



DECRIMINALIZATION OF HOMELESSNESS AND EXTREME POVERTY

CALL FOR INPUT

Call for Input by Special Rapporteur on the right to adequate housing, Balakrishnan Rajagopal and Special Rapporteur on extreme poverty and human rights, Olivier de Schutter

SUBMISSION

Prepared by the participants of the course "International Human Rights Protection" at ESADE, University Ramon Llull, Barcelona, fall term 2021.

Introductory Note

This submission was prepared by the participants of the university course “International Human Rights Protection” at ESADE, University Ramon Llull in Barcelona during the fall term 2021. The participants conducted independent research on the laws and regulations at national, federal state or local level of their home State or a State whose official language they speak. Draft submissions were circulated and commented on and then finalized, including a short assessment of the regulations in light of applicable regional and international human rights law.

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Austria

Austria

Cities considered: Vienna and Salzburg

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

The right to housing in Austria is a state objective (“Staatszielbestimmung”). This means that it is a non-binding objective and not enforceable.¹ To describe the term “homelessness”, the BAWO (Federal Working Group for Assistance to the Homeless) uses the ETHOS definition of FEANTSA.² ETHOS differences between four different types of homelessness: rooflessness, houselessness, living in insecure housing and living in inadequate housing. According to this definition, roofless is who lives in the streets or in public places and people living in emergency shelters.³ Houseless are considered people who have not got their own home, but have shelter. They live for example with friends or family.⁴

Begging falls within the legislative scope of the federal states, hence there is no general definition for begging in Austria. A general ban on begging is not possible in Austria, as this would be considered a violation of Article 10 ECHR.⁵ In §29 Salzburger Landes-Sicherheitsgesetz, begging is defined as “the solicitation of money or things of monetary value from strangers in a public place or by moving from house to house or from dwelling to dwelling, claiming real or alleged need for oneself or others for selfish purposes.” **Intrusive begging** is defined as “moving from house to house or from flat to flat, in particular when it is clearly undesirable to enter the property

¹ Heinz Schoibl, ‘Anmerkungen zum Recht auf Wohnen‘ (28 January 2016) <https://bawo.at/fileadmin/user_upload/public/Dokumente/News/News_inter_national/Recht_auf_Wohnen_160128.pdf> accessed 22 October 2021.

² Unterlerchner/Moussa-Lipp/Christanell/Hammer, ‘Wohnungslos während Corona‘ (2020) *juridikum* 395.

³ FEANTSA, ‘European Typology of homelessness and housing exclusion‘ <<https://www.feantsa.org/download/ethos2484215748748239888.pdf>> accessed 22 October 2021.

⁴ Fonds Soziales Wien, ‘Hintergründe – Obdach und Wohnungslosigkeit‘ <<https://www.obdach.wien/p/hintergruende-obdach-u-wohnungslosigkeit>> accessed 24 October 2021.

⁵ ‘Bettelverbot ist verfassungswidrig‘ (ORF *Steiermark*, 10 January 2013)

<<https://steiermark.orf.at/v2/news/stories/2566498/>> accessed 22 October 2021 (hereafter ORF *Steiermark*, ‘Bettelverbot ist verfassungswidrig’).

or the house, but contact is nevertheless made with a resident on site and money or objects of monetary value are requested from him or her for selfish purposes”.⁶

In the “Wiener Landes-Sicherheitsgesetz”, there is no definition about what is considered begging nor intrusive begging. The materials to the WLSG do not define the term either, but make it clear that the legislator of Vienna did not intend an absolute ban on begging.⁷

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

Begging

As already mentioned, begging falls within the legislative scope of federal states. For this reason, the laws are different in each of the nine federal states. Eight out of nine of the federal states have rules that prohibit certain forms of begging. In these eight federal states it is prohibited to beg in an aggressive/intrusive way or with minors. In addition to that, §2 Wiener Landessicherheits-Gesetz prohibits organized and commercial begging in public places (see annex).

In Salzburg, begging is regulated in §29 Salzburger Landessicherheits-Gesetz. It is prohibited to organize or arrange begging (see annex).⁸ By ordinance of the municipality, begging in certain public places may also be prohibited if, due to the number of beggars that is expected and the local conditions, there is the possibility that the use of the public place by other people will be restricted. This is also possible if a grievance (“Missstand) already exists or is expected immediately. A grievance is considered a life fact which can be evaluated negatively. It is narrowly defined and must be relevant for the community. As an example, the Constitutional Court states that the noise pollution resulting from flying with model airplanes which have an internal combustion engine,

⁶ Salzburger Landessicherheitsgesetz 2014, s §29.

⁷ VfGH 12.10.2012, G134/10.

⁸ Lukas Andraschko, ‘Overview on Begging restrictions in each Austrian state’ (2021) <<https://www.ohchr.org/Documents/Issues/joint-activity/Decriminalization-homelessness/Oesterreichischer-Stadtebund.pdf>> accessed on 22 October 2021.

can be described as a grievance.⁹ Before issuing such an ordinance, the Provincial Police Directorate has the opportunity to give a statement.¹⁰

Sleeping

According to the §1 of the “Verordnung des Magistrats der Stadt Wien zur Kampierverordnung 1985” outside of camping sites, in Vienna it is prohibited in public places located outdoors to place or use sleeping bags, use or put up tents and the parking of passenger cars, buses, station wagons, camper vans, caravans or caravan trailers for residential purposes as well as their use for living (sleeping).¹¹

In Salzburg, camping is prohibited in public places. In November 2018, homeless people put up temporary "tents" on a green area in Volksgarten, as it was already sub-zero temperatures at the time. These consisted of branches over which tarpaulins were stretched. As a result, they were punished by police officers for violating the camping ordinance with a fine of 200 € each. This was challenged and the Administrative Court (Verwaltungsgerichtshof) said that this construction could be subsumed under the term "tent" and therefore an administrative offence had taken place. According to § 15 (2) 2 Salzburger CampG, a fine of up to 10,000 € and a substitute imprisonment of up to 2 weeks is provided for the accused administrative offence. The Administrative Court imposed a fine of €100 and a substitute custodial sentence of 12 hours. There is no public information available if the fine was collected or if the custodial measures were imposed.¹²

Eating and performing personal hygienic activities

Regarding personal hygienic activities: if someone violates public decency, they commit an administrative offence according to §1 of the Wiener Landessicherheits-Gesetz and §27 Salzburger Landessicherheits-Gesetz, According to the Administrative Court, examples for violating public decency are **urinating** (VwGH 30.4.1992, 90/10/0039) or insulting someone in an obscene manner (VwGH 25.11.1975, 2287/74).

⁹ VfGH 22.06.1988, V150/87; V152/87.

¹⁰ VfGH: „Stilles Betteln“ - Bettelverbot in Sbg⁴ (2017) *LexisNexis Rechtsnews*.

¹¹ Verordnung des Magistrats der Stadt Wien betreffend das Verbot des Kampierens (Kampierverordnung 1985), s §1.

¹² Landesverwaltungsgericht Salzburg 18.06.2019, 405-3/509/1/12-2019.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

Begging

In Vienna, if someone violates §2 Landessicherheits-Gesetz Wien, they can be fined up to 700 €. In case of uncollectability, they will be punished with a substitute custodial sentence of up to one week.

In Salzburg, §29 Salzburger Landessicherheits-Gesetz states that if somebody induces another person to beg or organizes begging, a fine of up to 10 000 € (!) can be given. In case of uncollectability, the offence may be punished with a custodial sentence of up to two weeks. If somebody begs in an intrusive or aggressive manner, for example by touching, accompanying without being asked or insulting, begs with the assistance of a minor, or violating a certain regulation, they can be fined with a fine of up to 500 €, in case of uncollectability, the offence may be punished with a custodial sentence of up to one week.

Sleeping

In Vienna, a fine of up to 700 € can be imposed, but no custodial sentence/substitute imprisonment.

According to § 15 (2) 2 Salzburger CampG, a fine of up to 10,000 € and a substitute imprisonment of up to 2 weeks is provided for violating this article.

Performing hygienic activities

If someone violates §1 Wiener Landessicherheits-Gesetz, they will be punished with a fine of up to 700 euros, in case of uncollectability with a substitute custodial sentence of up to one week.

If someone violates §27 Salzburger Landessicherheits-Gesetz, , they will be punished with a fine of up to 500 euros, in case of uncollectability with a substitute custodial sentence of up to one week.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

Already in 2012, the Constitutional Court overturned a ban on begging in Salzburg (G155-10), which prohibited "silent begging", because this violated the right to freedom of expression (Article 10 of the European Convention on Human Rights). Freedom of expression includes the freedom of communication, even if such communication is disturbing or shocking. Further, the principle of equality is affected, because certain forms of begging, such as begging in an intrusive/aggressive way are treated the same as silent begging, while these subjects cannot be considered equal. The equal treatment of these different subjects requires a justification (which in this case does not exist).

The maintenance of order and/or protecting rights of others **cannot justify the prohibition of silent begging.**

According to the Constitutional Court, the prohibition of "silent begging" does not violate article 8 ECHR, as begging cannot be classified as "an expression of an individual lifestyle", which the Constitutional Court also mentions in the decision G132/11. Prohibiting begging in general – even silent begging - in public places without exception is not necessary in a democratic society.¹³ The Constitutional Court further pronounced that there is no objection to rules prohibiting certain forms of begging, such as intrusive or aggressive begging as well as begging with minors.¹⁴

The Constitutional Court of Austria stated:

"Public places (...) have an immanent encounter with other people. A disturbance of public order cannot (...) arise from the mere presence of individual people in public places who solicit financial support without displaying qualified, for example intrusive or aggressive behaviour".¹⁵

¹³ VfGH 30.06.2012, G155/10.

¹⁴ ORF *Steiermark*, 'Bettelverbot ist verfassungswidrig'.

¹⁵ Christian Neuwirth, 'Grundsatzentscheidung zu den Bettelverboten in Österreich' (*Verfassungsgerichtshof Österreich*, 11 July 2012)

<https://www.vfgh.gv.at/downloads/bettelverbote_ladenschluss_obsorge_presseinfo.pdf> accessed 21 November 2021.

As mentioned above, a general ban on begging is not possible in Austria. Although there are repeated calls for the abolition of begging bans, there are currently no concrete plans to actually do so. According to a survey by the magazine "Profil", 67% of Austrians are currently in favour of a begging ban in cities. For this reason, it does not seem achievable in the near future to decriminalise begging.¹⁶

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

In every federal state there is a "Kältetelefon", which is a telephone number that can be called during winter.¹⁷ The objective is to prevent homeless people from freezing during these cold months. Another possibility is the "Kälte-App". In this app you can mark the location of the homeless person you see on the street in a map, and you can indicate who needs help.¹⁸

The "Gruft" in Vienna is a shelter in Vienna, where people can sleep, have washing- and shower facilities and support through social workers. In addition, the Gruft offers various activities to strengthen the clients' self-esteem again, such as a football-team. The Gruft team competes in tournaments in Vienna and the provinces and goes on annual training camps.¹⁹

¹⁶ 'Umfrage: 67% für ein generelles Bettelverbot in Städten' *Profil* (2019) <<https://www.profil.at/oesterreich/umfrage-bettelverbot-staedten-11242373>> accessed 22 October 2021.

¹⁷ Caritas Österreich, 'Kältetelefon' (*Caritas Wien*) <<https://www.caritas-wien.at/hilfe-angebote/obdach-wohnen/mobile-notversorgung/kaeltetelefon>>, accessed 30 October 2021.

¹⁸ Fonds Soziales Wien, 'KälteApp: Per Klick Unterstützung für obdachlose Menschen im Winter anfordern' (*Obdach Wien*, 30 October 2019) <<https://www.obdach.wien/n/kaelte-app>>, accessed 30 October 2021.

¹⁹ Caritas, 'Aktivitäten' (*Caritas*) <https://www.gruft.at/unsere-hilfe/aktivitaeten> accessed 30 October 2021.

Compliance with International Human Rights Standards

The question arises if the regulations in Vienna and Salzburg violate article 8 ECHR (right to respect for private and family life). On the positive side, as mentioned above, there is no blanket ban on begging in Austria.

But both Vienna and Salzburg have regulations in place that one has to pay a fine of up to 700 € (Vienna) or 10 000 € (Salzburg) if the laws against begging/sleeping are violated and fines of up to 700 € (Vienna) and 500 € (Salzburg) for urinating in public. Even though for the high of the fine, the personal situation is considered, in case that the fine can't be paid, a substitute custodial sentence has to be served.

According to article 66 of the UN Guiding Principles on extreme poverty and human rights, states should assess and address any disproportionate effect of criminal sanctions and incarceration proceedings on persons living in poverty and they should repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities. It is likely that Austria violates Article 66 of the UN Guiding Principles on extreme poverty and human rights, because there is a disproportionate effect of criminal sanctions on people living in poverty and there are several laws in force that criminalize sleeping, begging and personal hygiene activities.

The penalty is not proportionate to the aims (protecting the rights of people passing the beggars in the streets and fighting organised crime), as the ECHR ruled in the judgement *Lacatus v. Switzerland*.²⁰ Austria oversteps its margin of appreciation and infringes the human dignity of beggars. Imprisonment for someone whose only chance of survival is begging is disproportionate. Therefore, options other than imprisonment should be considered: one option would be community service, even though this comes with the risk of the person not fulfilling the service.

In conclusion, the legislation in Austria does not comply with International Human Rights standards and should be amended.

²⁰ *Lacatus v Switzerland*, App no 14065/15, 19 January 2021.

Salzburger Landessicherheitsgesetz

Anstandsverletzung

§ 27

(1) Wer den öffentlichen Anstand verletzt, begeht eine Verwaltungsübertretung und ist mit einer Geldstrafe bis zu 500 € und für den Fall der Uneinbringlichkeit mit Ersatzfreiheitsstrafe bis zu einer Woche zu bestrafen.

(2) Den öffentlichen Anstand verletzt, wer ein Verhalten setzt, das mit den allgemeinen Grundsätzen der Schicklichkeit nicht im Einklang steht und das einen groben Verstoß gegen die in der Öffentlichkeit zu beachtenden Pflichten darstellt, insbesondere wer

1. andere Personen in der Öffentlichkeit in unzumutbarer Weise, etwa in einem augenscheinlich durch Alkohol oder Suchtgift schwer beeinträchtigten Zustand, belästigt oder

2. öffentliche Einrichtungen wie Denkmäler, Brunnen, Sitzbänke oder Unterstände in anstößiger Weise nützt, etwa indem andere Personen am bestimmungsgemäßen Gebrauch dieser Einrichtungen, soweit ein solcher in Betracht kommt, gehindert werden.

(3) Die Organe des öffentlichen Sicherheitsdienstes können Personen, die den öffentlichen Anstand gemäß Abs 2 verletzen, anweisen, ihr Verhalten einzustellen. Von der Festnahme einer Person, die bei einer solchen Verwaltungsübertretung auf frischer Tat betreten wird und trotz Abmahnung in der Fortsetzung der strafbaren Handlung verharret oder sie zu wiederholen sucht (§ 35 Z 3 VStG), haben die Organe des öffentlichen Sicherheitsdienstes abzusehen, wenn die Fortsetzung oder Wiederholung der Anstandsverletzung durch Anwendung eines oder beider gelinderer Mittel (Abs 4) nach Androhung verhindert werden kann. Bei Personen, die offensichtlich zur Wahrnehmung der Androhung nicht fähig sind, entfällt dieses Erfordernis der vorausgehenden Androhung.

(4) Als gelindere Mittel kommen folgende Maßnahmen der unmittelbaren Befehls- und Zwangsgewalt in Betracht:

1. die Wegweisung der Person vom öffentlichen Ort;

2. die Sicherstellung von Sachen, die für die Fortsetzung oder Wiederholung der Anstandsverletzung verwendet werden können.

(5) Sichergestellte Sachen sind auf Verlangen auszufolgen:

1. dem auf frischer Tat Betretenen, sobald die Übertretung nicht wiederholt werden kann, oder

2. einem anderen Menschen, der Eigentum oder rechtmäßigen Besitz an der Sache nachweist, wenn die Gewähr besteht, dass mit diesen Sachen die Übertretung nicht wiederholt wird.

Solange die Sachen noch nicht der Behörde übergeben sind, kann der auf frischer Tat Betretene das Verlangen auf Ausfolgung an die Organe des öffentlichen Sicherheitsdienstes richten, die die Sachen verwahren.

(6) Wird ein Verlangen auf Ausfolgung (Abs 5) nicht binnen sechs Monaten gestellt oder unterlässt es der innerhalb dieser Zeit nachweislich dazu aufgeforderte Berechtigte (Abs 5 Z 1 oder 2), die Sachen von der Behörde abzuholen, so gelten sie als verfallen.

(7) Die Organe des öffentlichen Sicherheitsdienstes haben bei Amtshandlungen gemäß Abs 4 die im Einzelfall in Frage kommenden öffentlichen Einrichtungen im sozialen Bereich zu verständigen, wenn die von der Amtshandlung betroffenen Personen offensichtlich der Hilfe der Gemeinschaft bedürfen.

(8) Die Gemeinde kann durch Verordnung den Konsum von Alkohol und das Mitführen von Alkohol zum Konsum an öffentlichen Orten untersagen, wenn dies zur Hintanhaltung von Anstandsverletzungen geboten erscheint. Wer gegen ein derart verhängtes Verbot verstößt, begeht eine Verwaltungsübertretung und ist mit Geldstrafe bis zu 300 €

zu bestrafen. Behördliche Vollzugsorgane können Personen, die sie bei der Begehung dieser Verwaltungsübertretung auf frischer Tat betreten, das alkoholische Getränk samt Behältnis abnehmen. Die Abs 5 und 6 gelten sinngemäß.

Bettelei

§ 29

(1) Eine Verwaltungsübertretung begeht, wer

1. in aufdringlicher oder aggressiver Weise, wie durch Anfassen, unaufgefordertes Begleiten oder Beschimpfen, bittelt;
2. unter Mitwirkung einer unmündigen minderjährigen Person in welcher Form auch immer bittelt;
3. eine andere Person zum Betteln, in welcher Form auch immer, veranlasst oder Betteln organisiert;
4. entgegen einer Verordnung gemäß Abs 2 bittelt.

(2) Durch Verordnung der Gemeinde kann auch ein nicht unter Abs 1 fallendes Betteln an bestimmten öffentlichen Orten untersagt werden, wenn auf Grund der dort zu erwartenden Anzahl an bittelnden Personen und der örtlichen Verhältnisse zu befürchten ist, dass die Benützung des öffentlichen Orts durch andere Personen erschwert wird, oder sonst ein durch ein solches Betteln verursachter Missstand im Sinn des Art 118 Abs 6 B-VG bereits besteht oder unmittelbar zu erwarten ist. Vor Erlassung einer solchen Verordnung ist der Landespolizeidirektion Gelegenheit zur Stellungnahme zu geben.

(3) Als Betteln gilt das Erbitten von Geld oder geldwerten Sachen von fremden Personen an einem öffentlichen Ort oder im Umherziehen von Haus zu Haus oder von Wohnung zu Wohnung unter Berufung auf eine wirkliche oder angebliche Bedürftigkeit für sich oder andere zu eigennützigen Zwecken. Als aufdringlich gilt Betteln im Umherziehen von Haus zu Haus oder von Wohnung zu Wohnung insbesondere dann, wenn ein Betreten des Grundstückes oder des Hauses erkennbar unerwünscht ist, aber trotzdem mit einer Bewohnerin oder einem Bewohner vor Ort Kontakt aufgenommen wird und von ihr bzw ihm Geld oder geldwerte Sachen zu eigennützigen Zwecken erbeten werden.

(4) Auch der Versuch einer Verwaltungsübertretung gemäß Abs 1 und 2 ist strafbar.

(5) Verwaltungsübertretungen gemäß Abs 1 sind zu ahnden:

1. in den Fällen des Abs 1 Z 1, 2 und 4 sowie des Versuchs dazu mit Geldstrafe bis 500 € und für den Fall der Uneinbringlichkeit mit Freiheitsstrafe bis zu einer Woche;
2. in den Fällen des Abs 1 Z 3 sowie des Versuchs dazu mit Geldstrafe bis zu 10.000 € und für den Fall der Uneinbringlichkeit mit Freiheitsstrafe bis zu zwei Wochen.

Bei Vorliegen von Erschwerungsgründen kann auch der Verfall des Erbetelten oder daraus Erlösten ausgesprochen werden.

Wiener Landessicherheitsgesetz

Artikel I

1. Abschnitt

Anstandsverletzung und Lärmerregung

§ 1.

(1) Wer

1. den öffentlichen Anstand verletzt oder

2. ungebührlicherweise störenden Lärm erregt oder

3. eine Person an einem öffentlichen Ort zu einer Handlung oder Duldung auffordert, die deren sexuelle Sphäre betrifft und von dieser Person unerwünscht ist, begeht eine Verwaltungsübertretung und ist mit Geldstrafe bis zu 700 Euro, im Falle der Uneinbringlichkeit mit einer Ersatzfreiheitsstrafe bis zu einer Woche zu bestrafen.

(2) Zum Zweck der Abstellung oder zur Vermeidung einer drohenden Fortsetzung ungebührlichen störenden Lärms können Organe des öffentlichen Sicherheitsdienstes die Gegenstände, mit denen der Lärm erregt wird, sicherstellen oder, sofern dies wegen der Beschaffenheit des Gegenstandes oder aus anderen Gründen nicht möglich ist, in geeigneter Weise außer Betrieb setzen.

(3) Sichergestellte Sachen sind auf Verlangen auszufolgen

1. dem auf frischer Tat Betretenen, sobald die Lärmerregung nicht mehr wiederholt werden kann, oder

2. demjenigen, der Eigentum oder rechtmäßigen Besitz an der Sache nachweist, sofern die Gewähr besteht, daß mit diesen Sachen die Lärmerregung nicht wiederholt wird.

(4) solange die Sachen noch nicht der Behörde übergeben sind, kann der auf frischer Tat Betretene das Verlangen (Abs. 3) an jene Organe des öffentlichen Sicherheitsdienstes richten, welche die Sachen verwahren.

(5) Wird ein Verlangen (Abs. 3) nicht binnen sechs Monaten gestellt oder unterläßt es der innerhalb dieser Zeit nachweislich hiezu aufgeforderte Berechtigte (Abs. 3 Z 1 oder 2), die Sachen von der Behörde abzuholen, so gelten sie als verfallen. In diesem Fall sind die sichergestellten Sachen zu verwerten oder, falls dies nicht möglich oder nicht zulässig ist, zu vernichten. Ein allenfalls erzielter Erlös ist dem Eigentümer, wenn er dies binnen drei Jahren nach Eintritt des Verfalls verlangt, auszufolgen.

(6) Weitergehende oder anderslautende landesgesetzliche Vorschriften betreffend Lärmerregung bleiben unberührt.

Art. 1 § 2

2. Abschnitt

Bettelei

§ 2.

(1) Wer an einem öffentlichen Ort

a) in aufdringlicher oder aggressiver oder gewerbsmäßiger Weise oder als Beteiligter an einer organisierten Gruppe um Geld oder geldwerte Sachen bittelt, oder

b) eine unmündige minderjährige Person zum Betteln, in welcher Form auch immer, veranlasst oder diese bei der Bettelei mitführt, begeht eine Verwaltungsübertretung und ist mit Geldstrafe bis zu 700 Euro, im Falle der Uneinbringlichkeit mit einer Ersatzfreiheitsstrafe bis zu einer Woche zu bestrafen.

(2) Geld und geldwerte Sachen, die durch eine Verwaltungsübertretung nach Abs. 1 erworben worden sind, können für verfallen erklärt werden.

(3) Eine Verwaltungsübertretung liegt nicht vor, wenn eine Tat gemäß Abs. 1 den Tatbestand einer in die Zuständigkeit der Gerichte fallenden strafbaren Handlungen bildet oder gemäß § 8 des Gesetzes betreffend die Regelung öffentlicher Sammlungen, LGBL. für Wien Nr. 16/1946, in der jeweils geltenden Fassung zu bestrafen ist.

Verordnung des Magistrats der Stadt Wien betreffend das Verbot des Kampierens (Kampierverordnung 1985)

Auf Grund der §§ 76 und 108 der Wiener Stadtverfassung wird verordnet:

§ 1. Außerhalb von Campingplätzen ist an im Freien gelegenen öffentlichen Orten verboten:

1. das Auflegen und das Benützen von Schlafsäcken,
2. das Aufstellen und das Benützen von Zelten sowie
3. das Abstellen von Personenkraftwagen, Omnibussen, Kombinationskraftwagen, Wohnmobilen, Wohnwagen oder Wohnwagenanhängern zu Wohnzwecken sowie deren Benützen zum Wohnen (Schlafen).

§ 2. § 1 findet auf solche Handlungen keine Anwendung,

1. die in unmittelbarem örtlichem Zusammenhang mit einer erlaubten Tätigkeit stehen (zum Beispiel Straßenbau, genehmigte Veranstaltung) oder
2. die schon nach anderen gesundheitspolizeilichen Vorschriften verboten sind.

§ 3. Wer gegen ein Verbot des § 1 verstößt, begeht eine Verwaltungsübertretung und unterliegt der hierfür im § 108 Abs. 2 Wiener Stadtverfassung-WStV, LGBl. für Wien Nr. 28/1968 in der jeweils geltenden Fassung, vorgesehenen Strafe.

Salzburger CampingplatzGesetz

Strafbestimmungen

§ 15

(1) Eine Verwaltungsübertretung begeht, wer

1. entgegen § 3 Abs 1 einen Campingplatz ohne Bewilligung errichtet oder wesentlich ändert;
2. entgegen § 8 Abs 1 vor der Fertigstellung der Errichtung den Betrieb des Campingplatzes oder bei wesentlichen Änderungen den Betrieb der davon erfassten Teile aufnimmt;
3. entgegen § 8 Abs 2 die Fertigstellung der Errichtung oder wesentlichen Änderung des Campingplatzes der Behörde nicht oder nicht unter Anschluss der erforderlichen Unterlagen anzeigt;
4. entgegen § 9 Abs 1 keine Campingplatzordnung anschlägt oder entgegen § 9 Abs 2 dafür sorgt, dass ein Verantwortlicher erreichbar ist;
5. entgegen § 9 Abs 3 die Einrichtungen nicht betriebsbereit oder sauber hält;
6. entgegen § 10 Abs 1 nicht dafür sorgt, dass während der Dauer des Betriebs des Campingplatzes den Vorgaben dieses Gesetz, der gemäß § 6 mitanzuwendenden Rechtsvorschriften oder der Bewilligung gemäß § 7 Abs 1 entsprochen wird oder Mängel beseitigt werden;
7. entgegen § 10 Abs 2 keine Überprüfungen vornehmen lässt oder der Behörde die Prüfbescheinigung nicht vorweist;
8. entgegen § 11 Abs 1 Organe der Behörde daran hindert, den Campingplatz während der Öffnungszeiten zu betreten;
9. entgegen einem Auftrag gemäß § 11 Abs 5 den ursprünglichen Zustand nicht fristgerecht herstellt;
10. trotz Erlöschen des Betriebsrechts gemäß § 12 Abs 1 den Campingplatz weiter betreibt;

11. entgegen § 12 Abs 2 keinen hygienisch einwandfreien Zustand auf der betreffenden Liegenschaft herstellt oder die Einrichtungen nicht längstens binnen drei Jahren ab Erlöschen des Betriebsrechts beseitigt;

12. entgegen einem auf Grund des § 13 Abs 1 oder 2 erlassenen Verbot oder Gebot außerhalb von Campingplätzen campiert.

