*Reply to the Special Rapporteur on adequate housing and extreme poverty, by Open Space Association from Turkey, İstanbul;*

* **Legislation or official regulations prohibiting begging, dining, sleeping or engaging in personal hygiene activities in all public spaces or specific locations, including relevant texts, and whether they are presently in effect.**
  + The main law that prohibits begging, dining, sleeping or engaging in personal hygiene activities is the Law on Misdemeanours. In the first article of the law, the law's aim is announced as “protecting the public morality, public health, environment and economical order”.[[1]](#footnote-0)
  + Begging is prohibited under Article 33 of the Law on Misdemeanours which took effect in 2005: “Any person found begging is imposed on administrative fine of 50 TL. Further, what has been collected from begging is seized and transferred to the public.” Article 38 in the same law also prohibits peddling: “Any person occupying city squares, avenues, streets or sidewalks for pedestrians to sell goods without explicit and written permission given by authorities is imposed on administrative fine of 50 TL by municipal police.” While the law is still in effect, the amount of administrative fine was set as 204 TL for the year 2021.[[2]](#footnote-1)
  + It became public in 2014 that the Prime Ministry sent a circular to all provincial governorates instructing them to send Syrian migrants engaged in begging to camps. In his statement, Minister of Interior Beşir Atalay said: *“Syrians who do not settle in camps in spite of their situation face further difficulties in the course of time which lead them to begging. We sent circulars to provincial governorates: We still have vacancies in our camps and cases of beginning must not be allowed. Local civil society organizations may extend assistance to these people. But if you will send them to camps, there are vacant places there. We don’t want to see scenes of begging in cities involving our Syrian brothers.”*[[3]](#footnote-2) According to news in the media, operations based on this circular are still going on in various provinces in which Syrian refugees found begging are detained by municipal police to be transferred to camps.[[4]](#footnote-3) [[5]](#footnote-4)
  + The Press release no. 69 by İstanbul Governorate dated 23 August 2021 states the following: “Unlicensed and illicit waste collection and sifting activities in the city lead to informal employment in unhealthy circumstances accompanied by various problems in terms of environmental and public health.” The statement by the Governorate also informs that 650 wheelbarrows called “*çekçek*” used in waste paper collection were seized, legal action was taken for 286 persons and persons of foreign nationality were moved to the Tuzla Repatriation Centre for deportation.[[6]](#footnote-5) As a result of these operations, many persons engaged in waste paper collection turned jobless, some among them were detained by use of physical force, 3 persons were arrested and many migrants were deported. [[7]](#footnote-6)
  + Meanwhile, Article 37 in the Law on Misdemeanours states “Any person disturbing others while selling goods or services are imposed on administrative fine of 50 TL. The security or municipal police are authorized to give effect to this fine for the misdemeanour mentioned.” In the enforcement of this article, public officials apply discriminatory sanctions threatening the safety of persons concerned on the basis of gender identity and sexual orientation under the pretext of “combating prostitution.”[[8]](#footnote-7) During the Roma Workshop organized by the İstanbul Metropolitan Municipality in 2019, Roma citizens engaged in peddling said the Municipality seized their fruit-vegetable stalls on the basis of Article 37 in the Law on Misdemeanours, imposed fine amounting to 150 TL and as a result they had to abandon this occupation since they could not afford to pay their accumulated fines.[[9]](#footnote-8)

**Laws or regulations allowing for the detention or imprisonment of persons who cannot afford to pay monetary fines imposed for ordinary offences.**

* + Enforcement may be given effect in case administrative fines imposed under the Law on Misdemeanours are not paid. But this provision excludes acts like the seizure of household properties or arrestation. In practice, however, on the basis of the provision “seizure of returns to begging” in the Law on Misdemeanours, beggars may be detained by security officials and municipal police.[[10]](#footnote-9) Persons who oppose the instructions of the security or municipal police may be sentenced to a penalty of imprisonment for a term of 6 months to 3 years based on Article 265 in the Turkish Penal Code which is about “preventing public officers from performing their duty”.[[11]](#footnote-10)

**Comments on whether any of mentioned legislation and regulations violates international human rights law**

* + Article 7 of the European Convention states “No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.” In “The “quality of law” requirements and the principle of (non-)retrospectiveness of the criminal law under Article 7 of the Convention” research report, it was stated that “Offences and penalties must be both accessible and foreseeable in order to prevent any arbitrariness by the domestic courts” based on Article 7 and the decisions of European Courts of Decision[[12]](#footnote-11). In this context, Law on Misdemeanours creates an arbitrary ground for punishment with its first Article and permits security laws to impose penalty without judicial justice.
  + The use of the Law on Misdemeanours by the security and municipal police as justification of discriminatory practices on the basis of sexual orientation and gender or ethnic identity is violation of Article 1 of the United Nations Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and Article 2 of the Covenant on Civil and Political Rights.
  + In the International Covenant on Economic, Social and Cultural Rights, Article 6 recognizes the right of all to the “opportunity to gain his living by work which he freely chooses or accepts” and Article 11 recognizes the “right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions.” Both articles stress that States Parties must undertake their responsibility in the realization of these rights . Further, Article 25 in the Universal Declaration of Human Rights states: “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.” Also European Social Charter Article 30 recognized the right to be protected from poverty and Article 31 recognized the right for housing. The fact that persons have to earn their living with some precarious jobs like begging, waste paper collection or peddling is an indicator that their right to work, right to be protected from poverty and enjoy adequate living standards is violated. The imposition of penalties on persons trying to subsist by doing these works criminalizes the state of poverty, ignores violations that force people to take up such jobs and indirectly violates these rights.

