**Decriminalization of homelessness and poverty**

[Eurodiaconia](https://www.eurodiaconia.org/) is a European network of churches and Christian NGOs providing social and healthcare services and advocating social justice. Together our membership represents the needs and unique experiences of 58 national and regional organisations in 32 countries.

For many years, Eurodiaconia and its members have been playing an active role in raising awareness around poverty and homelessness and proposing concrete ways forward to effectively tackle these issues at both EU and Member State levels.

Many of our 58 member organisations have extensive experience in providing specialised support for people experiencing poverty and homelessness at the local level. Building on this expertise, we have established a Homelessness Experts Group within our membership and we are active members of the European Platform for Combatting Homelessness.

This is why, based on input received from members from Germany, Romania, Serbia, Norway and Sweden, we are responding to the call for input launched by the Special Rapporteur on the right to adequate housing and the Special Rapporteur on extreme poverty and human rights to submit information concerning decriminalization of homelessness and poverty:

1. **Laws or regulations that prohibit begging, eating, sleeping, or performing personal hygienic activities in all or certain public places (please kindly include the wording of these laws and regulations and specify whether they are effectively enforced).**

**Germany:** In Hamburg, attempts were made to drive begging people out of the city center. Begging is still generally allowed, as stated by the Senate, 'if it is simply approaching passers with a request for donations without obstructing or harassing them.' However, anyone who permanently settles in a specific begging location and possibly even sets up objects would be in violation of the Hamburg Path Law. This constitutes a permit-required special use that would obstruct pedestrians. In Bremen the current local law was amended and adjusted in the penultimate week to consolidate the existing regulations concerning the train station in a local ordinance and supplement them with an alcohol and drug consumption ban at the stops.

**Romania:** The Romanian Penal Code prohibit begging with minors. This is clearly shown in article 215 of the Penal Code: "The act of an adult who, having the capacity to work, repeatedly appeals to the mercy of the public, asking for material help, using for this purpose the presence of a minor, is punishable by imprisonment from 3 months to 2 years or by fine".

The rest of the activities described above fall under the "environment of order and public comfort" section of the Penal Code. This section includes any and all types of activities that disturb the public order and misuse public property. The performing of personal hygienic activities in public places can be punished, as it is illegal to walk naked in the streets or generally appear without clothes.

There have been no scientific peer reviewed studies that document the enforcement of such regulations. Because of this, this analysis must rely on anecdotal evidence. In general, enforcement is sporadic and arbitrary. Homeless people are typically not allowed to loiter in city centers or around public schools. However, it is not uncommon to see homeless people sleeping in public parks or beneath bridges. Evidence shows that they need to be quite mobile, to avoid police harassment (O'neill, 2014, 21).

**Serbia**: The terms “primary” homeless (those living rough) and “secondary homeless” (those who live in spaces inhabited out of necessity, such as sheds, basements, cars, etc.) are often used in Serbia, and attests to a narrow understanding of homelessness. Those living rough are often arrested for “vagrancy” related offences, primarily in relation to the disruption of public order and begging. Only in the capital city in year 2011, 2237 persons were arrested and faced charges, out of which 908 persons were convicted of this offence and police register shows similar numbers for the whole last decade.

The problem of homelessness has not been sufficiently present in political discourses or covered by media, except during the winter when daily newspapers report on people who are freezing on the street.

Namely, in Article 12 of the Law on Public Peace and Order (“Begging”), it is provided that whoever endangers the peace of citizens or disturbs public order and peace by begging will be fined from 5,000 to 10,000 dinars or imprisoned for up to 30 days. Whoever commits the offense referred to in paragraph 1 of this article in a group of three or more persons will be fined from 10,000 to 30,000 dinars or imprisoned for up to 30 days. The Law on Public Peace and Order is available on the following link: <https://www.paragraf.rs/propisi/zakon_o_javnom_redu_i_miru.html>

**Norway:** In 2013, the Oslo city council adopted an amendment to the municipalities’ police statutes and introduced a total ban on sleeping in highly dense areas of Oslo. “In public parks, green areas, open spaces, on the roads or highly dense areas, camping, sleeping, tenting or similar are forbidden without having a special permission from the municipal authorithy“ This has been heavily enforced the following years and many people got fines for sleeping outside (approx. 6000kr in 2014-2015). However, the police has not been so active anymore on prosecuting people sleeping outside in the last years.

**Sweden:** In Sweden, there is no national ban on begging as long as it is not coercive (i.e. human trafficking) or intrusive (i.e. harassment). There is no law that explicitly prohibits children from begging, but there are other laws that can be used to some extent concerning parental responsibility for children (the Social Services Act), the Education Act (compulsory schooling), the Working Environment Act (which sets an age limit for work), unlawful coercion, etc. However, if someone begs inside shops or indoor shopping centres, they can be evicted and punished if they refuse to leave, based on the trespassing law.