(2) Verwaltungsübertretungen gemäß Abs 1 sind zu ahnden:

1. in den Fällen der Z 1 und 10 mit Geldstrafe bis zu 25.000 € und für den Fall der Uneinbringlichkeit mit Ersatzfreiheitsstrafe bis zu fünf Wochen;

2. in den Fällen der Z 2, 3, 6, 7, 8, 9, 11 und 12 mit Geldstrafe bis zu 10.000 € und für den Fall der Uneinbringlichkeit mit Ersatzfreiheitsstrafe bis zu zwei Wochen;

3. in den Fällen der Z 4 und 5 mit Geldstrafe bis zu 1.000 € oder für den Fall der Uneinbringlichkeit mit Ersatzfreiheitsstrafe bis zu drei Tagen.

Denmark

Denmark

Note: The regulations implemented in regard to homelessness and begging, in Denmark, apply on a national level. There are no local regulations, however, there is a disparity in how much certain regulations are being enforced from city to city, which will be pointed out.

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

Homelessness

The legal definition of homelessness is found in *Botilbudsvejledningen* chapter 12,²¹ the official guide on housing offers, in relation to *ServiceLovens* § 110²² on housing offers to citizens who find themselves in homelessness. This definition is applied on a national level.

The Danish definition goes,

“Målgruppen for optagelse i et midlertidigt botilbud efter servicelovens § 110 spænder fra personer, der står helt uden tag over hovedet (boligløse) til personer, der har en bolig, de ikke kan fungere i, og som evt. er i risiko for at miste boligen, hvis der ikke sættes ind i tide med relevant hjælp. Hjemløshed er et flertydigt begreb, fordi det ofte relaterer sig til og falder sammen med en lang række af andre problemer end blot manglen på en bolig. Alkohol- og stofmisbrug, blandingsmisbrug, psykisk lidelse, vold, kriminalitet, ringe arbejdsmarkedstilknudning, manglende sociale netværk, et omflakkende liv og rodløshed er blot nogle af de problemer, der hænger sammen med hjemløshed.”

A rough translation, with reservations for errors, would be

“The target group for admittance to a temporary housing offer in accordance with Servicelovens § 110 range from persons who is completely without a roof over their head (homeless), to persons who have housing in which they cannot function in and who are in risk of losing their housing, if relevant help is not provided in due time. Homelessness is an ambiguous concept, because it often relates to and coincides with a long range of other issues than simply the lack of housing. Alcohol- and narcotics abuse, substance abuse, mental illness,

²¹ VEJ nr 9031 af 14/01/2021 chapter 12.

²² LBK nr 1548 af 01/07/2021 § 110.

violence, crime, poor labor market affiliation, lack of a social network, a restless and wandering lifestyle as well as rootlessness are only some of the issues that are often related to homelessness.”

Begging

Danish legislation does not provide us with a legal definition of the word “begging”, thus when referring to the word “begging” in the legislation, *actus reus* must be determined in accordance with the common conception of law that the statute was referring to.²³ The lack of a legal definition has been criticized by Kirkens Korshær, which is a Danish aid organization. They are afraid that without a definition the provision will be enforced arbitrarily.²⁴

When examining the legislative history, however, “begging” is defined as *“an approach to strangers in which contributions to a living are obtained as a present. Liability to punishment requires that the approach is happening in a way that is uncomfortable for the general public.”*²⁵

This definition is supported by a judgement from 2018 decided by the Danish Eastern High Court. Here a person was sitting in Strøget (a shopping street) in Copenhagen leaning against a shop window with 2 puppies and a black plastic bag with 2 visible bottles that were part of the arrangement for a deposit on packaging. Even though the person was not directly approaching the people passing by his location and behavior made it impossible for the people passing by not to consider his begging. The court found that the person in his behavior was asking for gifts, thus approaching strangers, and this was happening in a way that was uncomfortable for the general public. The person was sentenced to 14 days in prison.²⁶

²³ Oluf H. Krabbe, *BORGERLIG STRAFFELOV AF 15. APRIL 1930 OG LOV AF S. D. OM IKRAFTTRÆDEN AF BORGERLIG STRAFFELOV M. M. UDGIVET MED KOMMENTARER* (G. E. C. GADS FORLAG 1931) 10.

²⁴ Høringssvar om forslag til lov om ændring af lov om ændring af straffeloven (26 February 2020) <https://kirkenskorshaer.dk/sites/kirkenskorshaer.dk/files/media/document/200131_H%C3%B8ringssvar_vedr_udkast_til_forslag_til_lov_om_utyghedsskabende_betleri.pdf> accessed 15 November 2021.

²⁵ Strl.bet. 1912 § 324 og § 326, mot. 282-83.

²⁶ U.2018.2543.

Does the city/cities, province/canton, federal state, or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

Prohibiting camps that are contributing to an unsafe environment and sense of danger

Paragraph 23 of the Danish Police Act enables the regional police commissioners, *in specific situations*, to set in place a zone of prohibition against camps that are able to create a climate of danger and an unsafe environment, in a specific zone, in order to protect the public security. The area of a zone of prohibition can cover a whole municipality.

The camps and specific situations are further defined in “*Guide on the communication of a zone of prohibition when violating the prohibition by establishing and staying in camps, which is capable of creating an unsafe environment.*”²⁷ Camps are defined as being of a more permanent character, where one or several (wandering) persons establish a space for sleeping and resting over the open sky, in a public space. As such, temporary resting spaces, and the establishing of such a space for a single night, is not considered to be included. The prohibition against establishing camps in a designated area is not a general prohibition, but it is instead directed at specific individuals, the police might deem likely to establish such camps. Therefore, it is also possible for a homeless individual to sleep temporarily in an area that might have been designated as a zone of prohibition for other individuals. It depends on the discretion of the police in the given situation. Sleeping in camps that have been prohibited by the police is illegal, but the police will inform the affected individuals beforehand, so that they have the possibility of moving away and avoid further consequences.

It is also stated in the regulation that the specific situations are intended to cover circumstances in which foreign nationals travel to Denmark and set up camps in public areas. In official comments made to the original legislative proposal, the Danish Justice Department notes that an influx of these foreign nationals is contributing to the number of camps that are generating a sense of an unsafe environment.

²⁷ VEJ nr 9410 af 29/06/2020.

Since the implementation of this regulation on April 1st, 2017, and up until December 31st, 2020, a total of 231 zones of prohibition have been put in place. All of the zones of prohibition have been put in place in the municipality of Copenhagen, although the possibility exists for other municipalities to make use of the regulation. A total of 6 zones of prohibition were communicated to Danish citizens, 192 to EU citizens and 33 to non-EU citizens. This survey was carried out by the judicial committee of the legislative body of Denmark. The reason why there is a disparity in how many zones of prohibition have been put in place from city to city, is that the majority of foreign nationals choose to travel to Copenhagen and set up camp there. As mentioned just before, this regulation was put in place as a result of the greater influx of foreign nationals coming to Denmark.

Prohibition against begging

Paragraph 197, section 1 of the Danish criminal code prohibits begging, as defined above. However, liability to punishment requires that the police have already given the beggar a warning. If the beggar continues begging after a warning from the police, the beggar can be sentenced up to 6 months in prison.

Section 2 contains a total prohibition against begging in specific areas. This means that the police do not need to give a warning when beggars are begging in these areas. The areas are walking streets, at stations, in or near a supermarket and in public transportation.

When determining the length of the sentence paragraphs 81, 82 and 83 regarding aggravating and mitigating circumstances apply.

Legislation regarding eating or performing personal hygienic activities in all or certain public places?

There is no legislation directly prohibiting eating or drinking in public places, however, certain personal hygienic activities such as urinating can be illegal.

Legislation regarding public urination

According to the Danish regulation, *Ordensbekendtgørelsen*,²⁸ it is illegal to publicly urinate as this may cause discomfort or be a general insult to others. Urinating on the street, in gates, or on storefronts is therefore punishable by a fine of DKK 1.000,00. It is, however, not illegal to urinate

²⁸ BEK nr 511 af 20/06/2005.

on the beach, in forests or on the roadside, as long as it is not done visibly and does not cause discomfort to others.

Are there any laws or regulations that allow for petty offences the detention or imprisonment of individuals who are unable to pay the respective fine?

Whenever a natural person is sentenced to pay a fine, an alternative sentence will be calculated. This is stated in paragraph 54 and 55 of the Danish Criminal Code.

Paragraph 54 of the Danish Criminal Code states that when a person is sentenced to a fine by the court, the court will at the same time decide upon the length of the alternative sentence. The alternative will be enforced in case the person does not pay the fine. The alternative sentences do not take into consideration the subject's financial circumstances or other personal struggles.

Paragraph 55 of the Danish Criminal Code contains a schedule determining how fines under 10.000 DKK that are sentenced by the police should be converted into an alternative sentence. For example, a fine of 500-999 DKK is converted into a 4-day alternative sentence if the convicted person is not able to pay the fine.

These provisions are applicable to all fines, both given in-court and out-of-court, cf. Paragraph 2 of the Danish Criminal Code.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalize begging, eating, sleeping or performing personal hygienic activities in public places?

It is not likely that the Government is planning to decriminalize begging or remove the possibility for the commissioner of police to prohibit specific camps in specific areas, since the provisions regarding both areas are quite new.

The total prohibition against begging in specific areas was adopted for a trial period in 2017 and made permanent in 2021.

The possibility for the commissioner of police to prohibit specific camps in specific areas was adopted for a trial period in 2018 but it was made permanent in 2021.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating, or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers, and toilets?

The Government has recently published a new political initiative trying to abolish homelessness.

One of the goals is to make 2.900 cheap habitations available with a monthly rent of 3.500 DKK. By building new buildings and providing a 1200 DKK contribution to rent, they are planning on reaching the goal.²⁹ This is part of the project “Housing First” where the government prioritizes the housing of the homeless people. From then the appropriate help for other possible psychosocial challenges is provided.

The Government is planning on spending 135 million DKK in order to support the renewal of the actions taken to abolish homelessness.

Compliance with International Human Rights Standards (article 8 ECHR)

Homelessness

In the case of homelessness, Danish legislation allows for the police to prohibit sleeping in specific areas in case the camps are deemed to be contributing to an unsafe environment. This leaves a lot to be interpreted and at the current point in time, this interpretation is left for the police to do. The authorities have issued some guidance on the interpretation of this regulation, such as the camp being of a more permanent state and what constitutes a more permanent state. However,

²⁹ NYHED, ‘Nyt udspil skal bane vejen for afskaffelse af hjemløshed’ (25 October 2021) <regeringen.dk/nyheder/2021/nyt-udspil-skal-bane-vejen-for-afskaffelse-af-hjemloshed/> accessed 15 November 2021.

we would argue that the regulation needs to be specified further, because theoretically the police could ban any outdoor sleeping on the grounds of this legislation, should they choose to interpret it broadly. The regulation leaves a lot of discretion to be carried out by the police, which is not necessarily a bad thing, but since it leaves too much discretion, it could in effect result in a human rights violation. A broad interpretation of the prohibition of zones, could give rise to arbitrary prohibitions which do not take into account the specific circumstances of the individual. Should arbitrary prohibitions on sleeping on the street become a reality, violations of article 8 of the ECHR might take place.

Begging

The prohibition against begging can in general be an intervention in art. 8 of the European Human Rights Convention, because begging can be the last solution for an individual to survive.

It is possible to consider individual factors when determining the length of the sentence because the common provisions paragraphs 82 and 83 regarding mitigating circumstances apply.

However, section two of article 197 of the Criminal Code is problematic because it leans heavily towards a blanket ban. Even though it only applies to begging in specific areas, the legislation does not give much room for considering the individual situation, since section 3 of paragraph 197 says that begging in these areas is to be considered an aggravating circumstance.

The Institute for Human Rights in Denmark has already expressed their concern with section 2 of paragraph 197 and refers to the case in Switzerland, *Lazarus vs. Switzerland*. Regardless of the critique from the Institute for Human Rights in Denmark the Danish minister of justice did not deem it necessary to change the legislation.³⁰

Regulations that allow for petty offences the detention or imprisonment

The possibility to detain or to put a person into prison if the person does not pay the fine can also be a violation of human rights. There is a substantial risk that a begging or homeless individual will

³⁰ Institut for Menneskerettigheder, 'Bolit og hjemlshed' <<https://menneskeret.dk/bolit-hjemlshed>> accessed 15 November 2021.

not be able to pay a fine. Thus, the regulations could often have a more severe effect on such individuals. Since deprivation of liberty is a serious intervention in the freedom of movement, it might be deemed disproportionate, taking into the consideration the severity (*or lack of*) of the offenses.

§ 23 of the Danish Police Act

“Justitsministeren fastsætter regler om sikring af den offentlige orden samt beskyttelse af enkeltpersoners og den offentlige sikkerhed, forebyggelse af fare eller ulempe for færdslen, dyr på offentligt sted, offentlige anlæg, husnumre og opslag, erhvervsvirksomhed på veje, offentlige forlystelser, renholdelse af veje m.v. 192

Stk. 2. De i medfør af stk. 1 fastsatte bestemmelser kan indeholde regler om, at politidirektøren kan udstede midlertidige påbud eller forbud med henblik på at forebygge fare for den offentlige orden eller enkeltpersoners eller den offentlige sikkerhed. De bestemmelser, der er fastsat i medfør af stk. 1, kan endvidere indeholde regler om, at politidirektøren i visse nærmere angivne særlige situationer kan meddele et zoneforbud, der omfatter en kommune, med henblik på at forebygge fare for den offentlige orden eller enkeltpersoners eller den offentlige sikkerhed”

§ 197 of the Danish Criminal Code

“Den, der imod politiets advarsel gør sig skyldig i betleri, eller som tillader, at nogen under 18 år, der hører til hans husstand, betler, straffes med fængsel indtil 6 måneder. Under formildende omstændigheder kan straffen bortfalde. Advarsel efter denne bestemmelse har gyldighed for 5 år.

Stk. 2. Kravet om advarsel gælder ikke, når forholdet er begået i gågade, ved stationer, i eller ved supermarkeder eller i offentlige transportmidler.

Stk. 3. Ved fastsættelse af straffen skal det indgå som en skærpende omstændighed, at forholdet er begået et af de steder, der er nævnt i stk. 2.”

Comment 2.1.2. in the legislative proposal to change the Danish Police Act

Med udtrykket ”særlige situationer” sigtes navnlig til det forhold, hvor udenlandske tilrejsende etablerer og opholder sig i en utryghedsskabende lejr på offentlige steder, f.eks. i parker og på offentlige veje, hvor den eller de pågældende personer sover og opholder sig ofte i længere tid ad gangen. Sådanne lejre indebærer store gener for omgivelserne i form af f.eks. støj, uro og uhygiejniske og ubumske sanitære forhold og giver anledning til fare for den offentlige orden eller enkeltpersoners eller den offentlige sikkerhed. Det kan imidlertid ikke udelukkes, at også andre forhold vil kunne udgøre en særlig situation, der kan begrunde, at justitsministeren fastsætter regler, der giver politidirektøren (eller den, som denne bemyndiger hertil), mulighed for at meddele et zoneforbud, der omfatter en hel kommune. Men anvendelsen af bemyndigelsen vil under alle omstændigheder forudsætte, at der foreligger nogle helt særlige forhold svarende til det ovenfor beskrevne eksempel om utryghedsskabende lejre.

Survey by the judicial committee of the Danish parliament

<https://www.ft.dk/samling/20201/almdel/REU/bilag/261/2360148/index.htm> accessed 15 November 2021.

§ 54 of the Danish Criminal Code

“Når en bøde idømmes af eller vedtages for en domstol, træffer retten samtidig med bødens fastsættelse afgørelse om forvandlingsstraffens varighed. Når bøden er fastsat som dagbod, iagttages ved forvandlingsstraffens beregning, at 1 dags fængsel svarer til 1 dagbod, dog at forvandlingsstraffen ikke kan sættes lavere end 2 dage. Er bøden fastsat på anden måde, kan forvandlingsstraffen ikke sættes lavere end 2 dage og ikke højere end 60 dage. I særlige tilfælde kan forvandlingsstraffen dog forhøjes indtil 9 måneder.

Stk. 2. Er en del af bøden betalt, bliver forvandlingsstraffen forholdsvis at nedsætte, dog således, at en del af en dag regnes som en hel dag, og at forvandlingsstraffen ikke kan nedsættes under ovennævnte mindstetid. Er en del af bøden afsonet, men resten tilbydes betalt, tages ved beregningen af denne rest alene hensyn til de hele dage, hvori forvandlingsstraf er udstået.

Stk. 3. For bøder, der idømmes juridiske personer, fastsættes ingen forvandlingsstraf.”

§ 55 of the Danish Criminal Code

“Bøde på 10.000 kr. eller derunder, som er vedtaget efter tilkendegivelse fra politiet, afsones efter følgende skala:

Bøden:

Forvandlingsstraffen:

0 - 499 kr. 2 dage

500 - 999 kr. 4 dage

1.000 - 3.999 kr. 6 dage

4.000 - 5.999 kr. 8 dage

6.000 - 10.000 kr. 10 dage

For andre bøder, der ikke er idømt af eller vedtaget for en domstol, fastsættes forvandlingsstraffen af byretten i den retskreds, hvor den pågældende bor eller opholder sig.

Stk. 2. Bestemmelserne i § 54, stk. 1, sidste punktum, og stk. 2, finder tilsvarende anvendelse.”

§ 82 of the Danish Criminal Code

Det skal ved straffens fastsættelse i almindelighed indgå som formildende omstændighed,

- 1) at gerningsmanden ikke var fyldt 18 år, da gerningen blev udført,
- 2) at gerningsmanden har høj alder, når anvendelse af den sædvanlige straf er unødvendig eller skadelig,
- 3) at gerningen grænser til at være omfattet af en straffrihedsgrund,
- 4) at gerningsmanden har handlet i undskyldelig uvidenhed om eller undskyldelig misforståelse af retsregler, der forbyder eller påbyder handlingens foretagelse,
- 5) at gerningen er udført i en oprørt sindstilstand, der er fremkaldt af forurettede eller personer med tilknytning til denne ved et uretmæssigt angreb eller en grov fornærmelse,
- 6) at gerningen er begået som følge af tvang, svig eller udnyttelse af gerningsmandens unge alder eller betydelige økonomiske eller personlige vanskeligheder, manglende indsigt, letsind eller et bestående afhængighedsforhold,
- 7) at gerningen er begået under indflydelse af stærk medfølelse eller sindsbevægelse, eller der foreligger andre særlige oplysninger om gerningsmandens sindstilstand eller omstændighederne ved gerningen,
- 8) at gerningsmanden frivilligt har afværget eller søgt at afværge den fare, der er forvoldt ved den strafbare handling,
- 9) at gerningsmanden frivilligt har angivet sig selv og aflagt fuldstændig tilståelse,
- 10) at gerningsmanden har givet oplysninger, som er afgørende for opklaringen af strafbare handlinger begået af andre,
- 11) at gerningsmanden har genoprettet eller søgt at genoprette den skade, der er forvoldt ved den strafbare handling,
- 12) at gerningsmanden på grund af den strafbare handling fratages en af de i § 79 omhandlede rettigheder eller påføres andre følger, der kan sidestilles med straf,
- 13) at straffesagen mod gerningsmanden ikke er afgjort inden for en rimelig tid, uden at det kan bebrejdes gerningsmanden,
- 14) at der er gået så lang tid, siden den strafbare handling blev foretaget, at anvendelse af den sædvanlige straf er unødvendig.

§ 83 of the Danish Criminal Code

Straffen kan nedsættes under den foreskrevne strafferamme, når oplysninger om gerningen, gerningsmandens person eller andre forhold afgørende taler herfor. Under i øvrigt formildende omstændigheder kan straffen bortfalde.

Ireland

Ireland

City considered: Dublin City

The legislation on begging and homelessness enacted by the Government of Ireland is applicable to all counties and provinces within the Irish state. The local authorities (City and County Council) have not introduced regulations that greatly differ from the national legislation on this matter.

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

Legal definition of Homelessness

The legal definition of Homelessness in Ireland is provided for in *Section 2 of the Housing Act 1988*. This definition of homelessness is used so as to determine whether or not a person is eligible for emergency accommodation.

2.—A person shall be regarded by a housing authority as being homeless for the purposes of this Act if—

(a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or

(b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in *paragraph (a)*,

and he is, in the opinion of the authority, unable to provide accommodation from his own resources.

Judicial Interpretation of Section 2 of the 1998 Act

In *Tee v Wicklow*³¹, the Irish High Court, held that when deciding whether a person can be defined as homeless for the purpose of *section 2 of the 1998 Act*, the housing authority must have regard for two essential criteria: the person ‘must have no accommodation available to him and be unable to provide such accommodation from his own resources.’³²

The High Court, in *Middleton v Carlow County Council*,³³ stated that *section 2 of the 1998 Act* gave the housing authority discretion to decide whether or not a person can be considered to be homeless, and that the Court’s role was ‘limited’ when reviewing this discretion. The Court held that, in accordance with the standard of review for administrative decisions of a government body, a Court could not overturn a decision unless it is ‘fundamentally at variance with reason and common sense’.³⁴ This decision indicates that it is up to the discretion of the housing authority to determine whether a person falls within the legislative definition of homeless.

In the case of *Mulbare v Cork County Council*³⁵, where a women diagnosed with cerebral palsy applied to the local housing authority for more suitable accommodation, closer to her treatment facilities, the court upheld the authorities refusal to grant the applicants request on the grounds that she was not homeless for the purpose of *Section 2 of the Housing Act 1988*,³⁶ since housing was offered to her.

Legal definition of Begging

The legal definition of ‘begging’ is provided for under *section 1(2) of the Criminal Justice (Public Order) Act 2011* (*the 2011 Act*).

(2) *For the purposes of this Act, a person begs if—*

³¹ [2017] IEHC 194 at 17.

³² Conor Casey, ‘Courts, Public Interest Litigation, And Homelessness: A Commentary On Recent Case Law’ (2019) DULJ 42, 1.

³³ [2017] IEHC 528.

³⁴ Ibid 40.

³⁶ Conor Casey, ‘Courts, Public Interest Litigation, And Homelessness: A Commentary On Recent Case Law’ (2019) DULJ 42, 191.

(a) other than in accordance with a licence, permit or authorisation (howsoever described) granted by or under an enactment, he or she requests or solicits money or goods from another person or other persons, or

(b) while in a private place without the consent of the owner or occupier of the private place, he or she requests or solicits money or goods from another person or other persons.

Judicial Interpretation of *the 2011 Act*

In *DPP v Florin Rostas & DPP v Maughan*,³⁷ the High Court held that a person charged with an offence under *section 2 of the Criminal Justice (Public Order) Act 2011*, is not required to prove their innocence. Rather, the burden of proof is on the prosecution to establish ‘a prima facie case that begging took place without legal authorisation.’ The burden of proof would then be transferred to the accused ‘to establish a reasonable doubt as to the legality of the begging.’³⁸ Begging without legal authorisation means begging without the necessary ‘licence, permit, or authorisation.’³⁹

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

Begging is regulated by the Criminal Justice (Public Order) Act 2011

The 2011 Act does not criminalise begging absolutely. However, it does criminalise begging in certain circumstances and in circumstances where it is not necessarily illegal to beg, *the Act* makes

³⁷ [2012] IEHC 19.

³⁸ Annual Review of Irish Law [2012], 26(1), 231-261f.

³⁹ Ibid 7 [3].

it an offence to contravene an order by An Garda Síochána (The national police service of Ireland) to desist from begging in proscribed circumstances.

Section 2 states that begging is an offence if a person while begging harasses, intimidates, assaults or threatens another person, or obstructs the passage of persons or vehicles.

Section 3 (1)(a) of the Act gives An Garda Síochána ('AGS') the power to direct a person who is begging 'in any place' and whom they reasonably believe 'to be acting or to have acted' in a way that would constitute an offence under *section 2*, to stop such behaviour and to vacate the area.

Similarly, *Section 3(1)(b) of the 2011 Act* gives AGS the power to direct a person who is begging and whom they reasonably believe 'to be acting or to have acted' in a way that would induce 'a reasonable apprehension for the safety of persons or property or for the maintenance of public peace,' to stop such behaviour and to vacate the area.

Section 3 (2) grants power to any member of AGS to direct a person who is begging in the places listed below, to desist from begging and to leave the vicinity of that place.

- Entrance to a dwelling
- An automated teller machine
- Vending machine, or –
- A night safe
- At or near entrance to a business premises during operating hours

Section 3(5) makes it an offence, liable on summary conviction to a fine of up to €500, to contravene a direction under this section.

Section 4 reserves the power of a member of AGS to arrest without a warrant any person whom they suspect to have committed an offence under *Section 2* or *section 3* of this act.

Section 5 makes it an offence to direct someone to beg, organises the begging by another person, forces another person to beg, otherwise causes another person to beg.

Section 6 states that a person commits an offence if they derive a living from the proceeds of begging by another person. It is also an offence to aid or abet this activity.

According to Gerry Whyte, the offence established by *section 2(b) of the 2011 Act* and the offence established by *section 9 of the Criminal Justice (Public Order) Act 1994 ('the 1994 Act')*, as amended, 'are in pari materia' and so have to be interpreted together. Both sections make it an offence to obstruct the passage of persons or vehicles, however, *section 2(b) of the 2011 Act* relates to an obstruction by a beggar and *Section 9 of the 1994 Act* relates to the public generally. Unlike the *2011 Act*, *the 1994 Act* refers to the 'wilful' obstruction of the 'passage of persons or vehicles in any public place.' Whyte suggests that since the *section 2 of the 2011 Act* does not specify that the obstruction must be wilful in order for an offence to be committed, an offence could be committed 'even if the obstruction was negligent or inadvertent.' Further, under *section 2* of the *2011 Act* a fine of up to €500 or imprisonment can be imposed, while under *section 9 of the 1994 Act* a fine 'not exceeding' €200 can be imposed.⁴⁰ Therefore, beggars who do not have the direct intention of causing an obstruction can face a greater punishment than other members of the public who 'wilfully' obstruct the passage of persons or vehicles.

As noted above, under *section 3(1)(b) of the 2011 Act*, the Gardaí can exercise their powers when the behaviour of a beggar gives rise to a 'reasonable apprehension for the safety of persons and property' or in order to maintain 'public peace,' in cases of passive begging. However, it has been questioned whether the Gardaí could use their powers when a beggar is engaged in passive begging.⁴¹ If this were permitted and the power was exercised in the name of 'maintaining public peace' this would be a de facto criminalisation of begging.

Children's Act 2001

Section 247 makes it an offence for someone who directs a child to beg or if they are in custody of the child, allows them to be in public place for the purpose of begging or receiving alms.

Criminal Justice (Public Order) Act 1994

Section 4 makes it an offence to be intoxicated in a public place and act in a manner as to endanger oneself or another within their proximity

⁴⁰ Gerry Whyte, 'Begging and the Irish Law' (2020) *The Irish Jurist*, 153-166, 64.

⁴¹ *Ibid.*

Public consumption of liquor is an area not legislated for by the national authorities and falls within the jurisdiction of local authorities. An example of a local authority that has exercised their jurisdiction and regulated the matter is Dublin City Council.