**Information about initiatives taken or planned to decriminalize begging, dining, sleeping or engaging in personal hygiene related activities in all public spaces or specific locations.**

* + According to sources of information we could reach, there is no initiative launched or planned to decriminalize begging, dining, sleeping or engaging in personal hygiene related activities in public spacesincluding the modification of the Law on Misdemeanours.

**Existing measures and services at municipal, regional and national levels geared to protecting people living in poverty from having to beg, sleep, bath, defecate or engage in other hygiene-related activities in public spaces due to their lack of access to employment, social assistance, housing, public baths and toilets and other services.**

* + The Ministry of Family and Social Services mostly accepts woman and children only to its shelters. According to statements made by the Minister of Family and Social Services, there are 149 shelters in total under the management of the Ministry and their capacity is 3,624 persons. Hostels are open only to women victims of violence, women in need of shelter and children.[[13]](#footnote-12)The İstanbul Metropolitan Municipality has a shelter for women victims of violence and children.[[14]](#footnote-13) In İstanbul again, there are also shelters for women opened by district municipalities of Küçükçekmece, Kadıköy, Beşiktaş and Ataşehir.
  + The only housing service delivered to homeless persons in İstanbul is a temporary sheltering facility by İstanbul Metropolitan Municipality. With its initiative launched in 2019, the İstanbul Metropolitan Municipality transformed its Florya preliminary transfer centre into a sheltering facility thus providing boarding to 3,384 persons in the winter of 2019-2020 and to 206 persons in the winter of 2020-2021. These are temporary sheltering facilities which are of not room but “salon” type. They deliver services only in winters and seek to protect homeless persons from winter conditions. Interviews made by Yücel Bekaroğlu Doğan[[15]](#footnote-14) with homeless persons in İstanbul as a part of his qualitative survey points out to the need for sheltering facilities open 365 days a year. In spite of this need, the former Director of Poorhouses in İstanbul Municipality had made the following statement: “Those facing chronic homelessness (who benefit from sheltering-housing services in winters) are actually persons who do not want to live in enclosed spaces and want to get out of such places as soon as possible in their state of frustration and distress. Indeed, they start vacating these facilities as winter passes and weather gets warmer, eventually we vacate the remaining.” It appears that one of the reasons impeding sustainable sheltering and support mechanisms is prejudices against poverty and homelessness on the part of official authorities.[[16]](#footnote-15)
  + Since the availability of social support against poverty extended by municipalities, governorates and the Ministry of Family and Social Policies depends on declaration of permanent residence, it is impossible for those without any means of housing to apply for social support mechanisms.

1. https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf [↑](#footnote-ref-0)
2. https://www.mevzuat.gov.tr/MevzuatMetin/1.5.5326.pdf [↑](#footnote-ref-1)
3. http://www.aljazeera.com.tr/haber/valiliklere-suriyeli-genelgesi [↑](#footnote-ref-2)
4. https://www.urfanatik.com/haber/3511785/suriyeli-dilencilere-operasyon [↑](#footnote-ref-3)
5. https://www.gaziantepgunes.com/haber/7118086/bir-bu-eksikti [↑](#footnote-ref-4)
6. http://www.istanbul.gov.tr/bakirkoy-ve-umraniye-ilcelerimizde-izinsiz-ruhsatsiz-atik-toplama-ve-ayirma-yerleri-ile-cekcekci-sahislara-yonelik-denetim-basin-aciklamasi [↑](#footnote-ref-5)
7. https://www.birgun.net/haber/istanbul-da-kagit-toplayicilarina-bir-operasyon-daha-361206 [↑](#footnote-ref-6)
8. <https://kaosgl.org/haber/lsquokabahatler-kanunu-ile-trans-kadinlara-ayrimcilik-yapilamazrsquo> [↑](#footnote-ref-7)
9. <https://calistay.ibb.istanbul/wp-content/uploads/2020/07/IstanbulRomanCalistayi_Dijital.pdf> [↑](#footnote-ref-8)
10. https://www.sozcu.com.tr/2021/gundem/metrobus-duraklarinda-dilenci-operasyonu-cocuklar-korkudan-agladi-6707246/ [↑](#footnote-ref-9)
11. https://www.mevzuat.gov.tr/mevzuat?MevzuatNo=5237&MevzuatTur=1&MevzuatTertip=5 [↑](#footnote-ref-10)
12. <https://www.echr.coe.int/Documents/Research_report_quality_law_requirements_criminal_law_Art_7_ENG.PDF> [↑](#footnote-ref-11)
13. https://www.aile.gov.tr/basin-aciklamalari/birgun-gazetesinin-siginma-evleri-22-ilden-kalabalik-baslikli-haberine-iliskin-basin-aciklamasi/ [↑](#footnote-ref-12)
14. https://ibb.istanbul/arsiv/38308/3-bin-808-kadinla-omuz-omuza-mucadele [↑](#footnote-ref-13)
15. https://dergipark.org.tr/tr/download/article-file/933593 [↑](#footnote-ref-14)
16. https://dergipark.org.tr/tr/download/article-file/933593 [↑](#footnote-ref-15)