Moreover, through the Ordinance Act (Ordningslag 1993:1617), municipalities have the authority to enforce local ordinances against begging, but only within specified areas. This means that while municipalities can't impose a blanket ban on begging across their entire jurisdiction, they can dictate where begging is prohibited. The bans consequently make it possible for police to remove individuals who are asking for money in these restricted areas. Some cities have even introduced “begging permits”, obligating beggars to purchase a permit from local authorities. Those found begging without this permit can be fined. In 2021 the Swedish National Public Television (SVT) reported that three individuals had been issued a fine due to not possessing a begging permit. Simultaneously, the Tidö Agreement (new government alliance) proposes to look into a potential national begging ban.

One of the more controversial aspects of the Tidö Agreement is the proposal to investigate the possibility to deport foreign nationals for “misconduct”. The agreement states that “Anyone in Sweden who enjoys Swedish hospitality has an obligation to show respect towards fundamental Swedish values and not, through actions, disrespect the population”.

According to the agreement an investigation look into the reintroduction of deporting foreigners with a history of misconduct. The Tidö Agreement specifically points out “[…] failure to comply with rules, association with criminal organizations, networks or clans, prostitution, substance abuse, involvement in violent or extremist organizations or environments that threaten fundamental Swedish values, or if there are otherwise clearly established objections regarding the way of life” as examples of misconduct.

That prostitution and substance abuse are used as examples of misconduct is concerning. Swedish law, through the Sex Purchase Act, criminalizes the buying of sex, not its sale, thereby safeguarding individuals in prostitution. Furthermore, Sweden has committed to adhering to the Council of Europe Convention on Action against Trafficking in Human Beings, which, among other things, established residency rights for crime victims. That a person with a residence permit could have their permit revoked and subsequently be deported due to prostitution seems to contradict this convention.

1. **Laws or regulations that allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences.**

**Germany**: In Germany, we have the substitute imprisonment (“Ersatzfreiheitsstrafe”) which was reformed this year. It has already been published in the federal law gazette (<https://www.recht.bund.de/bgbl/1/2023/218/regelungstext.pdf?__blob=publicationFile&v=2>), but the changes will only take effect from February 1, 2024. In the future, one day in prison will be offset by two daily fines (previously 1:1). However, it will still be possible for people who cannot pay their fines, for example, due to not having a valid ticket or violating drug laws, to go to prison. The extent to which substitute imprisonments will be avoided in the future will depend on how the federal states in Germany implement the changes in their existing regulations.

**Romania**: There are no laws in Romania that directly allow the detention or imprisonment of individuals who are unable to pay the fine imposed for petty offences. A person can be forced to pay a fine if he/she is unwilling but financially able to do so. However, if an individual is financially unable to pay a fine, he/she can engage in acts of community service if they consent to doing so. The amount of time dedicated to community service depends on how big the fine is. If the culprit doesn’t conform to the terms of the service, or commits a new offence before his service is over, he/she will be sent to prison. The amount of days spent in prison depends on how big the fine is. The exact wording of this law can be found in the Romanian Penal Code, under Title III, Chapter 2, Section 3.

**Serbia:** The Law of offences (GRS, 2014) article 41: the court can replace a fine that the punished natural person, entrepreneur or responsible person in a legal entity does not pay (in whole or in part) with a prison sentence by determining one day of imprisonment for every 1,000 dinars that has been incurred. The prison sentence cannot be shorter from one day and no longer than sixty days.

**Norway:** In 2013, The Norwegian Department of Justice and Public Security adopted an instruction (GI-02/2013) that informs immigration authorities to consider opening an expulsion case in all situations where foreigners are arrested or fined for small crimes such as petty theft and shoplifting. The instruction lists several qualifiers to inform the decision of whether to expel or not, for example if the person is homeless and poor and cannot document why she/he is staying in Norway, targeting European destitute migrants. Contrasting this harsh punishment for foreigners, the Parliament had reduced the penalty for Norwegian nationals who are guilty for the same criminal acts.

What we saw in practice was that the circular was particularly applied when it came to Roma people facing homelessness. We had, through time, seen cases where people were expelled for having stolen a chocolate worth 12kr or a package of sausages. They were often held in custody for a couple of days and then sent back to their home country. Some were also getting a ban to return to Norway for up to 2 years. The reasoning was based on their financial situation and the fact that they might repeat the offence, and this was regarded as a serious threat to fundamental society considerations.