Dublin City Council (Prohibition of consumption of Intoxicating Liquor in roads and in public places) Bye-Laws 2008

Section 6 of the 2008 Bye-Laws makes it an offence to consume alcohol in the specified public places under this section and to possess alcohol with the intent of consuming it in the public places specified.

Section 7 permits a member of AGS to direct a person whom they believe to be contravening this provision to desist from doing so and to leave the vicinity. It is an offence to contravene such an order and a fine not exceeding €1,900 can be imposed for doing so.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

As discussed, fines are imposed under a number of sections of *the 2011 Act*, *the Dublin City Council Bye-Laws 2008*, and *the 1994 Act*, that impose fines for petty offences. *Section 1 of the Courts (No.2) Act 1991* provides that a committal sentence can be imposed in the event of non-payment of fines.

In *Owens v DPP*,⁴² The Supreme Court stated that the Courts' power of committal in event of default of the payment of a fine is subject to a six-month limitation period, as per *section 1 of the Courts (No. 2) Act 1991*,⁴³ which was inserted into *the 2014 Act* by *Section 22 of the 2014 Act*.⁴⁴

However, the *Fines (Payment and Recovery Act) 2014* (*'the 2014 Act'*) introduced reforms that allow the Courts to consider alternative options, having consideration for a person's financial situation, before a prison sentence would be imposed for defaulting on a fine payment.⁴⁵ According to the then Minister for Justice and Equality, *the 2014 Act* was enacted to eliminate, in so far as practical

⁴² [2019] IESC 36.

⁴³ Annual Review of Irish Law 2019, 1(1), 281-340.

⁴⁴ Ibid.

⁴⁵ [2019] IESC 36, 1.

the option of imprisonment as a sanction for fine default. In *Owmes v DPP*,⁴⁶ the Supreme Court stated that the aim behind *the 2014 Act* was to 'lessen the likelihood' that people will be imprisoned for non-payment of fines.⁴⁷

The 2014 Act allows, as alternatives to a prison sentence, the Court to impose an attachment order, a recovery order, or a community service order. The Court also has the discretion make an order for a community service rather than imprisonment in the event that the fine still remains outstanding after an attachment or recover order has been made.⁴⁸

Fines (Payments and Recovery) Act 2014⁴⁹

Section 5 requires the court to take into account the Defendant's financial circumstances when imposing a fine.

Section 4 (5) permits the court to serve a written notice on a person convicted of an offence requiring them to appear before court with information relating to their financial circumstances for the purposes of assessing the amount of the fine.

Section 4 (7) a person who fails to comply with *subsection 5* shall be guilty of an offence and liable on summary conviction to a fine of up to €4000 or imprisonment for maximum term of 6 months or both.

Section 7 governs options open to court where failure of convicted to pay fine by due date.

Section 20 2A holds that where a court finds that the person fined has not paid the fine by the due date for payment and it would not be appropriate to make a recovery or attachment order or where receiver is unable to recover make an order committing a person to a term of imprisonment for a term not exceeding 12 months.

⁴⁶ [2019] IESC 36.

⁴⁷ [2019] IESC 36, 31.

⁴⁸ Government of Ireland , 'Minister Fitzgerald commences Fines (Payment and Recovery) Act 2014' (*Department of Justice* , 11 January 2016) <<https://www.justice.ie/en/JELR/Pages/PR16000009>> accessed 25 October 2021.

⁴⁹ See <<https://www.irishstatutebook.ie/eli/2014/act/7/enacted/en/html>> accessed 25 October 2021.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

Pursuant to the decision in *Dillon v DPP*⁵⁰, discussed below Ireland enacted the *Criminal Justice (Public Order) Act 2011* which decriminalised passive begging, previously criminalised under *section 3 of the Vagrancy (Ireland) Act 1847* ('the 1847 Act')

Section 3 of the Vagrancy (Ireland) 1847 Act provided that:

“Every person wandering abroad and begging, or placing himself in any public place, street, highway, court, or passage to beg or gather alms... shall on conviction thereof before any Justice of the Peace, if such justice shall think fit, be committed to the common gaol or house of correction, there to be kept to hard labour for any time not exceeding one calendar month”.

Section 3 of the 1847 Act was declared unconstitutional in *Dillon v DPP* since it amounted to an absolute ban on begging. The Supreme Court held it to be unconstitutional because it concerned “rumour or ill-repute or past conduct,” an element which resulted in *section 4 of the Vagrancy Act 1824* being held unconstitutional in a previous case. Also, it was held that *section 3 of the 1847 Act* infringed upon the constitutional right of citizens to freely express ‘their convictions and opinions.’ However, the Court noted that this right could be legitimated restricted.⁵¹

The *Criminal Justice (Public Order) Act 2011* only criminalises begging in certain instances, when accompanied by an element of aggression, trespass or contravention of a direction of AGS. At present, there is no indication that the Irish Government is planning to adopt any further legislative action to decriminalise begging, eating, sleeping or performing personal hygiene activities in public places.

⁵⁰ [2008] 1 I.R. 383.

⁵¹ Gerry Whyte, 'Begging and the Irish Law' [2020], *The Irish Jurist* 153-166, 64.

Are there any recent and perhaps innovative measures in place in your municipality / state to support people living in poverty from having to resort to begging, sleeping etc in public places because they do not have access to employment, social assistance, adequate housing?

The Housing Assistance Payment (HAP) Scheme is a type of social housing support that is provided by all local authorities in Ireland.⁵² Under this scheme, the authorities will pay the tenant's rent directly to the landlord. There are also Approved Housing Bodies (AHBs) a non-profit organisation which provides people, who cannot afford private sector rents or to buy a home, with rented accommodation. Section 6 of the Housing (Miscellaneous Provisions) Act, 1992 allows housing authorities to support AHBs in their provision of housing.⁵³

The Dublin Region Homeless Executive reported that in February 2021, 78 families avoided emergency accommodation, mainly as a result of the HAP scheme and 5 further tenancies were created by AHBs. Also, in that same time 55 families and 71 single adults moved from emergency accommodation to tenancies provided for by HAP and AHBs.

Compliance with International Human Rights Standards (article 8 ECHR)

The European Court of Human Rights held in *Lăcătuș v. Switzerland* that a blanket ban on begging violated an individual's right to human dignity protected under Article 8 of the European Convention on Human Rights. The object of combating organised crime and protecting the rights of passers-by did not constitute a legitimate interference permitted under Article 8.2. Furthermore, The UN Guiding Principles on Extreme Poverty and Human Rights recommends that any laws criminalising life sustaining activities in public such as begging should be reformed.

The national regulations governing begging in Ireland appear to comply with the UN Guiding Principles and the judgement of the European Court of Human Rights in *Lăcătuș v. Switzerland*. The *Vagrancy (Ireland) Act 1847*, which placed an absolute prohibition on begging, was repealed

52 'Housing Assistance Payment (HAP)' *Citizen's Information*, (18 May 2021) <https://www.citizensinformation.ie/en/housing/renting_a_home/housing_assistance_payment.html> accessed 27 October 2021.

53 Government of Ireland, 'Approved Housing Bodies (AHBs)' (*Govie*, 17 July 2020) <<https://www.gov.ie/en/publication/53ab7-approved-housing-bodies-ahbs/>> accessed 26 October 2021.

and replaced with the *Criminal Justice (Public Order) Act 2011*, which takes a more nuanced approach to begging, and only criminalises begging in the circumstances outlined above. The criminalisation of begging in the prescribed circumstances is justified on the grounds of prevention of organised begging, the exploitation of vulnerable persons and children and is limited to public order concerns.

In the *Lăcătuș v. Switzerland* the European Court of Human Rights stated that one of the issues with the applicable legislation was that it ‘precluded a genuine balancing of the interests at stake.’ As discussed, the relevant Irish legislation allows for a fine of up to 500 euro to be imposed if a person begging in certain prescribed circumstances does not comply with an order by a member of AGS to desist from doing so. A term of imprisonment can also be imposed. However, the *Fines (Payment and Recovery Act) 2014*, gives a wide discretion to the judiciary to explore alternatives to imprisonment in the event that a person who is fined cannot pay. This includes taking the financial situation of that person into account. The Irish legislation, therefore, unlike the relevant Swiss legislation in *Lăcătuș v. Switzerland*, allows for a balancing of interests before a term of imprisonment would be imposed in the event of non-payment of a fine for begging. The fact that the financial situation of a person fined for begging and who is unable to pay is taken into account seems also to be in line with the recommendation within the UN Guiding Principles on Extreme poverty and Human Rights, that states should ‘assess and address any disproportionate effect of criminal sanctions and incarceration proceedings on persons living in poverty.’

Although, in responding to the draft bill *Criminal Justice (Public Order) (Amendment) Bill 2008*, the Irish Human Rights and Equality Commission (IHRC) raised a number of concerns and not all of these concerns were addressed in the final *Criminal Justice (Public Order) Act 2011*. The IHRC considered that the powers given to AGS to arrest without a warrant passive beggars who failed to obey an order to desist from begging was ‘not a measured and focused response to dealing with begging that is accompanied by criminal behaviour, not covered by existing public order offences,’ and that these powers should be removed.⁵⁴ However, this power was kept in the final *2011 Act*. Therefore, the powers awarded to AGS to arrest passive beggars may infringe too greatly on the right to human dignity and the right of people to convey their plight, as discussed in *Lăcătuș v. Switzerland*.

⁵⁴ Criminal Justice (Public Order) (Amendment) Bill 2008 Seriously Flawed, *Irish Human Rights and Equality Commission* (22nd December 2008), Criminal Justice (Public Order) (Amendment) Bill 2008 Seriously Flawed - IHREC - Irish Human Rights and Equality Commission

Annex

Criminal justice (Public Order Act) 2011

Section 2 — A person who, while begging in any place

(a) harasses, intimidates, assaults or threatens any other person or persons, or

(b) obstructs the passage of persons or vehicles,

is guilty of an offence and is liable, on summary conviction, to a fine not exceeding €500 or imprisonment for a term not exceeding one month or both

Section 3.— (1) A member of the Garda Síochána may direct a person who is begging in any place and whom the member believes, upon reasonable grounds, to be acting or to have acted in a manner that—

(a) constitutes an offence under [section 2](#), or

(b) gives rise to a reasonable apprehension for the safety of persons or property or for the maintenance of the public peace,

to desist from acting in such manner and to leave the vicinity of that place in a peaceable and orderly manner.

(2) A member of the Garda Síochána may direct a person who is begging at or near—

(a) the entrance to a dwelling,

(b) an automated teller machine,

(c) a vending machine, or

(d) a night safe,

to desist from begging and to leave the vicinity of that place in a peaceable and orderly manner.

(3) A member of the Garda Síochána may direct a person who is begging at or near the entrance to a business premises, at any time when that premises is open for the transaction of business with members of the public, to desist from begging and to leave the vicinity of that place in a peaceable and orderly manner, if the member has reasonable grounds for believing that, by reason of the person's behaviour or the number of persons begging at or near the premises, members of the public are being, or are likely to be, deterred from entering the premises.

(4) A member of the Garda Síochána may direct a person (other than the owner or occupier of the place subsequently referred to in this subsection) who is begging in a private place to desist from begging and to leave that place and the vicinity thereof in a peaceable and orderly manner.

(5) A person who contravenes a direction under this section is guilty of an offence and is liable, on summary conviction, to a class E fine.

(6) A member of the Garda Síochána shall, upon giving a direction under this section, inform the person to whom the direction is given, in clear language, that if he or she fails to comply with the direction he or she shall be guilty of an offence.

(7) A member of the Garda Síochána shall not perform functions under this section while in a dwelling unless he or she is in the dwelling with the consent of the owner or occupier of the dwelling.

(8) This section shall not operate to limit the right of the owner or occupier of a private place to require a person who is begging at that place to—

(a) desist from begging, or

(b) leave that place.

(9) In this section—

“automated teller machine” means a machine designed to enable a person, by means of the use of a cash card, credit card or debit card, to—

(a) withdraw cash from, or lodge cash to, an account (including a bank account), or

(b) conduct other personal financial transactions;

“business premises” means a premises that is normally used for—

(a) the carrying on of any professional, commercial or industrial undertaking, or

(b) the provision of services to members of the public;

“night safe” means a device located on the external wall of a premises occupied by a bank or other financial services provider in which money, in whatever form, may be deposited by or on behalf of customers of that bank or financial services provider;

“vending machine” means a machine designed to enable a person to purchase goods or services by means of—

(a) the use of a debit card or credit card, or

(b) the deposit in the machine of money or tokens used as a substitute for money.

Section 5.— (1) A person who—

(a) controls or directs the actions of another person for the purposes of begging,

(b) organises or is materially involved in the organisation of begging by another person,

(c) forces another person to beg, or

(d) otherwise causes another person to beg,

is guilty of an offence.

(2) A person guilty of an offence under this section is liable—

(a) on summary conviction to a fine of up to €5000 or imprisonment for a term not exceeding 12 months or both, or

(b) on conviction on indictment to a fine not exceeding €200,000 or imprisonment for a term not exceeding 5 years or both.

Section 6.— A person who derives a living, in whole or in part, from the proceeds of begging by another person and who, in relation to that person, commits an offence under *section 5* or aids and abets the commission of such an offence is guilty of an offence and is liable on summary conviction to a class A fine (a fine not exceeding 5,000 euro) or imprisonment for a term not exceeding 12 months or both.

Children Act 2001

247.—(1) A person is guilty of an offence if he or she causes or procures a child or, having the custody, charge or care of a child, allows the child to be in any street or public place, or to make house to house visits, for the purpose of begging or receiving alms or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise).

(2) If a person who has the custody, charge or care of a child is charged with an offence under this section, and it is proved that the child was in any street, public place or house for any purpose referred to in *subsection (1)*, the person shall be presumed to have allowed the child to be in the street, public place or house for that purpose, unless the contrary is proved.

(3) A person found guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding—

(a) in the case of a first offence, £250, or

(b) in the case of a second or any subsequent offence, £500.

Criminal Justice (Public Order) Act 1994

4.—(1) It shall be an offence for any person to be present in any public place while intoxicated to such an extent as would give rise to a reasonable apprehension that he might endanger himself or any other person in his vicinity.

(2) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £100.

(3) Where a member of the Garda Síochána suspects, with reasonable cause, that an offence under this section or under *section 5* or *6* is being committed, the member concerned may seize, obtain or remove, without warrant, any bottle or container, together with its contents, which—

(a) is in the possession, in a place other than a place used as a dwelling, of a person by whom such member suspects the offence to have been committed, and

(b) such member suspects, with reasonable cause, contains an intoxicating substance:

Provided that, in the application of this subsection to *section 5* or *6*, any such bottle or container, together with its contents, may only be so seized, obtained or removed where the member of the Garda Síochána suspects, with reasonable cause, that the bottle or container or its contents, is relevant to the offence under *section 5* or *6* which the member suspects is being committed.

(4)“intoxicated” means under the intoxicating influence of any alcoholic drink, drug, solvent or other substance or a combination of substances and cognate words shall be construed accordingly.

8.—(1) Where a member of the Garda Síochána finds a person in a public place and suspects, with reasonable cause, that such person—

(a) is or has been acting in a manner contrary to the provisions of section 4 , 5 , 6 , 7 or 9 , or

(b) without lawful authority or reasonable excuse, is acting in a manner which consists of loitering in a public place in circumstances, which may include the company of other persons, that give rise to a reasonable apprehension for the safety of persons or the safety of property or for the maintenance of the public peace, the member may direct the person so suspected to do either or both of the following, that is to say:

(i) desist from acting in such a manner, and

(ii) leave immediately the vicinity of the place concerned in a peaceable or orderly manner.

(2) It shall be an offence for any person, without lawful authority or reasonable excuse, to fail to comply with a direction given by a member of the Garda Síochána under this section.

(3) A person who is guilty of an offence under this section shall be liable on summary conviction to a fine not exceeding £500 or to imprisonment for a term not exceeding 6 months or to both.

9.—Any person who, without lawful authority or reasonable excuse, wilfully prevents or interrupts the free passage of any person or vehicle in any public place shall be liable on summary conviction to a fine not exceeding £200.

Dublin City Council (Prohibition of Consumption of Intoxicating Liquor on Roads and in Public Places) Bye-Laws 2008

6. Subject to sections 9 and 11 hereof no person or persons shall –

(1) Consume or attempt to consume intoxicating liquor on a road or in a public place within the functional area of the Council or

(2) Possess intoxicating liquor on a road or in a public place within the functional area of the Council with the intention of consuming it on a road or in a public place or of supplying it to a person or persons for consumption on a road or in a public place within the functional area of the Council.

A person who contravenes paragraph 6(1) or 6(2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,900.

7. Where an authorised person or a member of the Garda Síochána has reasonable grounds for believing that a person is contravening or has contravened a provision of these bye-laws, such authorised person or member may direct such person to do either or both of the following, that is to say:

(i) desist from such breach, and

(ii) leave immediately the vicinity of the place concerned in a peaceable and orderly manner

Failure to comply with such a direction shall be an offence under this bye-law, and shall be liable on summary conviction in the District Court to a fine not exceeding €1,900

Fines (Payment and Recovery) Act 2014

5. (1) The purpose of this section is to ensure, in so far as is practicable, that, where a court imposes a fine on a person, the effect of the fine on that person or his or her dependants is not significantly abated or made more severe by reason of his or her financial circumstances.

Section 4(5) For the purposes of subsection (2), the court may, by notice in writing served on a person who has been convicted of an offence, require the person to attend before the court and provide the court with such information as the court may require in relation to his or her financial circumstances.

Section 4 (7) A person who fails or refuses to comply with a notice under subsection (5) served on him or her shall be guilty of an offence and shall be liable, on summary conviction, to a class B fine or imprisonment for a term not exceeding 6 months, or both.

7. (1) Subject to subsections (3) and (5), where a fined person fails to pay the fine by the due date for payment, the court shall, at the sitting of the court on the date specified in the notice concerned under subsection (4) served on the person (unless the person has paid the fine on or before that date)—

(a) subject to subsection (2), make a recovery order,

(b) make an attachment order, or

(c) make a community service order if section 4 of the Act of 1983 has been complied with.

(2) The court shall not make a recovery order in respect of the fined person (not being a body corporate) unless the fine or, as may be appropriate, that part of the fine that remains unpaid—

(a) exceeds such amount greater than €500 as may be prescribed, or

(b) if no such amount stands prescribed, exceeds €500.

(3) Where a fined person who has exercised his or her option under section 6 (1)(a)(ii) to pay the fine by instalments fails to pay any such instalment (in this subsection referred to as the “relevant instalment”) by the due date for payment, it is not necessary for the court to take action under this section in respect of the failure unless—

(a) there are 2 other failures by the fined person to pay that fine by instalments by the due date for payment, or

(b) the relevant instalment has still not been paid when all other instalments have been paid.

(4) The appropriate court official concerned shall, by notice in writing served on the fined person, require the person to appear before the court on the date and at the time specified in the notice, and to provide to the court a statement in writing of his or her financial circumstances.

(5) (a) The court shall, after considering a statement provided to it pursuant to subsection (4) in deciding what order to make under subsection (1)—

(i) first, give consideration to making an attachment order in respect of the fined person, and

(ii) second, if it is satisfied that it would not be appropriate for it to make an attachment order in respect of the fined person, give consideration to making, subject to subsection (2), a recovery order or community service order in respect of the fined person.

(b) Where the court is satisfied that it would not be appropriate for it to make an attachment order, recovery order or community service order in respect of the fined person, it may commit the person to prison in accordance with section 2 or 2A of the Act of 1986.

(6) A notice under subsection (4) shall—

(a) inform the fined person of the orders that the court may make under subsection (1) in respect of the person and of the court's power under subsection (5) to commit the person to prison, and

(b) state that a warrant may be issued for the arrest of the fined person if he or she fails to appear before the court as required by the notice.

(7) Where a fined person fails, without reasonable excuse, to appear before the court as required by a notice under subsection (4), the court shall, if satisfied that the notice was served on the person—

(a) issue a warrant for the arrest of the person, or

(b) if the court thinks it appropriate in all the circumstances, cause a further notice under subsection (4) to be served on the person specifying a new date for the person to appear before the court, and to provide it with the statement referred to in that subsection.

(8) A fined person arrested under subsection (7)(a) shall be brought before the next sitting of the court.

(9) A fined person who knowingly or recklessly makes a statement, in purported compliance with a notice under subsection (4), that is false or misleading in any material respect shall be guilty of an offence and shall be liable, on summary conviction, to a class B fine or imprisonment for a term not exceeding 6 months, or both.

(10) Rules of court shall prescribe the form of a statement referred to in subsection (4).

Section 20

2A. (1) Where a court is satisfied that—

(a) at the sitting of the court on the date specified in the notice concerned under section 7 (4) of the Act of 2014—

(i) a person on whom a fine has been imposed consequent upon his or her conviction on indictment of an offence has not paid the fine by the due date for payment, and

(ii) it would not be appropriate to make a recovery order or attachment order in respect of that person,

(b) at the sitting of the court on the date specified in the notice concerned under section 11 (2) of the Act of 2014, a receiver has been unable to recover—

(i) a fine imposed on a person consequent upon his or her conviction on indictment of an offence, or

(ii) a sum or sums from the proceeds of the sale of property belonging to that person sufficient to pay that fine,

Or

(c) at the sitting of the court on the date specified in the notice concerned under section 16 (3) of the Act of 2014, an attachment order made in respect of the earnings of a person has not resulted in the collection of a fine imposed on a person consequent upon his or her conviction on indictment of an offence,

and the court is also satisfied that, in relation to that person, the provisions of section 4 of the Criminal Justice (Community Service) Act 1983 have not been complied with, it may make an order committing the person to prison for a term not exceeding 12 months.

(2) Where a court has made a community service order under subsection (1A) of section 3 of the Criminal Justice (Community Service) Act 1983 consequent upon the conviction of a person on indictment of an offence, it shall, if satisfied that the person in respect of whom it made the order fails to comply with the requirement specified in subsection (1)(b) of section 7 of that Act, make an order committing the person to prison for a term not exceeding 12 months.

Italy

Italy

Cities considered: Como, Rome

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

The legal definition of homelessness is related to the locations the Italian juridical system identifies for the natural person, namely “*domicilio*”, domicile, “*residenza*”, residence, and “*dimora*”, abode. The first two figures are analyzed in Article 43 of the Civil Code. The institution of domicile is defined as the “place where (the person) has established the principal seat of his business and interests”. Residence is identified as the “place where the person has his habitual abode”; the 14 March 1986 judgment of the Court of Cassation also emphasized the voluntary aspect of residence, which is manifested by the declaration/application for registration at a particular place. While the domicile represents the patrimonial position of a person, the residence coincides with the place of existence tout court; it therefore plays a fundamental role for the less well-off⁵⁵. The legal significance of the abode, which is distinguishable for its non-habitual nature, is weaker than that of the other locations and assumes a subsidiary value, i.e. subordinate to the absence of a residence or domicile. The homeless person is defined negatively, by what he is lacking, that is a habitual abode. Their juridical situation is not made explicit in any legislation, but it has a specific bureaucratic-administrative connotation, laid down in the regulation of the civil registry for residence, issued by ISTAT, a public research organization dealing with general population censuses. It defines the “*senza tetto*”, the homeless, as those who move frequently within the same municipality due to a lack of permanent accommodation, and it also defines how the residence for the homeless people should be registered. Indeed, even though 1/3 of the Italian homeless are not registered at the population register and don’t have a residence, the latter is not a defining factor for their condition, and instead registration at the municipal registry office is a subjective right (and not a concession), recognized by the law 1228/1954⁵⁶. A non-existing address or the address of a shelter is registered for their residence and as the place in which they should be reachable. Other definitions for the homeless can be found in the documents regarding the indigents. The

⁵⁵ Laura Manganelli, “Homelessness e Residenza. L’iscrizione anagrafica della persona senza dimora.”, (Avvocato di Strada, 2013) <<https://www.avvocatodistrada.it/wp-content/uploads/2011/04/Tesi-Homelessness-e-Residenza-di-Laura-Manganelli.pdf>> accessed 15 November 2021.

⁵⁶ Romano Minardi, “Senza fissa dimora, senza tetto, senza diritti.”, I Servizi Demografici, 4, 2005.

Commission of Inquiry on Social Exclusion, appointed by the Ministry of Welfare, defined homeless people as the most extreme form of poverty, in terms of physical, human and social capital. Likewise, according to the definition used by the Italian Ministry of Social Policies in the ordinance issued to tackle the problem of extreme poverty (published in the Official Gazette, No. 18 of 24 January 2000), the homeless person can be described as a person without a stable home, in precarious material conditions of existence, without an adequate formal/informal support network.⁵⁷

Begging is defined as the request for alms as an act of charity towards a person in need, legally a donation, a liberality given without wanting anything in return. It differs from the act of asking for money made by a street artist after his performance, because those are considered "free donations by those present" in favor of a free service⁵⁸.

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

As mentioned above, the laws should guarantee the homeless to be registered as residents. However, the problem often comes with the application of the rules by the operators of the public administration at the municipal level, who use their discretion also due to the vague nature of the legislation on homeless people's condition. Thus, often they lose the status of residents because they are not reachable, of course that being a countersense for a person who for definition doesn't have a habitual dwelling. By being deprived of the subjective right to residence (which is not guaranteed by any article of the Constitution but can be considered one of the general principles of the Italian legal system, that can be deduced from a reading of the set of rules that constitute

⁵⁷ Elena Tessari, "Chi sono i senza fissa dimora del nostro territorio?", (Casa dell'Ospitalità, 2015) <http://www.casaospitalita.it/images/report_sistemato-pdf.pdf> accessed 15 November 2021.

⁵⁸ "Si può chiedere l'elemosina?", (La legge per tutti, 2020) <https://www.laleggepertutti.it/390178_si-puo-chiedere-lelemosina> accessed 15 November 2021.

the State and from the interpretation of case law)⁵⁹, they are subsequently deprived of all the rights for which residence constitutes a requisite to access it.

As for actual legislation related to the homeless, sleeping in the streets is not considered a criminal offence⁶⁰. A particular case in which living in the street could turn out to be a felony is if the homeless person owns a dog that is in a malnourished condition: this could constitute the criminal offence of mistreatment of animals, pursuant to article 544.3 of the criminal code. Also, article 726 of the Italian Criminal Code punishes acts and behaviors contrary to the public decency; there is no statutory definition of what falls within this category, and there is a certain discretion in the application of this provisions. Defecating or urinating in public is always regarded as a breach of article 726.

Begging used to be prohibited by article 670 of Italian Civil code. The first clause provided for arrest of up to three months for: "whoever begs in a public place or a place open to the public". In the second clause, the penalty of imprisonment was from one to six months if the act was "committed in a repugnant or vexatious manner, or by simulating deformity or illness, or using other fraudulent means to arouse the pity of others". In 1999 the law 205/1999, following the Constitutional Court's sentence 519/1995, declared illegitimate this rule incriminating begging; nevertheless, some aspects of the second provision of this article dating back to the fascist era are still present in Italian legislation. Indeed, the criminal nature of certain manners of begging were reintroduced by the Security Decree, issued on the 4th of October 2018 through the law n. 113 and conversed with amendments into law n.132 dated 1st December 2018.⁶¹

In particular, the crime of invasive mendicity, that was punished by the aforementioned article 670 of the criminal code, was proposed again by the article 21.4 of the decree, that instituted article 669.2 in the Criminal Code. According to it begging becomes harassing (and, therefore, punishable under criminal law) when the beggar engages in conduct so insistent as to create discomfort in the other person. The law does not voluntarily specify what is meant by harassment: it can be assumed that it covers all oppressive behavior aimed at overwhelming the other person to the point of

⁵⁹ 'Diritto alla casa nella legge e nella costituzione italiana' (La legge per tutti 2019) <<https://www.lalleggepertutti.it/297106-diritto-alla-casa-nella-legge-e-costituzione-italiana>> accessed 15 November 2021.

⁶⁰ 'Vivere per strada è legale?' (La legge per tutti 2017) <<https://www.lalleggepertutti.it/169982-vivere-per-strada-e-legale>> accessed 15 November 2021.

⁶¹ Valeria Zeppilli, 'Chiedere l'elemosina è reato?' (Studio Cataldi, 2016) <<https://www.studiocataldi.it/articoli/22308-chiedere-l-elemosina-e-reato.asp>> accessed 15 November 2021.

coercing him or her, i.e. forcing his or her will to yield. In case the act falls into a more serious offence, then the offences of private violence and threatening may be committed, as provided for in Article 610 of the Criminal Code. The offence of begging is also committed when begging is carried out by simulating illness or by resorting to other stratagems aimed at swindling people. Secondly, article 600.8 of the Criminal Code, which regulated the punishment of the use of minors in begging and was the only remaining crime related to begging after the abrogation of article 670, was amended through article 21.5 of the decree, by adding a clause to punish also the person who organises the begging of others, takes advantage of it or in any case favors it for his own benefit; this particular hypothesis of mendacity is placed among the offences against individual liberty and, specifically, among those against the individual personality. The law applies where the act does not constitute a more serious offence, such as enslavement under Article 600.⁶²

Local administrations can legislate on begging as regards the external aspect of begging, i.e. the one related to the decorum and cleanliness of the streets: municipal ordinances could prevent begging in sensitive places such as tourist areas, children's parks, municipal villas. Local bans could not create a new offence but only an administrative offence, which could be sanctioned with a financial penalty, not a criminal one. However, most of these measures were issued before 2017 and are no longer in force, because on 20th February 2017 the decree-law n.14 on “Urgent provisions on urban security” was promulgated, providing general guidelines on how local authorities and police forces should intervene to promote urban security, prevent crime and maintain decorum⁶³; Municipal ordinances derogating from legislative provisions are only possible for serious and necessary reasons, and as they are motivated by urgency they have a transient character.

There were nevertheless some local legislation on begging, of which many were later declared illegitimate by Courts or by the President of the Republic (as happened for the ordinance n. 35 issued on 09/11/2016 by the mayor of Carmagnola, which prohibited begging on all the municipality)

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Instead, the 05/05/2021 ordinance n. 11 of the municipality of Arzachena is still in force; it

⁶² Enrico Napoletano, ‘Il contrasto alle forme di accattonaggio nel Decreto Sicurezza: una prima analisi’ (Giurisprudenza Penale, 2019) <<https://www.giurisprudenzapenale.com/2019/01/31/contrasto-alle-forme-accattonaggio-nel-decreto-sicurezza-analisi/>> accessed 15 November 2021.

⁶³ ‘Sicurezza urbana: il testo coordinato del decreto’ (Altalex, 2019) <<https://www.altalex.com/documents/codici-altalex/2017/02/21/disposizioni-urgenti-in-materia-di-sicurezza-delle-citta>> accessed 15 November 2021.

⁶⁴ Francesco Rasero, ‘Il Presidente della Repubblica annulla l’ordinanza anti-accattonaggio’ *Il Carmagnolese*, (Carmagnola 19 October 2018).

regulates behavior in the streets, squares and at particular sensitive points (such as churches, schools, shopping centers, car parks, etc.) and prohibits begging, illegal sales and nuisance actions.

An Italian city in which there were often practical and legal discrimination towards homeless people is Como, in the Lombardy region. For instance, in 2017 an ordinance of the duration of 45 days was issued with the aim of preserving the decency of the city during Christmas festivities, and motivating it by the urgency of the discomfort of citizens caused by the growing number of homeless people; begging and bivouac was prohibited in the center, and during that period the police also stopped the volunteers that brought food to homeless people.⁶⁵ In 2018, on the occasion of the patron saint's day, the Mayor sent high-pressure cleaning machines to people sleeping under the porticoes of a church, describing the action as a necessary "disinfestation"; the same Mayor also made an appeal to the citizens of Como in an interview, not to "give coins to beggars, not even one euro, so as not to encourage a phenomenon that often borders on delinquency."⁶⁶ Or also, in 2020 the Councilor for Social Policies of the Municipality of Como was seen snatching the blanket from a sleeping homeless man and throwing it away. On 4th November 2019 a new local police regulation came into force, according to which it is forbidden to ask for alms insistently, especially near traffic lights, car parks, markets and fairs. In the event of particular discomfort caused to people by the beggar, the police may order the beggar to be removed for 48 hours. If this is not enough to stop the beggar, the police commissioner may order him to leave for up to 12 months. The regulation also prohibits to stay in makeshift shelters, to bathe in any public water surface, to relieve oneself in public spaces, to sleep near monuments, to lie down in public places.

Also, in the city of Rome, the urban police regulations aimed at preserving urban decency most often affect the poor. In the name of "*decorum*" in the historic centre of Rome, it is forbidden to climb, lie down or sit on monuments (but also on public lighting poles, vertical road signs, railings, buildings, boundary walls and the like, trees...). It is forbidden to bivouac and consume food and drink on historical, artistic, archaeological, and monumental heritage sites.

It has introduced the instrument of the urban "*daspo*", i.e. a removal order or a ban on entry for 48 hours that is verified and enforced by the police and the police commissioner, to those who violate the regulation by implementing incivilities. The receivers of this removal order are mostly

⁶⁵ Oriana Liso, 'Como, a Natale il sindaco multa i mendicanti' *La Repubblica* (Milano 18 December 2017).

⁶⁶ Emanuele Caso, 'Locatelli, appello a Como' (Comozero, 2019) <<https://comozero.it/politica/locatelli-alessandra-appello-rose-mimose-non-date-un-euro-ai-mendicanti-cattivi-il-popolo-ha-scelto/>> accessed 15 November 2021.

poor people: beggars, homeless, migrants.⁶⁷ Also, if the removed person violates the order to leave, then the police commissioner may order a ban on entering the place where the act was committed and failure to comply may result in imprisonment of up to one year. From harmless administrative offence to criminal offence, in a spiral of criminalization of social marginality.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

In Italy there's a distinction between "*multa*", a pecuniary criminal sanction provided for when a crime is committed, and "*ammenda*", pecuniary sanction by which a contravention, i.e. a minor offence, is punished. Its amount is smaller than that of the criminal fine and is set by Article 26 of the Criminal Code, for a minimum of 20 euros and a maximum of 10,000 euros. The judge, according to Article 133.2 of the Criminal Code, must also take into account the economic conditions of the offender and, in this regard, may increase the fine or penalty laid down by law by up to three times or reduce it by up to a third when, due to the economic conditions of the offender, he considers that the maximum measure is ineffective or that the minimum measure is excessively onerous. The *ammenda* would be had to be paid by a homeless in case he committed a crime, as for instance the organization of begging of others aforementioned. Conversely, in case the homeless person was fined following the breach of a local regulation, he would have to pay a "*sanzione amministrativa*", administrative sanction; it consists of the payment of a sum of not less than EUR 10 and not more than EUR 15,000 in accordance with Article 10 of Law 689/1981.

As for the *ammenda*, if the payment is not made within the prescribed period, the registry shall register the sum owed by the convicted person and at the same time hand over the relevant file to the tax collection agency. The agency has a period of four months in which to serve the collection notice to the debtor, and after 60 days of the notice he may proceed with enforced collection. If this enforcement procedure is also unsuccessful, the Criminal Court is notified, which in turn initiates the next stage of the procedure for converting the financial penalty. The Criminal Court transmits the documents to the public prosecutor to apply for conversion to the competent supervisory magistrate, who, in the presence of insolvency situations, may defer conversion for a

⁶⁷ Christian Raimo, 'Diciamo basta a regolamenti e multe che rendono Roma una città solo per ricchi' (Fanpage 2021), <<https://www.fanpage.it/roma/diciamo-basta-a-regolamenti-e-multe-che-rendono-roma-una-citta-solo-per-ricchi/>> accessed 15 November 2021.

period not exceeding six months. At the end of the period, if the state of insolvency persists, the conversion of the pecuniary penalty into parole or community services shall be ordered. Parole entails: the prohibition to leave the municipality of residence, the obligation to report at least once a day to the local public security office, the prohibition to possess weapons, ammunition and explosives for any reason, the suspension of the driving licence, the withdrawal of the passport. The conversion is made at the rate of one day for every 250 euros of fine.⁶⁸

For instance, the crime of invasive mendacity is punished by article 669.2 of the criminal code with a penalty of imprisonment from three to six months and a *ammenda* from 3000 to 6000 euro. According to the ordinance 11/2021 of the municipality of Arzachena, bivouacking, persistent begging, and consumption of alcohol outside the premises of public establishments are punishable by fines ranging from €100 to €300.

Local regulations on urban security, which originally was conceived as an alternative to the penal system, is instead now based on interventions that are increasingly focused on the symptoms and no longer on the structural conditions that cause insecurity in our cities, as can be seen in the ordinances listed above. The local level of legislation is where usually the discriminations against homeless people can be found, and indeed the administrative law lacks some of the constitutional guarantees and jurisdictional safeguards typical of criminal law.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

In Italy, the decriminalisation of all the activities related to people who live on the streets, is mostly obtained by the means of Court rulings; often, tribunals have to intervene because local administrations promulgate ordinances that go against national principles and legislation, as mentioned above.

For instance, the judgment n. 37787/2017 of the Court of Cassation withdrew a fine from a homeless man, stating that living on the streets is not an offence because of the state of need the

⁶⁸ 'Multa, ammenda e sanzione amministrativa' (Dequo, 2020) <<https://www.dequo.it/articoli/differenza-multa-ammenda-prescrizione>> accessed 15 November 2021.

man was in. The man was condemned by the tribunal of Palermo, where the mayor had issued an ordinance to prohibit the setting up of bivouacs or makeshift camps in public places in the municipality in order to avoid altering urban decorum or hindering public traffic. The judges of the Court of Cassation ruled that the appeal that the homeless person had made was well-founded and that he, being in a state of need, did not violate the municipal ordinance because 'the alleged fact did not take place' and because 'the ordinance was dictated as a preventive measure and was addressed to a generality of subjects'.⁶⁹

Another intervention is a memorandum of understanding promoted by the prefecture of Bologna, Emilia-Romagna region, Bologna province, Municipalities, Bologna Bar Association, trade unions and protection associations for landlords and tenants and credit institutions and banking foundations. The protocol, implemented on 30 October 2012, is aimed at implementing extraordinary preventive measures for evictions through the possibility of access to a contribution to the balance of the rent in arrears in order to avoid the validation of eviction or, if there is an eviction validation not yet carried out, for the payment of 2/3 of the deposit of a new accommodation.

An interesting case was the Supreme Court's judgement n. 3558/2007, which declared that the abusive occupation of a house, by a person in need and in a state of need, can be considered 'justified' and not lead to criminal conviction. They clarified that the right to housing should be counted among the 'primary goods linked to personality', which deserve to be counted among the fundamental rights of the person (protected by Article 2 of the Constitution).

Also, the Security Decree containing, among the other things, the laws on the criminalization of certain forms of begging, was modified in the parts regarding the reception of migrants, and many people are mobilizing initiatives to urge the government to also abrogate the articles that criminalize the poorest. In particular, a petition is being held for the abolition of article 21.4 that introduced the crime of tedious begging.

⁶⁹ 'Senzatetto: non è reato vivere per strada' (Studi legali, 2017) <<https://www.studilegali.com/articoli/senzatetto-non-e-reato-vivere-per-strada>> accessed 15 November 2021.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

An interesting and successful initiative is the voluntary association “*Avvocati di strada*”, which aims to provide qualified legal assistance to citizens in need who are deprived of their fundamental rights. Lawyers provide free legal advice and assistance to homeless citizens and are available to defend one or two homeless cases per year free of charge.

In Bologna, the city where “*Avvocati di strada*” was founded, there is also a self-managed dormitory called “*Accoglienza degna*”. It’s a place where there is no separation between operators and beneficiaries, where they can have dinner and breakfast together, where they can change and wash themselves, where they can get information and connect to networks and services, where they can plan initiatives and activities together, where they can all take responsibility for management and organisation.⁷⁰

Also, in the region where the city of Bologna is situated, Emilia Romagna, a regional law was approved this July (2021) to assign a general practitioner also to homeless people. The aim of this law is to broaden the range of people who can exercise their right to health and to rationalize the use of public resources, since the costs to the health system are exponentially much higher if homeless people have to go to the emergency room rather than to a general practitioner.⁷¹ In October the regional councillor of Toscana proposed to adopt the same law, and an online petition law launched to extend the right to a general practitioner to homeless people throughout Italy.

⁷⁰ ‘Bologna apre Accoglienza Digna’ (Meltingpot 2015) <<https://www.meltingpot.org/A-Bologna-apre-Accoglienza-Degna-dal-sogno-alla-realta.html#.YZvxMi-B1bV>> accessed 15 November 2021.

⁷¹ ‘Una legge per assegnare il medico di famiglia anche ai senzatetto’ (Italia che cambia 2021), <<https://www.italiachecambia.org/2021/07/medico-di-famiglia-senzatetto/>> accessed 15 November 2021.

This law was proposed and conceived after the Corona virus pandemic, when the importance of health as a collective and not just an individual right emerged. This vision brought many associations and regions to organize vaccinations for the homeless.⁷²

Lastly, with the Note 1319 of 19 February 2020, the Ministry of Labour and Social Policies has clarified the issue of residence and access to “*reddito di cittadinanza*”, Citizenship Income, providing that homeless people - even if deleted from the registry office due to unavailability - can apply for and have access to the measure.

Compliance with International and Regional Human Rights Standards (article 8 ECHR)

The first issue with Italian legislation, with respect to the objectives and obligations set out by the international standards on homelessness, is the fact that to date, there is no clear definition of what the minimum essential content of the right to housing is, thus making it impossible to claim it directly and immediately in court. Stating it directly in the Constitution would help to ensure that it is always applied concretely and to everyone, so as to fully comply with guideline no. 1 of the Guidelines for the implementation of the right to adequate housing. To achieve this, it would also be useful to provide a clearer legal definition of homelessness to avoid discretion. Among the laws that concern the right to residence there is the ban on foreclosure of the first home, which nevertheless applies only to public collection agents; hence the State should make sure that also the private sector safeguards the less well-off, as provided by guideline n.12 of the guidelines for the implementation of the right to adequate housing.

The requirement of reachability to maintain the residence status is a discrimination towards the homeless, because it doesn't have a human rights approach to the homeless' condition, whose dignity should be safeguarded by States, and it doesn't allow to ensure the right to recognition as a person before the law (specific right D of the guiding principles on extreme poverty). The impossibility for some people to meet this requirement and hence the risk of not having a resident status comes with the loss of many fundamental rights. This rule thus doesn't respect the foundational principle B, and the implementation requirement C of the guiding principles. The

⁷² ‘Vaccini a senzatetto e irregolari, le iniziative in campo dalla Sicilia alla Lombardia’ (Isole24ore 2021), <https://www.ilssole24ore.com/art/vaccini-senzatetto-e-irregolari-iniziative-campo-sicilia-lombardia-AE1lugK?refresh_ce=1> accessed 15 November 2021.

rule itself is also a sort of contradiction, hence the State didn't ensure policy coherence as requested by implementation requirement D. Not being a resident means not being able to access healthcare, hence the specific rights A, F, J to life and physical integrity, to an adequate standard of living, and to the highest attainable standard of physical and mental health are not guaranteed, and it also means not being able to vote, and hence to participate, which is a foundational principle of the UN guiding principles.

Of course, this means that migrants, who are more easily discriminated when it comes to registry administration, are even more often precluded these fundamental rights, and are not given an equal treatment as guideline n. 10 of the Guidelines for the Implementation of the right to adequate housing.

Under Italian law, neither begging per se nor sleeping in the street can be punished; regional and municipal entities theoretically could not issue ordinances imposing prohibitions that go beyond those defined by national legislation. But, as demonstrated in the previous paragraphs, it often happens that municipalities forbid begging or sleeping or eating or even simply standing in certain parts of the city, even going against the constitutional principle of free movement. As for the rules on begging, they are only partly in line with the international human rights standards on the matter, set out especially in the judgement of the ECtHR *Lăcătuș v. Switzerland*. Indeed, on one hand, the punishment of the use of minors and of the exploitation of other people's begging is justified by sound reasons in the public interest, and aim of protecting the rights of the indigents themselves, complying also with the guiding principles on extreme poverty in its foundational principle D on the Rights of the Child. On the other hand, the criminalization of simulating illness or any other stratagem aimed at swindling people appears to be disproportionate since it doesn't aim at protecting the rights of anyone, and instead it reinforces the stigmatization of those experiencing the most severe poverty, which State agents should avoid as the UN guiding principles recommend. Italy should also work more towards the implementation of the guideline n.11 concerning the capacity and accountability of local and regional governments for the realization of the right to adequate housing, since as indicated above, in Italy it was often regional and local regulations to not respect the right of the most indigent. There were often episodes of clear discrimination by local authorities, hence Italy should put an effort to eliminate prejudices, as stated by paragraph 21 of the guideline B of the UN guiding principles on extreme poverty and human rights.

Overall, except for some aspects of the legislation on begging, which could be easily modified as some citizens requested to do with a petition, Italy doesn't gravely breach the rules set out by

international standards concerning States' handling of homelessness and extreme poverty. The policies already respect the foundational principles of dignity and enjoyment of human rights, and the discrimination arises when public authorities don't apply properly the law. Moreover, what is almost missing in the State's measures is the goal to empower these people so to help them in the long term, giving them the tools to have an adequate standard of living that goes beyond surviving and to overcome their condition. At present this approach can be found only in the actions of Italian voluntary associations, which, for instance, work to make these people enjoy their right to transparency and access to information, to recognition as a person before the law, and to access to justice and effective remedies, as well as promoting their participation in the design of the services aimed at helping them.

Dispositivo dell'art. 544 ter Codice Penale:

Chiunque, per crudeltà o senza necessità, cagiona una lesione ad un animale ovvero lo sottopone a sevizie o a comportamenti o a fatiche o a lavori insopportabili per le sue caratteristiche etologiche è punito con la reclusione da tre a diciotto mesi o con la multa da 5.000 a 30.000 euro. La stessa pena si applica a chiunque somministra agli animali sostanze stupefacenti o vietate ovvero li sottopone a trattamenti che procurano un danno alla salute degli stessi. La pena è aumentata della metà se dai fatti di cui al primo comma deriva la morte dell'animale.

Tale articolo è stato inserito dalla l. 20 luglio 2004, n. 189.

La l. 20 luglio 2004, n. 189 ha previsto una serie di ipotesi in cui sussiste per presunzione la necessità sociale. Si tratta della caccia, pesca, allevamento, trasporto, macellazione, sperimentazione scientifica, giardini zoologici, etc. (art. 19 ter disp. att.).

Tale elemento deve essere valutato in riferimento al caso concreto, quindi tenendo conto della tipologia dell'animale e delle sue peculiarità.

Il trattamento sanzionatorio è stato innalzato secondo quanto previsto dall'art. 3, comma 1, lett b), della l. 4 novembre 2012, n. 201.

Dispositivo dell'art. 726 Codice Penale:

Chiunque, in un luogo pubblico o aperto o esposto al pubblico, compie atti contrari alla pubblica decenza è soggetto alla sanzione amministrativa pecuniaria da euro 5.000 a euro 10.000.

Per pubblica decenza si tratta, secondo la giurisprudenza, di un insieme di regole etico-sociali, che tutelano la società dai comportamenti disapprovati in senso generale, non dunque solo quelli definibili osceni.

Il d.lgs. 15 gennaio 2016, n. 8 ha depenalizzato il reato in commento.

Dispositivo dell'art. 669 bis Codice Penale:

Salvo che il fatto costituisca più grave reato, chiunque esercita l'accattonaggio con modalità vessatorie o simulando deformità o malattie o attraverso il ricorso a mezzi fraudolenti per destare l'altrui pietà è punito con la pena dell'arresto da tre a sei mesi e con l'ammenda da euro 3.000 a euro 6.000. È sempre disposto il sequestro delle cose che sono servite o sono state destinate a commettere l'illecito o che ne costituiscono il provento.

(1) Tale articolo è stato inserito dall'art. 21 quater comma 1 del D.L. 4 ottobre 2018, convertito con modificazioni dalla L. 1 dicembre 2018, n. 132.

Dispositivo dell'art. 600 octies Codice Penale:

Salvo che il fatto costituisca più grave reato, chiunque si avvale per mendicare di un persona minore degli anni quattordici, comunque, non imputabile, ovvero permette che tale persona, ove sottoposta alla sua autorità o affidata alla sua custodia o vigilanza, mendichi, o che altri se ne avvalga per mendicare, è punito con la reclusione fino a tre anni.

Chiunque organizzi l'altrui accattonaggio, se ne avvalga o comunque lo favorisca a fini di profitto è punito con la reclusione da uno a tre anni.

(1) Tale articolo è stato inserito dall'art. 3, comma 19, lett. a), della l. 15 luglio 2009, n. 94.

(2) La disposizione in esame è sostitutiva dell'abrogata norma ex art. 671. Rispetto all'articolo abrogato, la fattispecie ivi contemplata richiede l'esistenza di un qualificato rapporto tra l'agente e la vittima solo nei casi di mancato impedimento che il minore mendichi o di tolleranza del suo utilizzo da parte di terzi, laddove in precedenza si trattava di un presupposto onnipresente.

(3) Tale comma è stato inserito dall'art. 21-quinquies, comma 1, lettera a) del D.L. 4 ottobre 2018 n. 113, convertito con modificazioni dalla L. 1 dicembre 2018, n. 132.

Ordinanza n. 11 del 05/05/2021.

Ordinanza in materia di sicurezza urbana a tutela del decoro e della vivibilità urbana. Il Sindaco del Comune di Arzachena, Provincia di Olbia-Tempio **ordina**:

Sono vietati, i seguenti comportamenti:

1. bivaccare temporaneamente o permanentemente ovvero pernottare temporaneamente con tende, sacchi a pelo, borsoni o simili;
1. il consumo di bevande e alimenti di ogni genere e le attività che comportano disturbo agli altri fruitori del sito come giochi od emissioni di musica e rumori;
2. in particolare è sempre vietato il consumo di bevande alcoliche al di fuori delle pertinenze dei pubblici esercizi autorizzati;
3. nelle medesime aree, di cui al punto 1, lo stazionamento molesto, nonché praticare ogni forma di accattonaggio, sollecitando o richiedendo denaro, anche con modalità vessatorie o simulando infermità o malattie ed importunando i passanti.
4. Importunare e molestare le persone con richieste di denaro anche in cambio di prestazioni o cessione di beni, in particolare nelle aree di intersezione con intralcio della viabilità;
5. Occupare illecitamente aree e spazi pubblici con impedimento della fruizione e accessibilità pubblica e/o intralciare la libera circolazione di persone e veicoli;
6. Sono escluse dal campo di applicazione della presente ordinanza le esibizioni degli artisti di strada.

Avverte

Salvo che il fatto non costituisca altra violazione di rilevanza penale, chiunque viola il dispositivo della presente ordinanza è punito con la sanzione amministrativa da €.100,00 ad €.300,00, i cui proventi saranno destinati al Comune per miglioramento del decoro urbano e utenti deboli. L'autorità competente a ricevere il rapporto è il Sindaco del comune di Arzachena.

Il trasgressore è tenuto altresì alla pulizia e ripristino dello stato dei luoghi.

È previsto il sequestro delle attrezzature utilizzate per commettere l'illecito.

La presente ordinanza sarà trasmessa al sig. Prefetto della Provincia di Sassari.

Regolamento di Polizia urbana, entrato in vigore il 04/11/2019 con delibera n. 53 del consiglio Comunale di Como:

Art. 4

- 1.e) È fatto divieto di esercitare il campeggio, o dimorare in tende, baracche, ripari di fortuna, salvo che nei luoghi autorizzati.
- 9. È vietato l'accattonaggio molesto.

Art. 6

- 4. Salvo che nelle aree all'uopo destinate e segnalate è vietato fare il bagno nel lago, nei torrenti, nelle fontane e in genere in qualsiasi superficie d'acqua pubblica.

Art. 8

- 1.b) porre in essere forme di bivacco molesto, attuato da quanti, in sfregio alle norme di civile convivenza, si appropriano, occupandoli anche per brevi periodi, di siti destinati alla collettività.
- 1.c) lordare, anche espletando bisogni fisiologici o espettorando a cielo aperto, gli arredi urbani e gli spazi pubblici, utilizzarli in modo improprio, dormire o accamparsi vicino ai monumenti o sui gradini di accesso degli edifici prospicienti la pubblica via, sdraiarsi sul suolo pubblico ad eccezione dei parchi pubblici e delle spiagge.

The Netherlands

The Netherlands

Cities considered: Amsterdam and Den Haag (The Hague)

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

Homelessness

The terms ‘homelessness’ and ‘begging’ are not defined in any laws. However, the website of the Dutch government gives the following definition of being homeless:

You are homeless when:

- You do not have an address, and
- You do not have a mailing address, and
- Temporary (social) shelter is not possible for you

Even if you stay in different municipalities and you meet these conditions, you will be seen as homeless. 73

Case law also commented on cases concerning homelessness. Homelessness is here defined as ‘not having a permanent residence’.⁷⁴ This also refers to the situation in which people can sleep with relatives but are always uncertain of their stay the next night.⁷⁵

⁷³ See <<https://www.rijksoverheid.nl/onderwerpen/bijstand/vraag-en-antwoord/welke-regels-gelden-er-voor-dak--en-thuislozen-in-de-bijstand>> accessed 15 November 2021.

⁷⁴ Centrale Raad van Beroep, 15 March 2021, ECLI:NL:CRVB:2021:506.

⁷⁵ Rechtbank Amsterdam, 11 June 2021, ECLI:NL:RBAMS:2021:2978.

Begging

Begging is also not defined by any law. When the national prohibition of begging was abolished, the explanatory memorandum explains begging as ‘asking for favor in order to provide for the basic necessities in life’.⁷⁶ Case law also refers to begging. The court does not give an exact definition of the term, but it is often used in a context where people were begging ‘in order to provide money for food’⁷⁷ or ‘trying to earn money to survive’.⁷⁸ So, begging can be interpreted as ‘asking for money’. There is no distinction between different forms of begging.

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

There is no national prohibition on sleeping in public places and begging. Municipalities are able to impose a ban. Both Amsterdam and The Hague imposed such a ban.

Homelessness (sleeping in public places)

‘*Vagabondism*’ was nationally prohibited until 2000. This ban has expired because there was no longer a need for this prohibition. The legislator found that this was no longer meaningful and acceptable because wandering had no longer a socio-economic background. The element of threat and nuisance against which the government wanted to protect residents, has disappeared. However, regions can impose this ban in their regional regulations. In fact, there is hardly a place in the Netherlands where it is legal to sleep in public places.

Amsterdam

Amsterdam prohibits sleeping on or next to public roads. The term ‘roads’ is very broadly defined in the Regulation of Amsterdam (APV). This includes squares, parks, porches, and playgrounds

⁷⁶ MvT (1997-1998), nr. 3.

⁷⁷ Rechtbank Amsterdam, 28 February 2020, ECLI:NL:RBAMS:2020:2078.

⁷⁸ Rechtbank Amsterdam, 20 September, 2018, ECLI:NL:RBAMS:2018:6721.

(art. 1.1 sub 9 APV Amsterdam). In short, a ‘road’ is every place that is publicly accessible. This ban also includes sleeping in a vehicle, tent or caravan (art. 2.20 APV Amsterdam).

The central objectives of this prohibition are preventing and combating nuisance, fire hazard, pollution of public space and risks to public health. The sleeping ban also extends to vessels, so that measures can be taken against the use of pleasure boats as sleeping places by drug addicts and vagabonds. The fine for sleeping in public spaces is 70 euros for persons of 12 years and older and 140 euros for persons of 16 years and older.⁷⁹

The Hague

The regional regulation of The Hague prohibits lying or sleeping on or next to public roads between sunset and sunrise. Lying or sleeping in public places between sunrise and sunset is prohibited after a police officer has given notice that this must be terminated in the interest of public order or safety (art. 2:38B APV Den Haag). ‘Roads’ has a very broad definition (art. 1:1 sub a APV Den Haag). Like the regulation of Amsterdam, this includes all publicly accessible places. The fine for non-compliance with this prohibition is 140 euros. The regional regulation of The Hague gives no objective for this prohibition, but the prohibition falls under chapter two, which protect the interest of the public order.

Begging

Until 2000, the Netherlands had a national prohibition on begging. Begging did not or hardly occur anymore, due to better social services. Therefore, there was no longer need for a national prohibition.⁸⁰ Instead, local authorities have the possibility to criminalize this, when begging causes nuisance for citizens.

Amsterdam

Amsterdam criminalized begging in their regional regulation (art. 2.21 APV Amsterdam). This ban prohibits begging for money or any other good on public roads or in a place that is publicly accessible. The broad definition of ‘roads’ as mentioned earlier, is also applicable for this prohibition.

⁷⁹ Annex 1, Verordening Bestuurlijke Boete Overlast in Openbare Ruimte Amsterdam.

⁸⁰ *Kamerstukken II*, 1996/97, 25 437, nr. 3.

The reason for this prohibition is the following. Amsterdam states that begging can cause serious nuisance, for example when the beggar is aggressive or pushes people to give him/her money. There is no distinction made between different types of begging. All forms of begging are prohibited.

The enforcement article states that a violation of this prohibition can be punished with a fine or detention (art. 6.1 APV Amsterdam).

The Hague

The Hague has the same ban on begging as Amsterdam, although The Hague prohibits begging only in areas appointed by the major of the city. The major imposes the ban in areas where he deems this is necessary or desirable to keep nuisance manageable (art. 2:52 APV Den Haag). There is also no distinction between different forms of begging in The Hague.

The major has identified several areas where this ban applies. In fact, this ban covers the complete city center.⁸¹

The enforcement article states that a violation of this prohibition can be punished with a fine or detention (art. 6:1 APV Den Haag).

Performing personal hygienic activities

There is a ban on public urinating in both Amsterdam (art. 5.11 APV) and The Hague (art. 4:8 APV). This prohibition is formulated as using the street as a toilet, apart from public toilets.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

Amsterdam

Article 6.1 APV Amsterdam

⁸¹ Aanwijzingsbesluit ex art. 2:52 Den Haag.

Article 6.1 of the Region Regulation of Amsterdam states that a violation of the ban on begging (art. 2.21 APV Amsterdam) and sleeping in public places (art. 2.20 APV Amsterdam) can be punished with detention of three months or with a fine of the second category.

The Hague

Article 6:1 APV Den Haag

Article 6.1 of the Regulation of The Hague states that a violation of the ban on begging (art. 2.52 APV Den Haag) and sleeping in public places (art. 2.38B APV Den Haag) can be punished with detention of three months or with a fine of the second category.

In both cities, fines are first handed out before detention is imposed.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

There is no information on whether the Government decided to adopt or is planning to adopt any measures, to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

Besides the standard shelter and food services, the national government has not announced any innovative measures.

Compliance with International and Regional Human Rights Standards (article 8 ECHR)

There is not a national ban on homelessness and begging in the Netherlands. However, Amsterdam and the Hague have criminalized this in their local regulations. These prohibitions are formulated as a blanket ban: it is a general prohibition to which there are no exceptions. The European Court on Human Rights has indicated that such a blanket ban is illegal.⁸² The Court considered that individual aspects need to be taken into account under a ban like this.

Although a violation of local regulation is normally not judged by the criminal court, this court is authorized to look at the case.⁸³ The criminal court has the following general competences: the fine can be reduced to a minimum of € 3,-⁸⁴ and the detention can be reduced to 1 day.⁸⁵ The second competence is that the judge can issue a judicial pardon and decide on a conviction without the imposition of a sentence, if he deems it advisable.⁸⁶ These competencies are in line with the judgement of the ECtHR. But as said before, a violation of local regulation is normally not judged by the criminal court.

Not paying a fine could be a reason to take someone in custody.⁸⁷ The purpose of the custody is to exert pressure to pay the fine. After the custody, the fine is not waived. Custody is not used if the convicted person can demonstrate that he is unable to meet the obligation to pay. However, the National Ombudsman signalled that the custody often concern people who are willing to pay the fine, but who are not able to pay the fine. He incorporated his findings into a report.⁸⁸ As a result of this report, more options have been created for people who are not able to pay a fine, such as payment arrangements. This has resulted in far fewer people being held in custody.⁸⁹

⁸² *Lăcătuș v. Switzerland*, App no 14065/15, 19 January 2021.

⁸³ Explanation article 6.1 APV Amsterdam.

⁸⁴ Article 23 sub 2 Wetboek van Strafrecht.

⁸⁵ Article 18 sub 1 Wetboek van Strafrecht.

⁸⁶ Article 9a Wetboek van Strafrecht.

⁸⁷ Article 6:4:20 Wetboek van Strafvordering.

⁸⁸ Nationale Ombudsman, 'Gegijzeld door het systeem' (2015).

⁸⁹ Nationale Ombudsman, 'Brief over gijzeling aan staatssecretaris Veiligheid en Justitie' (2017).

Recently another development has occurred. A motion to investigate the possibilities to introduce community service as a substitute for a fine has passed.⁹⁰ The report that followed was positive about the introduction of this remedy.⁹¹ The proposal to legislate this has not yet been submitted.

Thus, there is a blanket ban on begging and homelessness in Amsterdam and The Hague, which is a violation of supranational human rights law. However, the criminal court is authorized to look at the case, although this only happens in exceptional circumstances. The criminal court has some competencies which are in line with the judgement of the ECtHR. Furthermore, there is a tendency towards more remedies for people who cannot pay their fine. This is a positive development from a human rights perspective.

⁹⁰ *Kamerstukken II*, 2019/20, 24 587, nr. 779.

⁹¹ WODC, 'Vervangende taakstraf bij het niet betalen van een geldboete' (2021).

Annex

Algemene Plaatselijke verordening Amsterdam (APV)

Article 1.1: In deze verordening wordt verstaan onder:

Sub 9. Weg:

- a. de voor het openbaar verkeer openstaande wegen of paden, met inbegrip van de daarin liggende bruggen en duikers en de tot die wegen behorende paden en bermten of zijkanten, alsmede de -al dan niet met enige beperking- voor publiek toegankelijke parkeerterreinen en parkeergebouwen;
- b. de -al dan niet met enige beperking- voor publiek toegankelijke stegen, pleinen, open plaatsen, parken, plantsoenen, speelweiden, bossen en andere natuurterreinen, ijsvlakten, veerponten en aanlegplaatsen voor vaartuigen;
- c. de voor het publiek toegankelijke stoepen, trappen, portieken, gangen, passages en galerijen die uitsluitend tot voor bewoning in gebruik zijnde ruimten toegang geven en niet afsluitbaar zijn;
- d. andere voor het publiek toegankelijke -al dan niet afsluitbare- stoepen, trappen, portieken, gangen, passages en galerijen; de afsluitbare alleen gedurende de tijd dat zij niet door of vanwege degene die daartoe naar burgerlijk recht is bevoegd zijn afgesloten;

Article 2.20: Slapen op of aan de weg

1. Het is verboden de weg als slaapplek te gebruiken of op of aan de weg of het openbaar water een voertuig, vaartuig, woonwagen, tent of ander onderkomen als slaapplek te gebruiken, daarin te overnachten of daartoe gelegenheid te bieden.
2. Het college kan van dit verbod ontheffing verlenen.
3. Het verbod geldt niet voor een woonboot als bedoeld in de Verordening op het binnenwater 2010.

Article 2.21: Bedelarij

Het is verboden op of aan de weg of in een voor publiek toegankelijk gebouw om geld of andere zaken te bedelen.

Article 5.11: doen van natuurlijke behoefte

Het is verboden op of aan de weg buiten een urinoir of andere toiletgelegenheid datgene te verrichten waarvoor een toiletgelegenheid is bestemd.

Article 6.1: Strafbepaling

Overtreding van het bij of krachtens de volgende artikelen bepaalde en de op grond van artikel 1.6 gegeven voorschriften en beperkingen wordt gestraft met hechtenis van ten hoogste drie maanden of met een geldboete van de tweede categorie:

1.8, 1.9, 2.2 eerste lid, 2.2 tweede lid, 2.2 derde lid, 2.2a, 2.3, 2.4, 2.5 eerste lid, 2.7 eerste lid, 2.7 tweede lid, 2.8 tweede lid, 2.9 eerste lid, 2.9 tweede lid, 2.10 vierde lid, 2.10 vijfde lid, 2.10 zesde lid, 2.12 eerste lid, 2.12 tweede lid, 2.12 vierde lid, 2.13 eerste lid, 2.15 vierde lid, 2.16 eerste lid, artikel 2.16c, artikel 2.16d, 2.17 eerste

lid, 2.17 tweede lid, 2.17 vijfde lid, 2.17A eerste lid, 2.18 eerste lid, 2.18 tweede lid, 2.19 eerste lid, 2.19 tweede lid, 2.20 eerste lid, 2.21, 2.22 eerste lid, 2.23 eerste lid, 2.25 eerste lid, 2.25 tweede lid, 2.26 derde lid, 2.26 vierde lid, 2.27 eerste lid, 2.27 tweede lid, 2.31 eerste lid, 2.36 tweede lid, 2.39 tweede lid, 2.40 eerste lid, 2.41 zevende lid, 2.44 vierde lid, 2.45 tweede lid, 2.47 eerste lid, 2.48, 2.49 eerste lid, 2.49 tweede lid, 2.50 eerste lid, 2.50 tweede lid, 2.50 derde lid, 2.51 eerste lid, 2.52 eerste lid, 2.53 eerste lid, 3.4, 3.5, 3.8 eerste lid, 3.12, 3.13, 3.14 eerste lid, 3.16 tweede lid, 3.18, 3.19 eerste lid, 3.20, 3.21, 3.26, 3.27 eerste lid, 3.27 tweede lid, 3.30 eerste tot en met zevende lid, 3.34 eerste lid, 3.34 tweede lid, 3.38 tweede lid, 3.40 eerste lid, 3.45 derde lid, 3.47, 3.50, 3.51, 3.53 eerste lid, 3.54, 3.59 tweede lid, 3.60 eerste lid, 3.60 tweede lid, 3.60 derde lid, 3.64, 4.2 eerste lid, 4.3 eerste lid, 4.5 vierde lid, 4.6, 4.7 eerste lid, 4.9 eerste lid, 4.10 tweede lid, 4.11 eerste lid, 4.12 eerste lid, 4.13 eerste lid, 4.14 eerste lid, 4.16 eerste lid, 4.17 eerste lid, 4.17 zesde lid, 4.17 zesde lid, 4.18, 4.19 eerste lid, 4.20 eerste lid, 4.21 eerste lid, 4.21 tweede lid, 4.22 eerste lid, 4.23 eerste lid, 4.24 eerste lid, 4.25 eerste lid, 4.26, 4.27, 5.2 eerste lid, 5.3, 5.3A eerste lid, 5.4 eerste lid, 5.5 eerste lid, 5.7 eerste lid, 5.7 tweede lid, 5.7 derde lid, 5.8 eerste lid, artikel 5.8A, 5.9 eerste lid, 5.9 tweede lid, 5.9 derde lid, 5.9 vierde lid, 5.10, 5.11, 5.12 eerste lid, 5.13 eerste lid, 5.13 tweede lid, 5.14, 5.15 eerste lid, 5.16 eerste lid, 5.17, artikel 5.18

Explanation Article 6.1: strafbepaling

De aanhef van artikel 6.1 regelt algemeen dat het niet-naleven van voorschriften of beperkingen die aan een vergunning of een ontheffing zijn verbonden een strafbaar feit oplevert.

Artikel 6.1 geeft verder een opsomming van de voorschriften op overtreding waarvan straf is gesteld. Deze opsomming is uitputtend. Wanneer een bepaling niet is genoemd in artikel 6.1 kan deze ook niet strafrechtelijk worden gehandhaafd. Dat laat onverlet dat bestuursrechtelijke handhaving wel mogelijk is.

Bepalingen die zien op de bestrijding van heling en overtreding van WOM-voorschriften alsmede artikel 3.23, eerste lid, ontbreken overigens in de opsomming. De reden is dat de strafbaarstelling van overtreding hiervan is geregeld in bijzondere (formele) wetten.

Algemene Plaatselijke Verordening Den Haag (APV):

Article 1:1 begripsomschrijving

In deze verordening wordt verstaan dan wel mede verstaan onder:

1. de weg, als bedoeld in artikel 1, eerste lid, onder b, van de Wegenverkeerswet 1994, alsmede de daaraan liggende en als zodanig aangeduide parkeerterreinen;
2. de - al dan niet met enige beperking - voor het publiek toegankelijke pleinen en open plaatsen, parken, plantsoenen, speelweiden, bossen en andere natuurterreinen, ijsvlakten en aanlegplaatsen voor vaartuigen;
3. de voor het publiek toegankelijke stoepen, trappen, portieken, gangen, passages en galerijen, die uitsluitend tot voor bewoning in gebruik zijnde ruimte toegang geven en niet afsluitbaar zijn;
4. andere voor het publiek toegankelijke, al dan niet afsluitbare stoepen, trappen, portieken, gangen, passages en galerijen; de afsluitbare alleen gedurende de tijd dat zij niet door of vanwege degene die daartoe naar burgerlijk recht bevoegd is, zijn afgesloten.
5. van de weg zoals bedoeld in sub a, onder 1 tot en met 4, maakt deel uit de daartoe behorende ondergrond.

Article 2:38B: (Nacht)verblijf aan de weg

1.Het is verboden om -al dan niet gebruikmakend van enige vorm van beschutting, waaronder in ieder geval begrepen het gebruik van een auto- op of aan de weg tussen zonsondergang en zonsopgang te liggen of te

slapen, danwel tussen zonsopgang en zonsondergang te liggen of te slapen, nadat door een ambtenaar van politie in het belang van de openbare orde of veiligheid is aangezegd dat dit moet worden beëindigd.

2.Het is verboden op of aan de weg een voertuig, woonwagen, tent, caravan of een soortgelijk of ander onderkomen te plaatsen met het kennelijk doel dit als slaapplek te gebruiken of daarin te overnachten danwel gelegenheid daartoe te bieden.

3.Burgemeester en wethouders kunnen van het in het eerste en tweede lid gestelde ontheffing verlenen.

Article 2:52: Bedelarij

Het is verboden in door de burgemeester aangewezen wegen en tijden op of aan de weg of in een voor het publiek toegankelijk gebouw om geld of andere zaken te bedelen.

Article 4:8: natuurlijke behoefte doen

Het is verboden binnen de bebouwde kom op of aan de weg zijn natuurlijke behoefte te doen buiten een daarvoor bestemde inrichting of plaats.

Article 6:1: Strafbepaling

1.Overtreding van het bij of krachtens de volgende artikelen bepaalde en de op grond van artikel 1:4 daarbij gegeven voorschriften en beperkingen wordt gestraft met hechtenis van ten hoogste drie maanden of geldboete van de tweede categorie en kan bovendien worden gestraft met openbaarmaking van de rechterlijke uitspraak: artikel 2:1, 2:3, 2:6, 2:8, 2:10, 2:10B, 2:11, 2:12, 2:18, 2:25, 2:25B, 2:26, 2:26A, 2:26B, 2:28, 2:29, 2:30, 2:30A, 2:31, 2:32, 2:33, 2:37, 2:38, 2:38A, 2:38B, 2:41, 2:44, 2:48, 2:49, 2:50, 2:52, 2:67, 2:68, 2:69, 2:72, 2:73, 2:73A, 2:73B, 2:74, 2:74A, 2:74B, 2:74C, 2:75, 2:79, 2:98, 3:3, 3:8, 3:10, 3:11, 3:12, 3:13, 3:14, 3:15, 3:16, 3:17, 3:18, 3:19, 3:20, 4:3, 4:4, 4:6, 4:13, 5:2, 5:3, 5:7, 5:8, 5:9, 5:10A, 5:11, 5:13, 5:24, 5:33, 5:34, 5:36, 5:37, 5:39, 5:42, eerste lid, 5:42, derde lid, 5:43.

Wetboek van Strafrecht

Article 9a:

Indien de rechter dit raadzaam acht in verband met de geringe ernst van het feit, de persoonlijkheid van de dader of de omstandigheden waaronder het feit is begaan, dan wel die zich nadien hebben voorgedaan, kan hij in het vonnis bepalen dat geen straf of maatregel zal worden opgelegd.

Article 18 sub 1:

1. De duur van de hechtenis is ten minste een dag en ten hoogste een jaar.

Article 23 sub 2:

2. Het bedrag van de geldboete is ten minste € 3.

Wetboek van Strafvordering

Article 6:4:20

1. Het openbaar ministerie beslist over toepassing van het dwangmiddel gijzeling jegens de veroordeelde indien volledig verhaal overeenkomstig de artikelen 6:4:4, 6:4:5 en 6:4:6 niet mogelijk blijkt bij een verplichting tot betaling van een geldbedrag aan de staat ten behoeve van het slachtoffer of diens nabestaanden.
2. Het openbaar ministerie neemt bij het bepalen van de duur van de toe te passen gijzeling hetgeen door de rechter is bepaald in acht en houdt rekening met gedeeltelijke betalingen die door de veroordeelde zijn verricht en met verhaal dat reeds ingevolge de artikelen 6:4:4, 6:4:5 en 6:4:6 is genomen.
3. Gijzeling wordt niet toegepast indien de veroordeelde aannemelijk maakt dat hij buiten staat is te voldoen aan de verplichting tot betaling.
4. De gijzeling eindigt indien de veroordeelde alsnog het verschuldigde bedrag volledig voldoet. De gijzeling kan te allen tijde worden beëindigd door Onze Minister.
5. De toepassing van gijzeling heft de verschuldigdheid niet op.

Aanwijzingsbesluit ex art. 2:52 Den Haag

<https://denhaag.raadsinformatie.nl/document/10638902/2/RIS310202%20Aanwijzingsbesluit%20bedelarij>

Annex 1, Verordening Bestuurlijke Boete Overlast in Openbare Ruimte Amsterdam

Bijlage (table)

<https://lokaleregelgeving.overheid.nl/CVDR436209/8#d80533327e81>

Sources

Laws and regulations

Aanwijzingsbesluit ex art. 2:52 Den Haag

Algemene Plaatselijke Verordening Amsterdam

Algemene Plaatselijke Verordening Den Haag

Verordening Bestuurlijke Boete Overlast in Openbare Ruimte Amsterdam

Wetboek van Strafrecht

Wetboek van Strafvordering

Case law

Rechtbank Amsterdam, 20 September, 2018, ECLI:NL:RBAMS:2018:6721

Rechtbank Amsterdam, 28 February 2020, ECLI:NL:RBAMS:2020:2078

Rechtbank Amsterdam, 11 June 2021, ECLI:NL:RBAMS:2021:2978

Centrale Raad van Beroep, 15 March 2021, ECLI:NL:CRVB:2021:506

EHRM, 19 January 2021, App no 14065/15, ECLI:CE:ECHR:2021:0119JUD001406515 (*Láčatus v. Switzerland*)

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Memorie van Toelichting (1997-1998), nr. 3

Reports

Nationale Ombudsman, '*Gegijzeld door het systeem*', 2015/160

Nationale Ombudsman, '*Brief over gijzeling aan staatssecretaris Veiligheid en Justitie*', 2017, nr. 201625282

WODC (Universiteit Leiden), '*Vervangende taakstraf bij het niet betalen van een geldboete*', 2021, nr. 3196

Norway

Norway

Cities considered: Oslo and Sola municipality

Introduction

Norway has moved in the direction of fewer restrictions that affect the homeless and the poor. As recently as February 2021, Sola municipality lifted its ban on begging, which was the last remaining in the country. This does not mean that Norway is without restrictions that affect the poor. Norway's largest city and capital, Oslo, has a ban on sleeping outdoors, a ban came in the light of the increasing immigration from Romania and Bulgaria in 2013.

Therefore, this report will mainly focus on the outdoor sleeping ban in Oslo, as well as mentioning the recent regulation about begging in Sola municipality. This is because it is important how an eventually future ban against begging could be enforced, because a begging ban is up for the different municipalities to enforce at even given time, at the power of the national police law.

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

The definition of homelessness

There is no specific legal definition of “homelessness” in Norway. Nevertheless, the police statute in Oslo makes “accommodation or similar” prohibited in “public parks, green areas, recreation areas, on roads or squares in densely populated areas” forbidden without permission.

This definition is very broad and will of course affect the homeless people in Oslo. In a verdict from 2013, it was said that the law was structured to affect “rich and poor”⁹², but the people sleeping on the streets are usually poor.

There is not much judicial practice around these provisions, and in the only verdict from 2013, the definition was never even questioned. This might be because the way the prohibition of sleeping

⁹² Verdict from Oslo, *TOBFY-2013-95040*.

outside is formulated encompasses most or all relevant situations and doesn't bring up much judicial problems.

The definition of begging

There is no legal definition of begging directly in the body of Norwegian laws. In the statute for Sola district, begging was explicitly forbidden in the law, but no further definition or explanation was given. However, in different preparatory works different explanation can be found.

Preparatory for the Norwegian criminal law

The legal definition of begging to be found in the preparatory works for the Norwegian criminal law. The criminal law itself doesn't make it illegal to beg, but to force or make other people to beg on your behalf.

In the preparatory work "begging" is described as "asking others for money or other means (...) also where the person begging acts threateningly or qualifies annoyingly".⁹³

Preparatory works for the national police law

Also, in the preparatory works for the national police law article 14, begging "includes situations where someone asks others for money that the recipient should spend on themselves, their loved ones or on a small group of people or an environment of which the recipient is a part".⁹⁴

⁹³ *Ot, prp. nr 50 (2005-2006)*.

⁹⁴ *Prop. 152 L (2012-2013)*, page 17- 18.

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

General information

There are currently no specific Norwegian regulations that prohibit eating or performing hygienic activities in public places. There are however general provisions in the Norwegian criminal law that prohibits conduct in public that affects other citizens negatively. Therefore, eating or performing personal hygienic activities is only illegal if it affects others in a negative matter. Therefore, the relevant laws that will be discussed below are the ones that specifically prohibit or can prohibit sleeping outside or begging.

The Norwegian police law

Ban against begging

Paragraph 14 nr. 8 of the Norwegian police law gives the individual municipalities the right to determine whether they want a ban against begging or not. Currently there are no municipalities that have this ban. The latest active ban against begging was at Sola municipality, but this was abolished in February 2021. This was due to the pressure from the media and the decriminalization might also have been affected by the fact that the current sleeping ban in Oslo from 2013 (see down below) pushed a lot of Romanians and Bulgarians away from Norway, which for the time being was one of the largest groups of beggars.

Ban against accommodation outdoors

Paragraph 14 in the national police law also gives the individual municipalities the option to initiate regulations to maintain “public order”⁹⁵. This is a broad term that in practice can embrace outdoors sleeping.

⁹⁵ *Politiloven*, § 14 nr. 1.

The police statutes for Oslo municipality

In the police statutes for Oslo municipality § 2-1 last paragraph makes it forbidden to sleep outside. See definition above in chapter 1.1. Relevant text is included in the annex.

The police statute for Sola municipality

Article § 5a in this police statute made it explicitly prohibited to beg (text included in annex). This police statute was given in accordance with the national police law article 14.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

The respective provisions in both the Sola and Oslo police statutes are given by the virtue of the national provision in the Police act § 30. Infringement on the police statutes in Sola and Oslo are punished in accordance with the national police law § 30 nr. 4. The punishment is either fines or imprisonment up to three months (the relevant text is included in annex). The price of the fines or the assessment of the length of the imprisonment is not included in the body of the law, and available cases are not easily accessible.

The ban on sleeping outdoors itself appears to be blank, meaning that no circumstances should be taken into consideration when deciding the punishment. However, this is not necessarily true. According to the national Criminal Law § 53, circumstances such as the “offender’s income, assets, debt burden and other factors” should be taken into the consideration. In the judgement ECtHR *Lăcătuș v. Switzerland*⁹⁶, the Court did not accept the situation where there was a blanket ban against begging with no circumstances to be taken into consideration. This is not the case in Norway, and the paragraph in the Criminal Law § 53 makes the sleeping ban in conformity with the judgement.

In practice however, prison is rarely the option and is only subsidiary if the person in question doesn’t have any means to pay, according to the criminal procedural law § 456.

⁹⁶ ECtHR *Lăcătuș v. Switzerland*, Application no. 14065/15.

According to the preparatory works for the Norwegian criminal law⁹⁷, the prison should be calculated 1:2, “1” being 1000 NOK and “2” meaning the number of days in prison. The same preparatory work say that this is only a “natural starting point”, meaning a 1:1 relation also is possible.

However, a community service is another way to serve the punishment, according to the national criminal law § 48 a. In the case of sleeping outdoors, the terms to do community service instead of prison are usually present, meaning that community service is a common option rather than imprisonment.

A ban against sleeping is still not in accordance with the “Guiding principles on extreme poverty and human rights” paragraph 66 letter (6), where any laws that criminalize “sleeping” in public should be repealed. The same is the case with the “Guidelines for the implementation of the Right to Adequate Housing” Guideline No. 5, as homelessness still is criminalized in Oslo.

Furthermore, the paragraph 66 also states that a ban shouldn’t have a “disproportionate effect” on “people living in poverty”. An argument can easily be made that this ban also in a bigger extent affects the poor, than the rich.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

In Norway there are no regulations that prohibit begging, eating, or performing national hygienic activities in public places, except in the cases where the behavior falls under a more general provision in the Norwegian criminal law, see chapter 2.1 above.

In recent years, there has been a great deal of progress towards decriminalizing outdoor begging, and the repeal of the provision of Sola municipality in February is an example of this. However, at any given time the municipalities can make this ban active again, in accordance with the police law article § 14 nr. 8.

⁹⁷ *Ot.prp. nr 90 (2003-2004)*, chapter 8.1.

When it comes to the decriminalization of sleeping outdoors however, there are currently no public governmental discussions ongoing in removing the sleeping ban from Oslo. There is also little pressure from the media as the number of homeless people continue to go down. However, this doesn't mean that there still aren't plenty of people that are affected by this ban.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

The Norwegian authorities offer temporary housing in emergency situations, but the conditions for access to this offer are strict, and in reality have little effect on preventing homelessness for the poor.

However, there are social measures that help people in need, most importantly the church's city mission. They operate in multiple cities in Norway. In Oslo for instance, they give the poor a pillow to rest their heads on, the opportunity for a shower and a bed for the night, in a safe, quiet, and warm environment for a very low price. This however is only a short-term solution for the poor, with a stay only possible up to 5 nights. This means that a long-term solution for poor people in Oslo currently is not in place which makes the ban for sleeping outdoors in Norway, contradictory.

Annex

Norwegian police law article § 14 nr. 8, translated text:

“In articles of association that are determined by the municipality and approved by the ministry or the body determined by the ministry, provisions may be made (...) on a ban on or more detailed conditions for begging in a public place or from house to house. It can be stipulated that anyone who wants to beg must report to the police in advance”.

Norwegian police law article § 14 nr. 1, translated text:

“In articles of association that are determined by the municipality and approved by the ministry or the body determined by the ministry, provisions may be made (...) to maintain peace and order”

The police statute for Oslo article § 2-1, paragraph 5, translated text:

“In public parks, green areas, recreation areas, on roads or places in densely populated areas, accommodation, camping, tenting or the like are prohibited, without special permission from the municipal authority.”

The police statute for Sola municipality article § 5a, translated text:

“Begging in a public place or from house to house is forbidden”

The national police law article § 30 nr. 4, translated text:

“With fines or imprisonment for up to 3 months, it is punished as intentional or negligent (...) violates provisions given pursuant to § 14

The national criminal Law § 53, translated text:

“When imposing a fine, in addition to such factors as are generally given weight in the sentencing, emphasis shall be placed on the offender's income, assets, maintenance burden, debt burden and other factors that affect the financial capacity.”

The national criminal procedural law § 456, translated text:

“Fines that are not paid or can be collected by payroll deduction or other enforcement, shall be enforced by serving the subsidiary prison sentence when the fined person has the ability to pay the fine or public interest so requires.”

The national criminal law § 48, translated text:

“Community punishment can be imposed instead of imprisonment when a) it would not otherwise have been sentenced to more severe punishment than imprisonment for 1 year, b) the consideration of the purpose of the punishment does not speak against a reaction in freedom, and c) the offender consents and is domiciled in Norway, Denmark, Finland, Iceland or Sweden.”

- Verdict from Oslo 2013, *TOBYF-2013-95040*, link to verdict: <https://lovdata.no/dokument/TRSIV/avgjorelse/tobyf-2013-95040>, not open for the public: admission is needed
- Preparatory works in the Norwegian criminal law (a definition of “begging”), *Ot. Prp. Nr. 50 (2005-2006)*, chapter 8.1. page 10 (link to document <https://www.regjeringen.no/no/dokumenter/otprp-nr-50-2005-2006-/id401675/>)
- Preparatory works for national police law, *prop. 152 L (2012-2013)*, page 17- 18, link to document: <https://www.regjeringen.no/no/dokumenter/prop-152-l-20122013/id726634/>
- Norwegian police law, link: <https://lovdata.no/dokument/NL/lov/1995-08-04-53>
- The police statutes for Oslo municipality, <https://lovdata.no/pro/#document/LF/forskrift/2007-06-06-577?searchResultContext=1485&rowNumber=23&totalHits=285>)
- The police statute for Sola municipality: <https://lovdata.no/dokument/LF/forskrift/1999-01-29-60>
- The church’s city mission social measure to help out homeless people: <https://kirkensbymisjon.no/arbeidsfelt/boligitak/>

Portugal

Portugal

Begging is not considered illegal in Portugal. The decriminalization of begging occurred in 1976, through Decree Law No. 365/76 of 15 May, which eliminated the punitive aspect from the legislation that existed until that moment.

However, there are individuals and organized crime networks that exploit their victims through forced begging. The issue here is not the punishment of begging, but the exploitation of the child or incapacitated person and, with it, the protection of the dignity of the person. In fact, anyone who exploits a minor under the age of 16 or a mentally incapacitated person by using him for begging shall be punished by a term of imprisonment of up to three years.⁹⁸

In fact, there are several initiatives that have been implemented with the aim of fighting marginality. In Portugal, everyone has the right, for himself and his family, to a house of adequate size, in hygienic and comfortable conditions, and which preserves personal intimacy and family privacy.⁹⁹

Social Security created the National Strategy for the Integration of People Experiencing Homelessness (ENIPSA), which aims to respond to social problems and create policies that prevent situations of social exclusion, creating conditions so that no one has to live on the street for lack of alternatives.

Portugal established the Support Program for Access to Housing, which is a program of housing solutions, of public support, whose target population is people who find themselves in undignified housing conditions, not having financial support that can guarantee them access to adequate housing.¹⁰⁰

Portuguese courts take into consideration the economic and financial situation of the offender. There is no blanket ban; they work case by case considering the person's situation. In fact, there are some alternative remedies (such as instalments and community service).

In Portugal, the fine is a primary penalty, fixed between 10 and 360 days, with each day corresponding to an economic penalty between 5€ and 500€. As mentioned before, when deciding

⁹⁸ Portuguese Penal Code, Article 296.

⁹⁹ Constitution of The Portuguese Republic, Article 65 (1976).

¹⁰⁰ Decree-Law No. 37/2018, in Diário da República.

upon the fine, courts take into consideration the person's economic situation along with personal expenses.

One of the alternative remedies is to pay the fine within a period not exceeding 1 year. Other alternative is to allow payment in instalments (the last of which may not go beyond two years following the date of the conviction). But the failing of the payment of one of the instalments will oblige payment of the entire amount still outstanding. If the offender requests, the fine imposed can be replaced by days of work in establishments, workshops or works of the State or other public law legal persons, or in private charitable institutions (community service). That must be determined by the court.

If the fine is not paid, it may be substituted by imprisonment for the corresponding period, reduced by two thirds. This substitution occurs even if the crime is not punishable by imprisonment, and the minimum limit of one month provided for imprisonment does not apply¹⁰¹.

In conclusion, the measures adopted and implemented by Portugal are in accordance with the essence of the rights protected by Article 8 of the European Convention on Human Rights (right to respect for private and family life, home and correspondence), as well as the rights protected by many other fundamental principles, such as the principle of human dignity, one of the founding principles.

¹⁰¹ Decree-Law No. 48/95, Article 49.

Spain

Spain

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

Homelessness

The government of Spain in the “Estrategia Nacional Integral para personas sin hogar”¹⁰², approved in 2015, intended to tackle the problem of the homeless. Here they provide the definition of “homeless” using the categories provided by ETHOS (European Typology on Homelessness and Housing Exclusion). Although these categories identify 13 different profiles grouped in 4 main general types, the document recognizes strategies focused only on solutions for the problems of categories A and B which are people on the street or alternative housing conditions because of the lack of adequate housing. More specifically, they work with the following definitions¹⁰³:

Category A: ROOFLESS.

1. People who live on the street or in public spaces in the exterior, without a place that could be defined as a house.
2. People living in emergency shelters, without an usual place who make use of night shelters.

Category B: HOUSELESS.

3. People living in accommodations for homeless (this includes people living in short intervals of times in hotels, hostels, temporal housing, shelters)
4. Women staying on shelters because of domestic violence or gender violence

¹⁰² Gobierno de España, ‘Estrategia Nacional Integral para Personas sin Hogar 2015-2020’ (2015) (hereafter ENIPSH 2015).

¹⁰³ Ibid.

5. People in shelters destined to immigrants because of their foreign status of temporary workers status
6. People dependent on correctional, sanitary or supervised institutions who lack a house to sleep.
7. Beneficiaries of long-stayed residencies because of their homeless condition

Cataluña: The laws on autonomic housing have defined the situation of the homeless as a housing problem. More specifically in “Derecho a la Vivienda en Cataluña”¹⁰⁴ defines homeless as following:

Homeless: the person or unit of coexistence with a manifest lack of a decent and adequate home, since they do not have a home, live on the street or in a space not suitable as a home, in accordance with the provisions of this Law, and suffer exclusion from social life due to social barriers or personal difficulties in living independently. People who have been the subject of an eviction process motivated by the proven impossibility of paying the rent also have the condition of homelessness (Art. 3.m).

Madrid: Madrid has a “Código de la Vivienda de la Comunidad de Madrid” (Housing Code) but, in contrast to Barcelona, it gives no definition of “homelessness” nor “begging”. A brief definition of housing and homeless can be found in the “Ordenanza del Acceso a los Servicios de Ayuda a domicilio”¹⁰⁵. In Annex II, the section called “Situación de la Vivienda” defines housing as a “(...) safe and comfortable space that allows people to take shelter and feel safe (...) those people who lack housing are considered homeless, even when they live in Institutions dedicated specifically to them”¹⁰⁶.

Begging

Cataluña: Although the Catalunian legislation doesn't provide a legal definition of what could be considered as begging, the “*Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona*”¹⁰⁷ tries to regulate this activity. For example, article 35 prohibits

¹⁰⁴ Ley 18/2007, de 28 de diciembre, del derecho a la vivienda. (BOE, núm. 50, de 27 de febrero de 2008).

¹⁰⁵ Ordenanza ANM 2009\25, de 29 de julio, por la que regula el Acceso a los Servicios de Ayuda a domicilio (BO. Ayuntamiento de Madrid 07/08/2009, núm. 5994).

¹⁰⁶ Ibid.

¹⁰⁷ Consolidated Version of Ordenanza de Medidas para Fomentar y Garantizar la convivencia ciudadana en el espacio público de Barcelona [2005] (Hereafter Ordenanza Convivencia Bcn 2005).

behaviors that “(...) under the guise of begging or under organized forms, represent coercive or harassing attitudes, or intentionally obstruct and impede the free movement of citizens through public spaces.”

So begging is defined as illegal only under certain conditions. In fact, on the 18th September 2019, the High Court of Justice of Cataluña annulled a resolution of the Municipality of Reus that prohibited begging in all forms. The resolution of the judges of Cataluña hold that begging is a practice as old as humanity and that has always been present in our daily lives, without representing a problem of coexistence as long as the practice is peaceful¹⁰⁸.

Madrid: There are no centralized regulations prohibiting begging in Madrid. However there are some programs in the city intended to help and improve the situation of those living in the street such as “Renta Mínima de Inserción en la Comunidad de Madrid”¹⁰⁹. This law intends to help those that “lack economic resources to face the basic needs of life”, and mainly, begging people are the beneficiary of that program. This could provide us an approach on how Madrid defines the situation of those who are begging, which considers them as those who lack basic economic resources to live.

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

Article 148 of the SC¹¹⁰ establishes that the order of the territory, urbanism and housing correspond to the competence of every “Comunidad Autónoma”. In the same way, the constitution defines a “Comunidad Autónoma” as “neighboring provinces with common historical, cultural and economic characteristics, island territories and provinces with a historical regional entity”¹¹¹. Therefore this report will refer specifically to regulations and norms of two

¹⁰⁸ Press, ‘Un municipio no puede prohibir la mendicidad en sus calles a través de una ordenanza’ (2020), Noticias Jurídicas <<https://noticias.juridicas.com/actualidad/jurisprudencia/14850-un-municipio-no-puede-prohibir-la-mendicidad-en-sus-calles-a-traves-de-una-ordenanza/>> accessed 15 November 2021.

¹⁰⁹ Renta Mínima de Inserción en la Comunidad de Madrid, Ley 15/2001 (hereafter Renta Mínima de Madrid).

¹¹⁰ Constitución Española (BOE núm.311, de 29 de diciembre de 1978).

¹¹¹ Ibid 29.

“Comunidades Autónomas”: Madrid and Cataluña. This explains the expansion of local regulation, instead of a centralized one, regarding coexistence and civic virtue.

It is worth saying that, although there is no national legislation that prohibits begging, article 232 of the Penal Code¹¹² prohibits the use of underage or people with disabilities for begging. It is sanctioned with time in prison that could go up to a year.

Madrid: There is no “Ordenanza de Civismo y Convivencia” like the one that exists in Barcelona. There used to be one called “Ordenanza Municipal de Policía Urbana y Gobierno de la Villa de Madrid”¹¹³, which prohibited and punished begging. But, as it’s said in the Official Madrid Website¹¹⁴, it was officially suppressed on the 28th September of this year mainly because it was in desuse and dealt with obsolete and inexistent services. The suppression of this Ordenanza was made by the Madrid City Council Plenary Session, through the “Ordenanza de Derogación Normativa”. According to the official Madrid website¹¹⁵, “this ordinance is the first step in a repeal process that seeks the City Council's priority objective of improving municipal regulations through a simple, clear and transparent municipal legal system for citizens and companies.”

As it was said above, the “Ordenanza Municipal de Policía Urbana y Gobierno de la Villa de Madrid”¹¹⁶ was in disuse. For that reason, since 2013 there has been a project that intends to replace it and it is called “Proyecto de Ordenanza de Convivencia Ciudadana en el Espacio Público”¹¹⁷. Its main objective it’s to regulate the public spaces as places of coexistence and civic virtue. It claims that it prevents from disturbed acts and improper behaviours in the area of Madrid and it would regulate all Municipios in Madrid. Regarding the topics we are analyzing here, it prohibits begging, carrying out physiological needs in public spaces, cleaning and sleeping in public spaces (see Annex, section 1). The project was promoted mainly by Ana Botella who was the

¹¹² Ley Orgánica 10/1995, de 23 de Noviembre, del Código Penal. (BOE, núm 281, 24/11/1995).

¹¹³ Ordenanza Municipal de Policía y Gobierno de la Villa, ANM 1948\1 (BO. Ayuntamiento de Madrid 16/07/1948) (Hereafter ANM 1948\1).

¹¹⁴ Ayuntamiento de Madrid, “El Pleno aprueba la derogación de 17 normas y ordenanzas municipales obsoletas” (Sede *Madrid*, 28th September 2021) <<https://www.madrid.es/portales/munimadrid/es/Inicio/Actualidad/Noticias/El-Pleno-aprueba-la-derogacion-de-17-normas-y-ordenanzas-municipales-obsoletas/?vgnnextfmt=default&vgnnextoid=b03f77d9a4b2c710VgnVCM1000001d4a900aRCRD&vgnnextchannel=a12149fa40ec9410VgnVCM100000171f5a0aRCRD>> accessed 15 November 2021.

¹¹⁵ Ibid.

¹¹⁶ ANM 1948\1, n° 12.

¹¹⁷ Proyecto de Ley, de octubre de 2013, de Ordenanza de Convivencia Ciudadana en el Espacio Público (Hereafter Proyecto Madrid 2013).

Mayor of Madrid from 2011 to 2015¹¹⁸. But it hasn't gone any further than just being a project of law.

As it was already said, the lack of regulation on civic virtue and coexistence in Madrid, has led to a situation where there is no central regulations but at the same time, some “town halls” (Municipios) have elaborated and applied their own rules of public coexistence as an exponent of the principle of autonomy.

So, in spite of the lack of centralized regulations, lots of Municipios, within the Comunidad Autónoma de Madrid, came out with their own legislations called “Ordenanza de Civismo”. This is the case of San Sebastian de los Reyes, Alcalá de Henares, Getafe, Miraflores de la Sierra and Paracuellos de Jarama. All of them regulate or prohibit the situation of sleeping, begging and certain activities such as washing in the street and public spaces. (see Annex, section 2).

Apart from that, there is one Ordenanza¹¹⁹ that applies to Comunidad de Madrid that prohibits people from removing and extracting waste from bins. (see Annex, section 3). It directly affects those that find themselves with nothing to eat and are forced to remove public bins in the look for anything to eat.

Cataluña: The Catalan legislation prohibits the “improper use of public spaces in a way that prevents the use or enjoyment by other citizens”. Sleeping, washing clothes or bathing in fountains could implicate a 500 euro fine¹²⁰.

Also, it prohibits conducts that, under the guise of begging or under organized forms, represent coercive or harassing attitudes, or intentionally obstruct and impede the free movement of citizens through public spaces¹²¹. These types of conducts implicate a fine that could go up to 3.000 euros depending on the severity of the infraction. However, the imposition of a fine does not exclude the possibility of being prosecuted for the commission of a crime. (see Annex, section 4).

¹¹⁸ Redacción El Boletín, 'Pedir limosna en Madrid puede costar caro. Ana Botella quiere imponer multas de hasta 3.000 euros', *El Boletín*, (Madrid, 8th October 2013) <<https://www.elboletin.com/nacional-85216-pedir-limosna-madrid-costara-carro-ana-botella-html/>> accessed 15 November 2021.

¹¹⁹ Ordenanza de Limpieza del Espacio Público y Gestión de Residuos, ANM 2009/6 (Hereafter ANM 2009/6).

¹²⁰ Ordenanza Convivencia Bcn 2005, n°6.

¹²¹ Ibid 12.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

In Spain, the non-compliance with payment obligations is not considered to be a criminalized conduct. Therefore the responsibility assumed by the person obliged to pay a debt is solely patrimonial. This explains the fact that homeless people in Cataluña get lots of fines and still, nothing happens to them. Even if you search on the internet, it is full of newspaper articles that show homeless people that have been fined over and over again, without further consequences. One that outstand is the homeless that got more than 100 fines for sleeping on the street¹²².

Madrid: Most of the sanctions related to the behaviour of homeless people and begging activities are monetary fines.

In the regulations mentioned above, it says nothing about detention or imprisonment. In general they are first noticed by an official authority, and then, if the conduct persists they are economically sanctioned. But it is also common that those sanctions are substituted by individualized attention sessions with social services or with courses in which they get informed about the possibilities that private and public institutions offer and the financial and monetary help they could obtain.

Cataluña: Although there are fines contemplated in the Catalan legislation for those who violate the Ordenanza de Convivencia Cívica, these sanctions are rarely paid. For example, in a research published by El País¹²³, Ivanna Vallespín collects testimonies of several people in homeless conditions that had never paid a single fine in years. In this article they explain that just in the year 2011 there were 1160 complaints against people in street conditions. This implies an average of three complaints per day. What's more important, the respondents recognize that, even when they are not paying the fine, they still get new ones.

In both **Madrid and Cataluña**, and according to the Ordenanzas analyzed above, what could eventually happen if they do not pay the fine is that the authority can proceed to the precautionary intervention of the means used to develop the unlawful conduct as well as the fruits obtained. At the same time and in both cases, the fine can be left behind if those committing the unlawful

¹²² Montse Riart, 'Barcelona multa más de 100 veces a un hombre por dormir en la calle', *Cadena Ser*, (Barcelona, 2nd february 2012) <https://cadenaser.com/ser/2012/01/02/sociedad/1325474018_850215.html> accessed 15 November 2021.

¹²³ Vallespín, Ivanna, 'Multado por Indigente', *El País*, (Barcelona, 9th january 2012) <https://elpais.com/ccaa/2012/01/09/catalunya/1326145206_945592.html> accessed 15 November 2021.

activity, engage in individualized attention sessions with social public services in which people can be informed of the possibilities that social assistance offers. This intention is well illustrated when we see that after some claims of social organizations that accused the government of sanctioning people sleeping in the street in 2020, Albert Battle, the mayor of Barcelona's security, went to offer public apologies, declaring that "In no case does the Urban Guard have orders to fine the homeless" and "on the contrary, the City Council fights to respond to the most vulnerable".¹²⁴

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

Madrid: According to the Official Website of La Comunidad de Madrid¹²⁵, at the present time, there are lots of mechanisms that intend to be a support for those that are in poverty in Madrid:

- First of all, there exists a Social Emergency Service which is available 24 hours a day and every day of the day and it intervenes in situations of desorientation, abandonment and helplessness.
- There also exists a program called "Sal de la Calle" (Get out of the Street), which includes a center where people can have a place to sleep, eat and meet their basic needs. It's specialized in the situation of women in the street, especially pregnant women.
- "Servicio de acogida y asistencia a personas sin hogar en situación de convalecencia", which is aimed to help those in street situation that are gravely ill.
- "Plan de Inclusión de las Personas sin Hogar de la Comunidad de Madrid" (2016-2021) (Social Inclusion Plan for Homeless): every 5 years Madrid designs a special Plan to tackle the situation of those who are in a situation of Extreme Poverty. The plan is structured in 5 main points and 76 specific measures. When 5 years have passed since the

¹²⁴ Bosch, Rosa 'Entidades sociales lamentan sanciones a sintecho por no confinarse', *La Vanguardia*, (Barcelona, 19th march 2020) <<https://www.lavanguardia.com/vida/20200319/474260977634/sintecho-confinamiento-barcelona-multas.html>> accessed 15 November 2021.

¹²⁵ Comunidad de Madrid, 'Actuaciones dirigidas a personas sin hogar' (n/d), <<https://www.comunidad.madrid/servicios/asuntos-sociales/actuaciones-dirigidas-personas-hogar>> accessed 15 November 2021.

implementation of the program, Madrid does a report and a balance evaluating the results of the implementation of the Plan. For the last Plan they dedicated 170 millions of euros.

- “Estrategia de Inclusión Social de la Comunidad de Madrid”¹²⁶ (Social Inclusion Strategy for Madrid): its main goal is to eradicate extreme poverty in the region, providing tools for those in that situation. Government organizations, ONG, Social Services and independent experts take part in this plan. Its budget is about 2.189 millions of euros and, similar to the previous one, it counts with a follow up strategy and a final balance to measure the improvements of the situation.
- “Renta Mínima de Inserción”¹²⁷: (minimum insertion income): this monetary help is aimed to guarantee a minimum income for those in extreme poverty. The amount is 400 euros per month, but it is worth mentioning that all “beggars” have to declare every month how much they receive from begging in the street so the government can discount that quantity from the 400 euros¹²⁸.

Cataluña: Although there is no record of measures adopted by the Cataluñan Government to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places, there is a plan to reduce the number of people living under these conditions. The “Plan de lucha contra el sinhogarismo de Barcelona 2016-2020”¹²⁹ structures an action plan to address this issue taking into account the following criterias:

1. Recognition of rights and protection of people in street situations. This aims to guarantee the safety, basic needs, access to culture and leisure, among other aspects of people in street situations.
2. Homelessness prevention. This criteria aims to prevent people leaving the penitentiary system, immigrants or people with disabilities becoming homeless.

¹²⁶ Comunidad de Madrid, ‘Estrategia de Inclusión Social de la Comunidad de Madrid 2016-2021’ (2016) <<https://www.comunidad.madrid/transparencia/informacion-institucional/planes-programas/estrategia-inclusion-social-comunidad-madrid-2016-2021>> accessed 15 November 2021.

¹²⁷ Renta Mínima de Madrid, nº 8.

¹²⁸ Redacción InfoLibre, ‘La Comunidad de Madrid obliga a los mendigos a declarar lo que ganan en la calle para pedir la Renta Mínima de Inserción’ *InfoLibre*, (Madrid, 2nd october 2018) <https://www.infolibre.es/noticias/politica/2018/10/02/la_comunidad_madrid_obliga_los_mendigos_declarar_que_ganan_calle_87302_1012.html> accessed 15 November 2021.

¹²⁹ Ajuntament de Barcelona, ‘Plan de Lucha contra el sinhogarismo de Barcelona 2016-2020’ (2016).

3. Access to the health system. This includes an adequate attention to mental health issues.
4. Access to an adequate housing model. Adapting the portfolio of services to people's needs to improve the quality of life of people and avoid exclusion. Also, access to adequate housing implies the improvement of living conditions in facilities and avoiding overcrowding.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

Madrid: No additional information could be found (see above).

Cataluña: Barcelona has been implementing different public policies to address this problem. For example, since 2008 the Xarxa d'Atenció a Persones Sense Llar every year conducts a count of the people living in the streets and their vulnerability condition. It should be noted that this is an organization formed by different social entities (including the City Council of Barcelona). However they also acknowledge the fact that there are countless challenges to face in the future because local authorities don't consider homelessness as an urgent matter.

Compliance with International and Regional Human Rights Standards (article 8 ECHR)

To assess whether the laws and regulations of Spain regarding extreme poverty and homelessness are in compliance with regional and international human rights standards is a very difficult task, since the regulations are decentralized and vary from region to region. According to the Guiding

Principles on Extreme Poverty and Human Rights¹³⁰, the eradication of extreme poverty is not only a moral duty but also a legal obligation under international Human Rights law. In this sense, and especially in the regions analyzed in this report (Madrid and Cataluña), it is possible to say that both governments have put into practice some mechanisms with the intention of the suppression of those conditions. In fact, both 'Comunidades' have specific plans to deal with the specific situations of those living on the street which are renewed after every 5 years and also have a special independent monitoring mechanism, which is in compliance with what's established in the Guiding Principles of the UN¹³¹ and in the Resolution adopted by the Human Rights Council regarding Adequate Housing¹³².

An important point to stand out in Spain is that people begging or sleeping on the street are not taken into detention, in contrast to the situation in other European countries. Nevertheless, the situation is far from better: people doing those activities are prone to receive a fine which, given their current status, are unable to pay. And in spite of not being imprisoned, the fact that they are fined for carrying out an activity which is essential for their survival speaks a lot about how this group of people are being criminalized. If we consider the judgement of the European Court of Human Rights (Case *Lăcătuș v. Switzerland*)¹³³ people have the right, inherent in human dignity, to meet their basic needs, even if it's by begging. Therefore, fining people for an activity which constitutes a means of survival goes against Article 8 of the European Convention on Human Right.

¹³⁰ Final draft of the guiding principles on extreme poverty and human rights (published 18th July 2012) A/HRC/21/39.

¹³¹ Ibid.

¹³² Adequate housing as a component of the right to an adequate standard of living, and the right to non-discrimination in this context (Adopted by HR Council on 19th June 2020), A/HRC/RES/43/14.

¹³³ *Lăcătuș v. Switzerland*, App no. 14065/15 (January 2021).

SECTION 1

PROYECTO DE ORDENANZA DE CONVIVENCIA CIUDADANA EN EL ESPACIO PÚBLICO. MADRID.¹³⁴

Octubre 2013

Exposición de motivos: El objetivo principal de esta Ordenanza es el de preservar el espacio público como lugar de convivencia y civismo, en el que todas las personas puedan desarrollar en libertad sus actividades de libre circulación, ocio, encuentro y recreo, con pleno respeto a la dignidad y a los derechos de los demás y a la pluralidad de expresiones y de formas de vida diversas existentes, y a la vez, que constituya una herramienta eficaz para que los servicios municipales puedan asegurar el libre ejercicio de los derechos de todos los ciudadanos y promover la convivencia y la protección del espacio público ante conductas irresponsables o antisociales.

Artículo 10: Conductas que adoptan formas de mendicidad.

- 1.- No se permiten aquellas conductas de mendicidad que representen actitudes coactivas o de acoso, la mendicidad organizada y aquéllas que obstaculicen o impidan intencionadamente el libre tránsito de las personas o vehículos en el espacio público.
- 2.- No se permite ejercer la mendicidad en las entradas y salidas de centros educativos, de atención social, hospitales, establecimientos comerciales y empresariales.
- 3.- No se permite el ofrecimiento de bienes o servicios a personas que se encuentren en el interior de vehículos. Se considerarán incluidos en este supuesto, la limpieza de los parabrisas de los automóviles.
- 4.- Sin perjuicio de lo previsto en la normativa penal, no se permite la utilización de menores o personas con discapacidad para el ejercicio de mendicidad.

Artículo 16: Necesidades fisiológicas

No se permite escupir o hacer necesidades fisiológicas en el espacio público.

Artículo 20: Uso impropio del espacio público

- 1.- No se permite hacer un uso impropio del espacio público y sus elementos, de manera que impida o dificulte la utilización o el disfrute del mismo o de los servicios públicos por el resto de los usuarios.
- 2.- No se permiten los siguientes usos impropios del espacio público y de sus elementos:

¹³⁴ Proyecto Madrid 2013, nº 16

- a) Acampar o instalar elementos estables en el espacio público, salvo autorización para lugares concretos.
- b) Utilizar los bancos y los asientos públicos, y en general el mobiliario urbano, para usos distintos a los que está destinado.
- c) Cocinar en el espacio público salvo en los lugares al efecto dispuestos o cuando se cuente con autorización municipal.

Artículo 28: Limitaciones en fuentes y estanques públicos

No se permite en fuentes y estanques públicos las siguientes acciones:

- a) El baño o la utilización de sus aguas para el lavado de ropa u otros utensilios y para el aseo de animales o personas.
- b) Introducir en ellos cualquier tipo de animales, así como depositar objetos o sustancias en las fuentes y estanques públicos, ensuciarlas o alterar su estética o la calidad del agua.
- c) El acceso a los vasos de las fuentes públicas, trepar a las figuras y elementos existentes en ellas, así como ensuciarlas o dañarlas.
- d) Extraer agua de las instalaciones hidráulicas ornamentales, así como provocar salpicaduras o alterar la disposición de los surtidores, canales o juegos de agua.
- e) Manipular sus instalaciones.
- f) La conexión de mangueras a fuentes bebedero.
- g) Su utilización para la práctica del modelismo salvo en los lugares en que esté expresamente autorizado por resolución del órgano municipal competente.

2) SECTION 2

a) **Ordenanza Municipal para la Protección de la Convivencia Ciudadana y Prevención de Actuaciones Antisociales de San Sebastián**¹³⁵

2 de Junio 2008.

Artículo 37: Normas de Conducta

1. Está prohibido hacer necesidades fisiológicas, como por ejemplo defecar, orinar, vomitar, escupir y otras análogas, en cualquiera de los espacios definidos en esta Ordenanza como ámbito de aplicación objetiva de la misma, a excepción de las instalaciones o elementos que estén destinados especialmente a la realización de aquellas necesidades. Está especialmente prohibida la conducta descrita en el apartado anterior, cuando se realiza en vías públicas, espacios de concurrida afluencia de personas o frecuentados por menores, o monumentos o edificios de catalogación especial, o edificios institucionales o administrativos.

¹³⁵Ordenanza Municipal para la Protección de la Convivencia Ciudadana y Prevención de Actuaciones Antisociales de San Sebastián, (approved on 21st february 2008) (BOCM nº 130, 2/06/2008)

Artículo 48: Normas de conducta

Está prohibido hacer un uso impropio de los espacios públicos y sus elementos, de forma que impida o dificulte la utilización por el resto de usuarios. A estos efectos, se entiende por uso impropio:

- a) Acampar a las vías y los espacios públicos, acción que incluye la instalación estable, el dormir de día o por la noche en estos espacios públicos o sus elementos o mobiliario en ellos instalados, utilizando o no determinados enseres (saco de dormir, mochila, manta, cartones o similares), o en tiendas de campaña, vehículos, autocaravanas o caravanas, salvo autorizaciones para lugares concretos.
- b) Utilizar los bancos y los asientos públicos para usos diferentes a los cuales están destinados.
- c) Lavarse o bañarse en las fuentes, los estanques o similares, o lavar en ellos animales u objetos de cualquier tipo.

b) ORDENANZA MUNICIPAL PARA FOMENTAR Y GARANTIZAR LA CONVIVENCIA CIUDADANA EN LOS ESPACIOS PÚBLICOS DE ALCALÁ DE HENARES.¹³⁶

19 de Octubre de 2010

Capítulo Cuarto: Ocupación del espacio público por conductas que adoptan formas de mendicidad

Art. 24. Normas de conducta.—

1. Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan el libre tránsito de los ciudadanos por aceras, plazas, avenidas, pasajes, bulevares u otros espacios públicos.
2. Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio a personas que se encuentren en el interior de vehículos privados o públicos. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública así como la búsqueda y vigilancia de aparcamientos a terceros.
3. Sin perjuicio de lo previsto en la legislación penal, queda totalmente prohibida la mendicidad ejercida por menores o aquella que se realice, directa o indirectamente, con menores o personas con discapacidad.
4. Se prohíbe también la realización en el espacio público de actividades de cualquier tipo cuando obstruyan o puedan obstruir el tráfico rodado por la vía pública, poniendo en peligro la seguridad de las personas por desarrollarse en la calzada, en los semáforos o invadiendo espacios de tráfico rodado.

Capítulo Sexto: Necesidades fisiológicas

Art. 30. Normas de conducta.—

1. Está prohibido hacer necesidades fisiológicas, tales como defecar, orinar, escupir, en cualquiera de los espacios definidos en el artículo 3 de esta Ordenanza como ámbito de aplicación objetiva de la misma.

¹³⁶Ordenanza Municipal para Fomentar y Garantizar la convivencia ciudadana en los espacios públicos de Alcalá de Henares (BOCM n° 250, 19/10/2010)

2. Se considera especialmente grave la conducta descrita en el apartado anterior cuando se realice en espacios de concurrida afluencia de personas o frecuentados por menores, o cuando se haga en monumentos o edificios catalogados o protegidos

Capítulo duodécimo: usos impropios del espacio público

Art. 52. Normas de conducta.—

1. Queda prohibido hacer un uso impropio de los espacios públicos y sus elementos, de manera que impida o dificulte la utilización o el disfrute por el resto de los usuarios.

2. Sin perjuicio de lo establecido en otras Ordenanzas Municipales, no están permitidos los siguientes usos impropios de los espacios públicos y de sus elementos:

a) Acampar en las vías y los espacios públicos, acción que incluye la instalación estable en estos espacios públicos o sus elementos o mobiliario en ellos instalados, o en tiendas de campaña, vehículos, autocaravanas o caravanas, salvo autorizaciones para lugares concretos. Tampoco está permitido dormir de día o de noche en estos espacios. Cuando se trate de personas en situación de exclusión social, será de aplicación lo previsto en el artículo 54.2 de esta Ordenanza.

b) El uso de cualquier clase de productos pirotécnicos definidos en la legislación sectorial aplicable, sin autorización municipal.

c) Utilizar los bancos y los asientos públicos para usos distintos a los que están destinados. d) Lavarse o bañarse, o lavar ropa en fuentes, estanques o similares.

c) ORDENANZA DE CONVIVENCIA CIUDADANA EN EL MUNICIPIO DE GETAFE¹³⁷

20 de Agosto de 2019

Ocupación del espacio público por conductas que adopten formas de mendicidad:

Art. 32. Normas de conducta.—

1. Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan de manera intencionada el libre tránsito de los ciudadanos y ciudadanas, así como el tráfico rodado, por los espacios públicos.

2. Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio a personas que se encuentren en el interior de vehículos privados o públicos. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública.

3. Sin perjuicio de lo previsto en el artículo 232 de Código Penal, queda totalmente prohibida la mendicidad ejercida por menores o aquella que se realice, directa o indirectamente, con menores o personas con diversidad funcional.

4. Se prohíbe también la realización en el espacio público de actividades de cualquier tipo cuando obstruyan o puedan obstruir el tráfico rodado por la vía pública, pongan en peligro la seguridad de las personas o impidan de manera manifiesta el libre tránsito de las personas por aceras, plazas, avenidas, pasajes o bulevares u otros espacios públicos. Estas conductas están especialmente prohibidas cuando se desarrollen en la calzada, en los semáforos o invadiendo espacios de tráfico rodado.

5. En aquellos casos de conductas que adoptan formas de mendicidad no previstas en los apartados anteriores, y que tengan raíz social, los agentes de la autoridad, y de acuerdo además con el contenido del Plan de Convivencia y el Plan

¹³⁷ Ordenanza de Convivencia Ciudadana en el Municipio de Getafe (BOCM nº 197, 20/08/2019)

de Inclusión Social, contactarán con los servicios sociales al efecto de que sean estos los que conduzcan a aquellas personas que las ejerzan a los servicios sociales de atención primaria, con la finalidad de asistirles, si fuera necesario.

Limpieza en el espacio público:

Art. 40. Normas de conducta.—

1. Está prohibido hacer necesidades fisiológicas, como por ejemplo defecar, orinar, escupir, en cualquiera de los espacios definidos en el artículo 3 de esta Ordenanza como ámbito de aplicación objetiva de la misma, salvo las instalaciones o elementos que estén destinados especialmente a la realización de tales necesidades o cuando la realización de las mismas sea consecuencia de una enfermedad acreditada o circunstancia justificada análoga. Tendrá consideración de mayor gravedad la conducta descrita en el apartado anterior, cuando se realice en vías públicas, espacios de concurrida afluencia de personas o frecuentados por menores, o monumentos o edificios de catalogación especial, edificios institucionales o administrativos.

Uso impropio del espacio público:

Art. 48. Normas de conducta.—

1. Queda prohibido hacer un uso impropio de los espacios públicos y sus elementos, de manera que impida o dificulte la utilización o el disfrute por el resto de los usuarios.

2. No están permitidos los siguientes usos impropios de los espacios públicos y de sus elementos:

a) Acampar en las vías y los espacios públicos, acción que incluye la instalación estable en estos espacios públicos o sus elementos o mobiliario en ellos instalados, o en tiendas de campaña, vehículos, auto caravanas o caravanas, salvo autorizaciones para lugares concretos. Tampoco está permitido dormir de día o de noche en estos espacios. Cuando se trate de personas en situación de exclusión social, será de aplicación lo previsto en el artículo 60.2 de esta Ordenanza.

b) Utilizar los bancos y los asientos públicos para usos distintos a los que están destinados. c) Lavarse o bañarse en fuentes, estanques o similares.

d) Lavar ropa en fuentes, estanques, duchas o similares.

d) Ordenanza Municipal Reguladora del Fomento de la Convivencia y del Civismo de Miraflores de la Sierra¹³⁸

21 de Enero 2020

Art. 42. Normas de conducta.—

Está prohibido hacer un uso impropio de los espacios públicos y sus elementos, de forma que impida o dificulte la utilización por el resto de usuarios. A estos efectos, se entiende por uso impropio:

a) Acampar a las vías y los espacios públicos, acción que incluye la instalación estable, el dormir de día o por la noche en estos espacios públicos o sus elementos o mobiliario en ellos instalados, utilizando o no determinados enseres (saco de dormir, mochila, manta, cartones o similares), o en tiendas de campaña, salvo autorizaciones para lugares concretos.

¹³⁸ Ordenanza Municipal Reguladora del Fomento de la Convivencia y del Civismo de Miraflores de la Sierra (BOCM nº 17, 21/01/2020)

- b) Utilizar los bancos y los asientos públicos para usos diferentes a los cuales están destinados.
- c) Lavarse o bañarse en las fuentes o similares, o lavar en ellos animales u objetos de cualquier tipo.

e) Ordenanza de Convivencia Ciudadana en el Municipio de Paracuellos de Jarama¹³⁹

21 de Julio 2020

Art. 25 Normas de conducta.—

1. Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan de manera intencionada el libre tránsito de los ciudadanos y ciudadanas, así como el tráfico rodado, por los espacios públicos.
2. Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio a personas que se encuentren en el interior de vehículos privados o públicos de manera insistente coactivas o de acoso. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública así como el ofrecimiento de cualquier objeto.
3. Sin perjuicio de lo previsto en el artículo 232 de la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, queda totalmente prohibida la mendicidad ejercida por menores o aquella que se realice, directa o indirectamente, con menores o personas con diversidad funcional.
4. Se prohíbe también la realización en el espacio público de actividades de cualquier tipo cuando obstruyan o puedan obstruir el tráfico rodado por la vía pública, pongan en peligro la seguridad de las personas o impidan de manera manifiesta el libre tránsito de las personas por aceras, plazas, avenidas, pasajes o bulevares u otros espacios públicos. Estas conductas están especialmente prohibidas cuando se desarrollen en la calzada, en los semáforos o invadiendo espacios de tráfico rodado.
5. En aquellos casos de conductas que adoptan formas de mendicidad no previstas en los apartados anteriores, y que tengan raíz social, los agentes de la autoridad, contactarán con los servicios sociales al efecto de que sean estos los que conduzcan a aquellas personas que las ejerzan a los servicios sociales de atención primaria, con la finalidad de asistirles, si fuera necesario

Art. 42 Normas de conducta.—

1. Queda prohibido hacer un uso impropio de los espacios públicos y sus elementos, de manera que impida o dificulte la utilización o el disfrute por el resto de los usuarios.
2. No están permitidos los siguientes usos impropios de los espacios públicos y de sus elementos:
 - a) Acampar en las vías y los espacios públicos, acción que incluye la instalación estable en estos espacios públicos o sus elementos o mobiliario en ellos instalados, o en tiendas de campaña, vehículos, auto caravanas o caravanas, salvo autorizaciones para lugares concretos.
 - b) Utilizar los bancos y los asientos públicos para usos distintos a los que están destinados. c) Lavarse o bañarse en fuentes, estanques o similares. d) Lavar ropa en fuentes, estanques, duchas o similares.

¹³⁹ Ordenanza de Convivencia Ciudadana en el Municipio de Paracuellos de Jarama (BOCM nº 269, 03/11/2020)

3) SECTION 3

Ordenanza de Limpieza de los Espacios Públicos y Gestión de Residuos, de 27 de febrero de 2009. Madrid.
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Artículo 14. Actuaciones prohibidas.

j) Manipular, rebuscar o extraer residuos depositados en recipientes instalados en la vía pública

4) SECTION 4

Ordenanza de medidas para fomentar y garantizar la convivencia ciudadana en el espacio público de Barcelona¹⁴¹

Artículo 35. Normas de conducta

1. Se prohíben aquellas conductas que, bajo la apariencia de mendicidad o bajo formas organizadas, representen actitudes coactivas o de acoso, u obstaculicen e impidan de manera intencionada el libre tránsito de los ciudadanos y ciudadanas por los espacios públicos.

2. Queda igualmente prohibido el ofrecimiento de cualquier bien o servicio a personas que se encuentren en el interior de vehículos privados o públicos. Se considerarán incluidos en este supuesto, entre otros comportamientos, la limpieza de los parabrisas de los automóviles detenidos en los semáforos o en la vía pública así como el ofrecimiento de cualquier objeto.

3. Sin perjuicio de lo previsto en el artículo 232 del Código Penal, queda totalmente prohibida la mendicidad ejercida por menores o aquella que se realice, directa o indirectamente, con menores o personas con discapacidades.

4. Se prohíbe también la realización en el espacio público de actividades de cualquier tipo cuando obstruyan o puedan obstruir el tráfico rodado por la vía pública, pongan en peligro la seguridad de las personas o impidan de manera manifiesta el libre tránsito de las personas por aceras, plazas, avenidas, pasajes o bulevares u otros espacios públicos. Estas conductas están especialmente prohibidas cuando se desarrollen en la calzada, en los semáforos o invadiendo espacios de tráfico rodado.

5. En aquellos casos de conductas que adoptan formas de mendicidad no previstas en los apartados anteriores, y que tengan raíz social, los agentes de la autoridad, y de acuerdo únicamente con el contenido del Plan de Inclusión Social, contactarán con los servicios sociales al efecto de que sean éstos los que conduzcan a aquellas personas que las ejerzan a los servicios sociales de atención primaria, con la finalidad de asistirles, si fuera necesario.

Artículo 58. Normas de conducta

¹⁴⁰ ANM 2009/6, nº 18

¹⁴¹ Ordenanza Convivencia Bcn 2005, nº 6

1. Queda prohibido hacer un uso impropio de los espacios públicos y sus elementos, de manera que impida o dificulte la utilización o el disfrute por el resto de los usuarios.

2. No están permitidos los siguientes usos impropios de los espacios públicos y de sus elementos:

a) Acampar en las vías y los espacios públicos, acción que incluye la instalación estable en estos espacios públicos o sus elementos o mobiliario en ellos instalados, o en tiendas de campaña, vehículos, autocaravanas o caravanas, salvo autorizaciones para lugares concretos. Tampoco está permitido dormir de día o de noche en estos espacios. Cuando se trate de personas en situación de exclusión social, será de aplicación lo previsto en el artículo 60.2 de esta Ordenanza.

b) Utilizar los bancos y los asientos públicos para usos distintos a los que están destinados. c) Lavarse o bañarse en fuentes, estanques o similares.

d) Lavar ropa en fuentes, estanques, duchas o similares.

United Kingdom

United Kingdom

Cities considered: London, Glasgow

How is “homelessness” and “begging” defined in national, regional or local laws and regulations?

The laws pertaining to the topics discussed in this report are mostly nation - wide. They apply in England or Scotland as a whole, and are not specific to Glasgow or London.

ENGLAND (London)

In England, the definition of homelessness is included in the Housing Act 1996. Under s175(1)¹⁴², a person is homeless if he has no accommodation available for his occupation in the United Kingdom or elsewhere which he is entitled to occupy, has a licence to occupy or occupies as a residence (giving him the right to remain in occupation). Under s175(4)¹⁴³, a person is threatened with homelessness if it is likely that he will become homeless within 56 days. A person will also be threatened with homelessness if they have been given a notice under section 21 of the Housing Act 1988 and that notice will expire within 56 days, as per s175(5) (a) and (b)¹⁴⁴.

There is no legal definition of begging in English law. The Vagrancy Act 1824¹⁴⁵, which we will explain in more detail below, does not provide a definition of begging. Often in academic literature and official documents a simple ‘dictionary’ definition is used. In the 2018 Public Health England literature review, it was stated that ‘Begging is defined in the dictionary as the solicitation of money or food, especially in the street’¹⁴⁶.

¹⁴² Housing Act 1996, s175(1) (hereafter HA 1996).

¹⁴³ HA 1996 (n 2) s175(4).

¹⁴⁴ HA 1996 (n 3) s175(5)(a) and (b).

¹⁴⁵ The Vagrancy Act 1824 (hereafter VA 1824).

¹⁴⁶ Public Health England, ‘Evidence Review: Adults with complex needs (with a particular focus on street begging and street sleeping) (2018) 14, London, PHE P <https://www.basw.co.uk/system/files/resources/basw_51006-8.pdf> accessed 27 October 2021.

SCOTLAND (Glasgow)

In Scotland, the Housing (Scotland) Act 1987 defines homelessness for the purposes of the Act. Under s24(1)¹⁴⁷ a person is homeless if he has no accommodation. And under s24(2A)¹⁴⁸, a person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to occupy. A person is potentially homeless (threatened with homelessness) if it is likely that he will become homeless within 2 months, as per s24(4)¹⁴⁹.

As in England, Scottish law does not include a statutory definition of begging. However, the definition which has been adopted in the ‘Glasgow Begging Strategy Action Plan 2020 - 2025’¹⁵⁰, and other articles, is that “The term “begging” refers to people who ask for money from members of the public in a unilateral exchange.”¹⁵¹

Does the city/cities, province/canton, federal state or national State have any laws or regulations in place (= in force and being enforced) that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places?

ENGLAND (London)

For almost two centuries begging has been illegal in England as per section 3 of the Vagrancy Act 1824¹⁵². Although this offence does not carry a jail sentence under the Act, it can still lead to a fine of up to £1,000 (which on the standards scale is a level 3 fine)¹⁵³ and enables arrest.

¹⁴⁷ Housing (Scotland) Act 1987, s24(1) (hereafter H(S)Act 1987).

¹⁴⁸ H(S)Act 1987 (n 2) s24(2A).

¹⁴⁹ H(S)Act 1987 (n 3) s24(4).

¹⁵⁰ Working Group and other collaborators, ‘Glasgow Begging Strategy Action Plan 2020 - 2025’ (2020) (hereafter ‘Glasgow Begging Strategy’) <<https://www.glasgow.gov.uk/CHttpHandler.ashx?id=49525&p=0>> accessed 26 October 2021.

¹⁵¹ ‘Glasgow Begging Strategy’ (no 2) page 7.

¹⁵² VA 1824 (n 2) s3.

¹⁵³ The standard scale of fines is contained in section 37(2) of the Criminal Justice Act 1982. Each level in the scale corresponds to a specific sum to be paid. A level 3 fine is £1,000.

The minimum age of criminal responsibility in England and Wales is 10 years of age, meaning that children as young as 10 can be criminalised for begging offences.¹⁵⁴ Section 3 has been interpreted by courts to target those who habitually beg, rather than those who only do it on a limited number of occasions. This was made clear by the 1884 High Court case of *Pointon v Hill*¹⁵⁵, which recognised that section was “directed against a particular habit or mode of life”¹⁵⁶ and that the prosecutor had to demonstrate that the accused adopted the calling of beggar.

In addition, in 2003 as part of their aim to tackle both crime and anti-social behaviour, the Labour Government made begging a recordable offence¹⁵⁷. The Government stated that this would “help tackle the anti-social behaviour of some aggressive beggars, which can intimidate the public, leading to increased fear of crime”¹⁵⁸ and would aid police officers in identifying repeat offenders.

Additionally, under section 4 of the Vagrancy Act 1824¹⁵⁹ rough sleeping is also criminalised. This means that it is illegal for people to sleep on the streets. However, in the case of *L v Crown Prosecution Service*¹⁶⁰, the High Court held that section 4 of the Vagrancy Act 1824 should be ‘resorted to with caution’¹⁶¹ and as a ‘choice of last resort’.¹⁶²

Neither eating or performing hygienic activities in public places are expressly prohibited in statute. However, public urination comes within the scope of hygienic activities and thus must be considered independently. There is no specific law prohibiting public urination. Nevertheless, there are a number of offences under which someone can be criminally charged. One such offence is that of indecent exposure, defined in the Sexual Offences Act 2003 s66¹⁶³. In order to commit this offence one must publicly display part of themselves that is considered

¹⁵⁴ Children and Young Persons Act 1963, s16.

¹⁵⁵ *Pointon v Hill* [1884] 12 QBD 306 (hereafter *Pointon v Hill*).

¹⁵⁶ *Pointon v Hill*, page 308.

¹⁵⁷ The National Police Records (Recordable Offences) (Amendment) Regulation 2003, Regulation 2.

¹⁵⁸ ‘Begging - Is begging illegal’ (Politics.co.uk, 7 April 2011) <<https://www.politics.co.uk/reference/begging/>> accessed 28 October 2021.

¹⁵⁹ VA 1824, (n 3), s4.

¹⁶⁰ *L v Crown Prosecution Service* [2008] 1 Cr. App. R. 8 (hereafter *L v Director of Public Prosecutions*).

¹⁶¹ *L v Crown Prosecution Service* (n 2) [36].

¹⁶² *L v Crown Prosecution Service* (n 3) [36].

¹⁶³ Sexual Offences Act 2003, s66(1) (hereafter SOA 2003).

either morally unacceptable or offensive. The punishment for this offence can range from a 2 years maximum prison sentence to a fine¹⁶⁴.

Furthermore, public urination can also constitute an offence under section 5 of the Public Order Act 1986¹⁶⁵, which prohibits behaviour likely to cause harassment, alarm or distress. Being found guilty under this Act can lead to the receipt of a Penalty Notice for Disorder (PND). A PND is the most likely method to be employed by a police officer in response to public urination as it is used to tackle low level, antisocial and nuisance behaviour.

Offences under s5 of the Public Order Act are classed as upper tier offences and so warrant a £90 fine.¹⁶⁶ The offender has 21 days from the date of receipt of the PND to pay the fine in full or request a court hearing.¹⁶⁷

SCOTLAND (Glasgow)

The Vagrancy Act 1824 was given effect in Scotland through the Prevention of Crimes Act 1871. However, through the Civic Government (Scotland) Act 1982, the Vagrancy Act was repealed. As a result of this, section 3 of the Vagrancy Act no longer applies and the act of begging is decriminalised in Scotland.

So, the current legal position at common law in Scotland is that begging is not illegal, unless it is carried out in an aggressive manner. Whether the beggar is being aggressive is at the discretion of the police officer at the scene. If they decide that the begging is aggressive, it can lead to the beggar being found guilty of the offence of breach of the peace. The beggar could also potentially be prosecuted according to criminal law provisions, such as those contained in the Antisocial Behaviour etc. (Scotland) Act 2004. Glasgow does not have any supplementary laws on top of the rest of Scotland which criminalise begging or restrict begging.

¹⁶⁴ SOA 2003 (n 2) s66(2).

¹⁶⁵ Public Order Act 1986, s5.

¹⁶⁶ Ministry of Justice, 'Penalty Notices for Disorder (PNDs)' (2014) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/403812/penalty-notice-disorder-police-guidance.pdf> accessed 29 October 2021 (hereafter Ministry of Justice, 'Penalty Notices for Disorder'), page 25.

¹⁶⁷ Ministry of Justice, 'Penalty Notices for Disorder' (n 2) page 4.

It is also worth noting that in Scotland the minimum age of criminal responsibility was raised to 12 in 2019 and therefore only those over the age of 12 can be prosecuted for aggressive begging¹⁶⁸. However, prior to 2019 the minimum age of criminal responsibility was 8. This age still applies to the offences committed prior to the 11th of June 2019¹⁶⁹. The consequence of this is that children who committed the offence of aggressive begging before this date can be criminalised, even though they are as young as 8.

Scotland's lack of regulation on begging has been a source of controversy and many cities have expressed a desire for begging to be criminalised. However, the Scottish government has remained adamant that it will not support the criminalisation of begging. In 2014, Aberdeen City Council tried to introduce the Prohibition of Begging in Designated Area byelaws, but they were not confirmed by the Scottish Ministers.¹⁷⁰

Like in England, there are no specific laws which expressly prohibit eating, sleeping, or performing personal hygienic activities in all or certain public places, but urination is a personal hygiene activity which can be illegal in certain circumstances. Under s47 of the Civic Government (Scotland) Act 1982, "Any person who urinates or defecates in such circumstances as to cause, or to be likely to cause, annoyance to any other person shall be guilty of an offence and liable, on summary conviction, to a fine"¹⁷¹.

Furthermore, there are other offences which could be committed due to the activities which homeless people are forced to undertake in public. The offence of breach of the peace arises out of conduct that is "severe enough to cause alarm to ordinary people and threaten serious disturbance to the community", as per *Smith v Donnelly*.¹⁷² If for example, a group of homeless people are making a lot of noise on the street, socialising or drinking, it could amount to this offence. More often now however, disorderly conduct crimes such as this are prosecuted under section 38(1) of the Criminal Justice and Licensing (Scotland) Act 2010¹⁷³.

¹⁶⁸ Age of Criminal Responsibility (Scotland) Act 2019, s1 (hereafter ACR(S)A 2019).

¹⁶⁹ ACR(S)A 2019 (n 2) s2(2).

¹⁷⁰ Scottish Government response to the proposed byelaws: <<https://committees.aberdeencity.gov.uk/documents/s39206/Street%20Begging%20-%20SG%20response.pdf>> accessed 28 October 2021.

¹⁷¹ The Civic Government (Scotland) Act 1982, s47.

¹⁷² *Smith v Donnelly* [2001] SCCR 800.

¹⁷³ The Criminal Justice and Licensing (Scotland) Act 2010, s38(1) (hereafter CJL(S)A 2010).

Upon conviction under this provision in the Sheriff Court, offenders could face a maximum penalty of 12 months imprisonment, a fine of £5,000, or both¹⁷⁴.

Moreover, in Scotland there is the common law offence of public indecency. The leading case on this offence is *Webster v Dominick*¹⁷⁵, which suggests that the essential elements of the offence are indecent conduct, which causes affront to the public who witness it. A typical example of indecent conduct is indecent exposure of one's genitals. Therefore, a homeless person is at increased risk of being prosecuted for this offence, because they may be forced to urinate, wash themselves or change their clothes in public places. As this is a common law offence, like for the offence of breach of the peace, punishment for this crime is at the discretion of the sentencing court. However, there are limits. In the Justice of the Peace Court, the maximum fine is level 4 on the standard scale¹⁷⁶(£2,500), and the maximum imprisonment period is 60 days. In summary procedure of the Sheriff Court the maximum fine is £1000, and maximum period of imprisonment is up to 1 year¹⁷⁷.

Are there any laws or regulations that allow the detention or imprisonment of individuals for petty offences who are unable to pay the respective fine?

ENGLAND (London)

There are various methods that may be used by the court when someone is unable to pay the respective fine under s3 of the Vagrancy Act 1824. These include the court deducting the fine from your wages or benefits or sending bailiffs to your home to collect what you owe. The court may also register the fine, which means that the fine will stay on the offender's credit history for 5 years. The court may also, if it thinks you are unable to afford the fine, ask you to pay for the cost of the fine in installments, over a longer period of time or at a later date. In addition, the court may request their presence at a hearing, which is the offender's chance to indicate to the court how much of the fine they are able to pay.

¹⁷⁴ CJL(S)A 2010 (n 2) s38(4).

¹⁷⁵ *Webster v Dominick* [2005] 1 JC 65.

¹⁷⁶ The standard scale of fines in Scotland is the same as that in England, but is contained in different legislation. The relevant provision is s225 of the Criminal Procedure (Scotland) Act 1995.

¹⁷⁷ Scottish Sentencing Council, 'What the Law Says' <<https://www.scottishsentencingcouncil.org.uk/about-sentencing/what-the-law-says/>> accessed 27 October 2021.

Detention or imprisonment are only used in extreme cases and normally only when the court is under the impression that you are purposely not paying¹⁷⁸.

Next it is vital to consider whether the failure to pay the fines incurred as the result of the issuance of a PND allows for detention or imprisonment. In the Penalty Notices for Disorder (PNDs) guidance¹⁷⁹ it is stated that all possible collection methods can be employed by the judge. They can also make a supervised activity order or sentence the person to prison. However, the general procedure is that if the offender fails to pay the fine in the full amount within the 21 day period then a fine of one and a half times the amount of the original penalty will be registered in the magistrates' court. Alternatively, in exceptional circumstances, this will result in the commencement of court proceedings for the penalty offence¹⁸⁰.

SCOTLAND (Glasgow)

As explained above, there are no specific laws which criminalise homelessness or begging in Glasgow or Scotland as a whole, and therefore no specific regulations determining punishments and the consequences of inability to pay a fine. However, the common law offences of breach of the peace and public indecency, as well as the statutory offence under s38(1) of the Criminal Justice and Licensing (Scotland) Act 2010 can result in the offender having to pay a fine. There are some general rules in Scotland which apply in relation to the payment of fines. When a court imposes a fine, generally it will also impose a Fines Enforcement Order, which details the fine and how it is to be paid.¹⁸¹ s226A of the Criminal Procedure (Scotland) Act 1995¹⁸² provides for Fines Enforcement Officers, who have powers to help ensure that the offender pays their fine. For example, these officers can arrange for the money to be deducted from the offender's earnings¹⁸³ or for benefits that they are receiving.¹⁸⁴

¹⁷⁸ Citizens Advice, 'Paying a court fine' <<https://www.citizensadvice.org.uk/debt-and-money/help-with-debt/dealing-with-urgent-debts/paying-a-court-fine/>> accessed 29 October 2021.

¹⁷⁹ Ministry of Justice, 'Penalty Notices for Disorder' (n 3).

¹⁸⁰ Ministry of Justice, 'Penalty Notices for Disorder' (n 4) page 4.

¹⁸¹ Crime. Scot - Andrew Crosbie, 'Fines' <<https://crime.scot/fines/>> accessed 28 October 2021.

¹⁸² Criminal Procedure (Scotland) Act 1995, s226A (hereafter CP (S) Act 1995).

¹⁸³ CP (S) Act 1995 (n 2) s226F.

¹⁸⁴ CP (S) Act 1995, s226E.

In specific circumstances, the court can decide not to allow the offender time to pay the fine, and may exercise their power to impose imprisonment. The circumstances which warrant some action by the court are listed in s214(2) of the Criminal Procedure (Scotland) Act 1995¹⁸⁵ and include the offender appearing to have sufficient means to enable them to pay the fine immediately.¹⁸⁶ The length of imprisonment depends on the amount of the fine. For example, as per s219(2) of the Criminal Procedure (Scotland) Act 1995¹⁸⁷, a fine exceeding £200 but not exceeding £500 can result in 14 days of imprisonment.

However, if the deadline for payment has passed and the offender has not been imprisoned under the s214 power of the court, the court cannot immediately impose imprisonment.¹⁸⁸ The court must instead enquire as to why the outstanding fine has not been made, which can lead to the offender being given more time to pay the fine or the fine being cancelled altogether.

Has the local, regional or national Government adopted or is planning to adopt any measures to decriminalise begging, eating, sleeping or performing personal hygienic activities in public places?

ENGLAND (London)

In London, and England as a whole, there has been much discussion of repealing or reforming the Vagrancy Act 1824, as many believe it is an outdated and draconian piece of legislation, which only perpetuates the cycle of homelessness. In 1981, there was an attempt to repeal section 4 of the act in England and Wales, but the bill did not progress beyond the first reading in Parliament. In addition, the Crime of Vagrancy (Abolition) Bill 1991 failed to abolish the Vagrancy Act 1824. Various charities, such as Crisis have campaigned extensively for repeal of the act. A joint report called ‘Scrap the Act: The case for repealing the Vagrancy Act (1824)’¹⁸⁹ was released in 2019 criticising the act and pushing for its repeal. The use of the act has declined

¹⁸⁵ CP (S) Act 1995, s214(2).

¹⁸⁶ CP(S) Act 1995, s214(2) (a).

¹⁸⁷ CP (S) Act 1995, s219(2).

¹⁸⁸ CP (S) Act 1995, s216(1).

¹⁸⁹ Nick Morris, ‘Scrap the Act: The case for repealing the Vagrancy Act (1824)’ (21 March 2016) <https://www.crisis.org.uk/media/240604/cr0220_vagrancyact_report_aw_web.pdf> accessed 27 October 2021.

over the years, and most often it is used as a warning mechanism for the homeless to get them to relocate, but it still remains in force.

SCOTLAND (Glasgow)

In Glasgow or Scotland more widely, as there is no specific legislation criminalising begging or any of the other activities, there are no relevant reforms to discuss. There have been calls to decrease the scope of the offence of breach of the peace, as some argue it can be used to criminalise too many different types of behaviour. Attempts have been made by the appeal court to better define the offence, but there are still questions as to what its parameters should be.

Are there any recent and perhaps innovative measures in place in your municipality, province/canton/federal State to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets?

ENGLAND (London)

The Mayor of London has made a lot of headway regarding the creation of innovative measures used to support people living in poverty from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places because they do not have access to employment, social assistance, adequate housing, public showers and toilets.

Firstly, regarding access to adequate housing, during the COVID-19 lock down, the Mayor opened hotels across the city in order to provide food and shelter for over 1,300 people who were sleeping rough. He has also provided facilities, where they can receive safe medical care, for rough sleepers who are either COVID-positive or are showing symptoms. In addition, the Mayor has aimed to address the long term causes of homelessness by continuing to deliver affordable homes such as council houses and homes for social rent.

More council homes were started in the year 2019/20 in London than any other year since 1984/85 thus providing many homeless with affordable accommodation.

The Mayor is also persistent in his goal to deliver London's first ever Rough Sleeping Action Plan¹⁹⁰ in which he aims to help prevent homelessness through the utilisation of his powers and resources. This plan also sets out varying actions to be carried out by the Government, including the investment of £574m over a period of 5 years on new services, initiatives and programmes. Most importantly, this plan petitions the government to increase funding so that councils are able to meet their obligations included under the Homeless Reduction Act 2018 and also reverse welfare reforms which are only causing homelessness and making it more difficult to tackle.

There are also charity outreach teams that are funded by the mayor who help to provide a safe way off the streets for those sleeping rough. Furthermore, citizens can use the StreetLink website or mobile app to refer to outreach teams to someone they see sleeping rough.

SCOTLAND (Glasgow)

Glasgow has introduced several initiatives to combat the issue of homelessness. Housing First¹⁹¹ which recognises everyone's right to a home and seeks to provide access to housing for those sleeping rough and with complex needs. There is no rigorous process for homeless people to go through to obtain this housing, they just have to have a willingness to enter into a tenancy. Moreover, there is the Positive Outcomes Project which is a joint initiative between the police and charities¹⁹². It aims to help those driven to commit offences, sleeping rough and begging as a result of drug or alcohol addictions. This service aims to help them with their rehabilitation, by helping them access accommodation and education for example. The Scottish government is also investing £50 million to reconfigure the approach to tackling homelessness and has introduced the 'Ending Homelessness Together' action plan.

¹⁹⁰ Mayor of London, 'Rough Sleeping Plan of Action' (June 2018) Greater London Authority <https://www.london.gov.uk/sites/default/files/rough_sleeping_plan_of_action_1.pdf> accessed 28th October 2021.

¹⁹¹ Homeless Network Scotland, 'Housing First Scotland' <<https://homelessnetwork.scot/housing-first/>> accessed 28 October 2021.

¹⁹² Police Scotland and others, 'Positive Outcomes Project' (2019) <https://kc-ha.com/data/Positive_Outcomes_Project_2019_11_28_16_32_45.pdf> accessed 27th October 2021.

¹⁹³This action plan outlines how local and national governments can work together to tackle homelessness, and accounts for the impact of Covid - 19.

In regard to combating begging in Glasgow, an important development is the introduction of the ‘Glasgow Begging Strategy Action Plan 2020 - 2025’¹⁹⁴, which was led by the Working Group (which was formed specifically to create this action plan) and was collaborated on by many organizations such as Police Scotland and NHS Scotland. The three key objectives of the action plan are to ‘support people on the street who are begging’, ‘reduce the need for people to beg’ and ‘provide cash alternatives for people who wish to support beggars’¹⁹⁵. One of the ways that the plan proposes to do this is by raising public awareness of support services which are available for beggars and alternative ways in which donations can be made to beggars.

Compliance with International and Regional Human Rights Standards (article 8 ECHR)

We will now discuss whether the homelessness and begging laws in England and Scotland are in compliance with human rights obligations. The European Convention on Human Rights (ECHR) was incorporated into United Kingdom law through the enactment of the Human Rights Act 1998. This means that individuals are able to enforce their rights under the ECHR in domestic courts. Article 8 of the European Court of Human Rights (ECHR) provides that ‘Everyone has the right to respect for his private and family life, his home and his correspondence’. This Article aims to protect human dignity and privacy and is the most relevant Article in the current context. If a person is homeless or begging, it is a fundamental part of their private life. They are vulnerable and their dignity is at stake. Therefore, any laws restricting or governing homelessness and begging can directly impact their Article 8 right. In the European Court of Human Rights case of *Lăcătuș v. Switzerland* (hereafter the *Lăcătuș* case), it was held that imposition of a fine and subsequent imprisonment of a beggar was a breach of her Article 8 right. The court stated that the applicant was forced to beg out of necessity. She therefore had the right, inherent in human dignity, to

¹⁹³ Scottish Government, ‘Ending homelessness together: updated action plan - October 2020’ (8 October 2020) <<https://www.gov.scot/publications/ending-homelessness-together-updated-action-plan-october-2020/>> accessed 27 October 2021.

¹⁹⁴ ‘Glasgow Begging Strategy’ (n 3).

¹⁹⁵ ‘Glasgow Begging Strategy’ (n 4) page 19.

attempt to meet her basic needs by begging. Moreover, the court found that the penalty imposed on the applicant was not proportionate to the aims pursued by the member state, and less restrictive measures should have been employed instead. The member state had overstepped its margin of appreciation in penalising the beggar.

We will assess whether the UK legislation is compliant with Article 8, bearing in mind the court's reasoning in the *Lăcătuș* case.

Homelessness

In both England and Scotland there is no direct ban on homelessness. However, in England, section 4 of the Vagrancy Act 1824 places a ban on rough sleeping. This will affect the majority of homeless people, as it is likely that most of them will be forced to sleep rough at some point. It is also a blanket ban, and individual circumstances are not taken into account when assessing liability of the accused. Rough sleeping will not be tolerated in any circumstances. This means that, even if the accused rough sleeps out of absolute necessity and they have no other options, the person is still criminally liable under the Vagrancy Act. Moreover, a blanket ban is a very restrictive measure, which is most likely disproportionate to the aims of the member state. The state could have employed less restrictive measures to curb rough sleeping, which do account for individual circumstances. As discussed above, in *Lacatus* the penalty imposed on the beggar was found to be a violation of Article 8 because it did not take into account the circumstances of the applicant and was disproportionate to the aim pursued by the state. Therefore, section 4 of the Vagrancy Act 1824 is a violation of Article 8.

Furthermore, in both countries there exists both common law and legislation that indirectly penalises those who are homeless. This is because they criminalise certain activities which those who are homeless are forced to carry out in public, such as urination. These laws do not constitute a blanket ban on homelessness and so individual circumstances can be considered. This aspect of the laws are compliant with Article 8. However, they disproportionately affect homeless people who often have no other option than to carry out these activities in public. And just as the applicant in *Lăcătuș* had the right to meet her basic needs by begging for reasons of human dignity, arguably rough sleepers also have the right to carry out certain activities in public out of necessity. Therefore, the laws in Scotland and England could be a violation of Article 8.

Begging

As for the laws concerning begging, there is a large contrast between England and Scotland. In England begging is illegal as per section 3 of the Vagrancy Act. This clearly constitutes a blanket ban on begging as the legislation places a general ban on begging and does not consider individual circumstances. Thus, section 3 of the Vagrancy Act 1824 cannot be considered proportional in light of the *Lăcătuș* case and is therefore in violation of Article 8. In contrast, in Scotland begging is only illegal if it is so aggressive that it amounts to breach of the peace. This is not in conflict with Article 8, as it does not only affect those who are homeless but instead aims to prevent aggression against other members of the public.

Annex

HOUSING ACT 1996 s175

175 Homelessness and threatened homelessness.

(1) A person is homeless if he has no accommodation available for his occupation, in the United Kingdom or elsewhere, which he—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court,

(b) has an express or implied licence to occupy, or

(c) occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of another person to recover possession.

(2) A person is also homeless if he has accommodation but—

(a) he cannot secure entry to it, or

(b) it consists of a moveable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it.

(3) A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(4) A person is threatened with homelessness if it is likely that he will become homeless within **[F156]** days.

[F2](5) A person is also threatened with homelessness if—

(a) a valid notice has been given to the person under section 21 of the Housing Act 1988 (orders for possession on expiry or termination of assured shorthold tenancy) in respect of the only accommodation the person has that is available for the person's occupation, and

(b) that notice will expire within 56 days.]

HOUSING (SCOTLAND) ACT 1987 s24

24 Homeless persons and persons threatened with homelessness.

(1) A person is homeless if he has no accommodation in **[F1]**the United Kingdom or elsewhere].

(2) A person is to be treated as having no accommodation if there is no accommodation which he, together with any other person who normally resides with him as a member of his family or in circumstances in which the local authority consider it reasonable for that person to reside with him—

(a) is entitled to occupy by virtue of an interest in it or by virtue of an order of a court, or

(b)has a right or permission, or an implied right or permission to occupy, or in England and Wales has an express or implied licence to occupy, or

(c)occupies as a residence by virtue of any enactment or rule of law giving him the right to remain in occupation or restricting the right of any other person to recover possession.

[F2(2A)A person shall not be treated as having accommodation unless it is accommodation which it would be reasonable for him to continue to occupy.

(2B)Regard may be had, in determining whether it would be reasonable for a person to continue to occupy accommodation, to the general circumstances prevailing in relation to housing in the area of the local authority to whom he has applied for accommodation or for assistance in obtaining accommodation.]

(3)A person is also homeless if he has accommodation but—

(a)he cannot secure entry to it, or

(b)it is probable that occupation of it will lead to **[F3]**abuse (within the meaning of the Protection from Abuse (Scotland) Act 2001 (asp 14)),] or

[F2(bb)]it is probable that occupation of it will lead to **[F4]**abuse (within the meaning of that Act)] from some other person who previously resided with that person, whether in that accommodation or elsewhere, or]

(c)it consists of a movable structure, vehicle or vessel designed or adapted for human habitation and there is no place where he is entitled or permitted both to place it and to reside in it; or

(d)it is overcrowded within the meaning of section 135 and may endanger the health of the occupants **[F5]**; or

(e)it is not permanent accommodation, in circumstances where, immediately before the commencement of his occupation of it, a local authority had a duty under section 31(2) in relation to him.]

(4)A person is threatened with homelessness if it is likely that he will become homeless within **[F6]**2 months].

[F7(5)]For the purposes of subsection (3)(e), “permanent accommodation” includes accommodation—

(a)of which the person is the heritable proprietor,

(b)secured by a Scottish secure tenancy,

(c)secured by an assured tenancy that is not a short assured tenancy,

(d)where paragraph 1 or 2 of schedule 6 to the Housing (Scotland) Act 2001 (asp 10) is satisfied in relation to the person, secured by a short Scottish secure tenancy.

[F8(e)]secured by a private residential tenancy.]]

VAGRANCY ACT 1824 s3 AND s4

3Persons committing certain offences how to be punished.

..... **F1[F2]**every petty chapman or pedlar wandering abroad, and trading without being duly licensed, or otherwise authorized by law; every common prostitute wandering in the public streets or public highways, or in any place of public resort, and behaving in a riotous or indecent manner; and] every person wandering abroad, or placing himself or herself in any public place, street, highway, court, or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do; shall be deemed an idle and disorderly person within the true intent and meaning of this Act; and **[F3]**, subject to section 70 of the Criminal Justice Act 1982,] it shall

be lawful for any justice of the peace to commit such offender (being thereof convicted before him by his own view, or by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the house of correction, . . . **F4** for any time not exceeding one calendar month.

4Persons committing certain offences to be deemed rogues and vagabonds.

Every person committing any of the offences herein-before mentioned, after having been convicted as an idle and disorderly person; **F4** every person pretending or professing to tell fortunes, or using any subtle craft, means, or device, by palmistry or otherwise, to deceive and impose on any of his Majesty's subjects; **J** every person wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, **F5** not having any visible means of subsistence **J** and not giving a good account of himself or herself; **F6** every person wilfully exposing to view, in any street, road, highway, or public place, any obscene print, picture, or other indecent exhibition **J**; **F7** every person wilfully openly, lewdly, and obscenely exposing his person **F8** in any street, road, or public highway, or in the view thereof, or in any place of public resort, **J** with intent to insult any female **J**; every person wandering abroad, and endeavouring by the exposure of wounds or deformities to obtain or gather alms; every person going about as a gatherer or collector of alms, or endeavouring to procure charitable contributions of any nature or kind, under any false or fraudulent pretence . . . **F9** . . . **F10** every person being found in or upon any dwelling house, warehouse, coach-house, stable, or outhouse, or in any inclosed yard, garden, or area, for any unlawful purpose; **F11** every suspected person or reputed thief, frequenting any river, canal, or navigable stream, dock, or basin, or any quay, wharf, or warehouse near or adjoining thereto, or any street, highway, or avenue leading thereto, or any place of public resort, or any avenue leading thereto, or any street, **F12** or any highway or any place adjacent to a street or highway; **J** with intent to commit **F13** an **F14**arrestable offence **F14**indictable offence **]]]]**; and every person apprehended as an idle and disorderly person, and violently resisting any constable, or other peace officer so apprehending him or her, and being subsequently convicted of the offence for which he or she shall have been so apprehended; shall be deemed a rogue and vagabond, within the true intent and meaning of this Act; and **F15**, subject to section 70 of The Criminal Justice Act 1982, **J** it shall be lawful for any justice of the peace to commit such offender (being thereof convicted before him by the confession of such offender, or by the evidence on oath of one or more credible witness or witnesses,) to the house of correction, . . . **F16** for any time not exceeding three calendar months; . . . **F17**, and . . . **J F18**

CRIMINAL JUSTICE ACT 1982 s70

70Vagrancy offences.

(1)Where a person is convicted—

(a)under section 3 or 4 of the **M1**Vagrancy Act 1824, of wandering abroad, or placing himself in any public place, street, highway, court, or passage, to beg or gather alms; or

(b)under section 4 of that Act—

(i)of wandering abroad and lodging in any barn or outhouse, or in any deserted or unoccupied building, or in the open air, or under a tent, or in any cart or waggon, and not giving a good account of himself; or

(ii)of wandering abroad, and endeavouring by the exposure of wounds and deformities to obtain or gather alms,

the court shall not have power to sentence him to imprisonment but shall have the same power to fine him as if this section had not been enacted.

(2)If a person deemed a rogue and vagabond by virtue of section 4 of the Vagrancy Act 1824 is thereafter guilty of an offence mentioned in subsection (1) above, he shall be convicted of that offence under section 4 of that Act and accordingly—

(a)shall not be deemed an incorrigible rogue; and

(b)shall not be committed to the Crown Court,

by reason only of that conviction.

(3) This section applies to offences committed before as well as after it comes into effect.

CHILDREN AND YOUNG PERSONS ACT 1963 s16

16 Offences committed by children.

(1) Section 50 of the principal Act shall be amended by substituting therein the word “ten” for the word “eight”.

SEXUAL OFFENCES ACT 2003 s66

66 Exposure

[E1](1) A person commits an offence if—

- (a) he intentionally exposes his genitals, and
- (b) he intends that someone will see them and be caused alarm or distress.

(2) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years.]

PUBLIC ORDER ACT 1986 s5

5 Harassment, alarm or distress.

(1) A person is guilty of an offence if he—

- (a) uses threatening **[E5 or abusive]** words or behaviour, or disorderly behaviour, or
 - (b) displays any writing, sign or other visible representation which is threatening **[E5 or abusive]**,
- within the hearing or sight of a person likely to be caused harassment, alarm or distress thereby.

(2) An offence under this section may be committed in a public or a private place, except that no offence is committed where the words or behaviour are used, or the writing, sign or other visible representation is displayed, by a person inside a dwelling and the other person is also inside that or another dwelling.

(3) It is a defence for the accused to prove—

- (a) that he had no reason to believe that there was any person within hearing or sight who was likely to be caused harassment, alarm or distress, or
- (b) that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the writing, sign or other visible representation displayed, would be heard or seen by a person outside that or any other dwelling, or
- (c) that his conduct was reasonable.

(4) **F6**.....

(5) **F6**.....

(6) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

AGE OF CRIMINAL RESPONSIBILITY (SCOTLAND) ACT 2019 s1 AND s2(2)

1 Raising the age of criminal responsibility

For section 41 of the Criminal Procedure (Scotland) Act 1995 substitute—

“41 Age of criminal responsibility

A child under the age of 12 years cannot commit an offence.”.

2 Raising the age of criminal responsibility: consequential repeal and saving

- (1) Section 41A of the Criminal Procedure (Scotland) Act 1995 is repealed.
- (2) Despite that repeal, section 41A continues to have effect in relation to offences committed before the day on which this section comes into force.

CIVIC GOVERNMENT (SCOTLAND) ACT 1982 s47

47 Urinating etc.

Any person who urinates or defecates in such circumstances as to cause, or to be likely to cause, annoyance to any other person shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding [**F1**level 2 on the standard scale].

CRIMINAL JUSTICE AND LICENSING (SCOTLAND) ACT 2010 s38(1) AND s38(4)

38 Threatening or abusive behaviour

- (1) A person (“A”) commits an offence if—
 - (a) A behaves in a threatening or abusive manner,
 - (b) the behaviour would be likely to cause a reasonable person to suffer fear or alarm, and
 - (c) A intends by the behaviour to cause fear or alarm or is reckless as to whether the behaviour would cause fear or alarm.
- (4) A person guilty of an offence under subsection (1) is liable—
 - (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both, or
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both.

CRIMINAL PROCEDURE (SCOTLAND) ACT 1995 s214(2), s216(1), s219, s226A, s226E, 226F

214 Fines: time for payment and payment by instalments.

(2) If on the occasion of the imposition of a fine—

- (a) the offender appears to the court to possess sufficient means to enable him to pay the fine forthwith; or
- (b) on being asked by the court whether he wishes to have time for payment, he does not ask for time; or
- (c) he fails to satisfy the court that he has a fixed abode; or
- (d) the court is satisfied for any other special reason that no time should be allowed for payment,

the court may refuse him time to pay the fine and, if the offender fails to pay, may exercise its power to impose imprisonment and, if it does so, shall state the special reason for its decision.

216 Fines: restriction on imprisonment for default.

- (1) Where a court has imposed a fine or ordered the finding of caution without imposing imprisonment in default of payment, subject to subsection (2) below, it shall not impose imprisonment on an offender for failing to make payment of the fine or, as the case may be, to find caution, unless on an occasion subsequent to that sentence the court has enquired into in his presence the reason why the fine has not been paid or, as the case may be, caution has not been found.

219 Fines: periods of imprisonment for non-payment.

- (2) Subject to the following subsections of this section, the maximum period of imprisonment which may be imposed under subsection (1) above or for failure to find caution, shall be as follows—

Amount of Fine or Caution	Maximum Period of Imprisonment
Not exceeding £200.....	7 days
Exceeding £200 but not exceeding £500.....	14 days
Exceeding £500 but not exceeding £1,000.....	28 days
Exceeding £1,000 but not exceeding £2,500.....	45 days
Exceeding £2,500 but not exceeding £5,000.....	3 months
Exceeding £5,000 but not exceeding £10,000.....	6 months
Exceeding £10,000 but not exceeding £20,000.....	12 months

Exceeding £20,000 but not exceeding £50,000.....	18 months
Exceeding £50,000 but not exceeding £100,000.....	2 years
Exceeding £100,000 but not exceeding £250,000.....	3 years
Exceeding £250,000 but not exceeding £1 Million.....	5 years
Exceeding £1 Million.....	10 years

[F1 226A Fines enforcement officers

(1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.

(2) A FEO has the general functions of—

- (a) providing information and advice to offenders as regards payment of relevant penalties;
- (b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).

(3) Where an offender is subject to two or more relevant penalties, a FEO—

- (a) in exercising the function conferred by subsection (2)(b) above;
- (b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act,

shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.

(4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.

(5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—

- (a) the offender; and
- (b) any FEO for the district in which the enforcement order was made.

(6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—

- (a) from any FEO for the district in which the order was made; and
- (b) to a FEO for the district in which the offender resides.

(7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.

(8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.]

[F1 226E Deduction from benefits

(1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.

(2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.]

[F1 226F Powers of diligence

(1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.

(2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.

(3) The types of diligence are—

(a) arrestment of earnings; and

(b) arrestment of funds standing in accounts held at any bank or other financial institution.

(4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

(5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.

(6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.

(7) Provision in regulations under subsection (6) above may, in particular—

(a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;

(b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.

(8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.]