There is also imprisonment for individuals who are not able to pay fines (not necessarily imposed for petty offences, we do not have an overview over which types of fines).

An example: a person who had to stay in prison for 50 days for 5 unpaid fines got in the period 2017-2019. We contacted The Office of the General Attorney for guidance in the complaint process. The State Attorney looked into the case and the client didn’t have to execute the punishment.

The General Attorney found out that possibly thousands of people were imprisoned due to Police’s practice of sending out summons for punishments without checking if the persons had material means to pay the fines. 22 persons were released from prison the day the General Attorney announced this decision.

**Sweden:** Sweden does not imprison people who cannot pay fines. If, after receiving a reminder, you do not pay your fine, the matter is handed over to the Swedish Enforcement Authority (Kronofogdemyndigheten), which comes with an additional fee of SEK 600. Once the case has been handed over, it is closed for the police. If you have questions about the case, you should contact the Enforcement Authority, not the police.

1. **Information about attempts made or planned to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places.**

**Germany**: In Hamburg many libraries have extended opening hours since this summer. In the 'FlexiBib,' customers can also use the services of the Hamburg libraries between 7 AM and 10 PM, including on weekends.

**Romania:** There are no plans in place by any of the major political parties or any relevant state institutions to decriminalize street vending, informal business activities, sex work, begging, eating, sleeping or performing personal hygienic activities in public places. All these activities are considered petty offences under the Romanian Penal Code.There are also no talks in Parliament of decriminalizing these offences.

**Serbia:** The Law of offences (GRS, 2014) article 41: If the court decide it justified, taking into account the seriousness of the offense, the amount of the unpaid fine and the property potential of the convicted person, the court may, instead of imprisonment, order that the unpaid fine be replaced by work in the public interest, with eight hours of work replacing one day of imprisonment, i.e. 1,000 RSD fine, and the work cannot last longer than 360 hours.

The Law of offences is available on following link: https://www.paragraf.rs/propisi/zakon\_o\_prekrsajima.html

1. **Information concerning initiatives to change the response of law enforcement officials and of the criminal justice system from penalization, punishment or detention, towards facilitating social inclusion of persons living in poverty or experiencing homelessness.**

**Germany:** During the reform of substitute imprisonment, Diakonie, together with Caritas and the churches, advocated for comprehensive reform to prevent people from being incarcerated simply because they are impoverished. Here is our statement (in German): <https://www.diakonie.de/fileadmin/user_upload/Diakonie/PDFs/Stellungnahmen_PDF/Gemeinsame_Stellungnahme_der_EKD__des_Kommissariats_der_deutschen_Bischoefe__u._der_BAG-S_zum_Gesetz_zur_UEberarbeitung_des_Sanktionenrechts.pdf>

**Romania**: The National Strategy regarding social inclusion and the reduction of poverty is the most comprehensive plan to tackle the homelessness and poverty problems in Romania. Recognizing that rampant inequality and unequal access to social services negatively affects a society’s long-term prosperity, the strategy seeks the following actions: to expand access to healthcare for vulnerable segments of the population (such as single families, people with disabilities, the elderly, etc); to make education more accessible and affordable; to reduce social disparities in local communities; to focus on preventing homelessness by increasing the social safety net.

It is too early to evaluate the efficacy of this program however, as the government seeks to implement it between 2022-2027. It is imperative to keep a close look on how this strategy evolves over time. It is one of the few initiatives at the state level that is aimed at tackling homelessness and poverty.

**Norway**: The sleeping ban has been heavily criticized. The Norwegian center for human rights at the Oslo University has pointed out that criminalizing actions that are necessary for survival and are easily related to human dignity, such as sleeping, is very problematic from a human rights perspective. After looking closer into the practice of the police, the Norwegian center for human rights established that the ban seemed discriminatory and that Roma migrants were particularly vulnerable. They also stated that the expulsion from a sleeping place is likely to be a violation of human rights if the person has no alternative accommodation option.

Our organisation, the Oslo City Mission was also involved in some advocacy and legal efforts to address the expulsion of migrants that committed petty offences. One case: a man who had presumably stolen two bags besides a clothes container. The man had a job in Norway and his wife and daughter were about to move to Norway, too. His daughter was supposed to start in the kindergarten. Not only he was expelled from Norway, but he got a ban for returning for two years.

We decided to go to court. In parallel, in January 2021 we complained to EFTA Surveillance Authority about the Instruction (GI-02/2013) and the way it was put into practice. We teamed up with some politicians to get help in addressing the Minister of Justice about the Instruction and the answer was that it was particularly applied to those who had little to no affiliation to Norway and that it was also used to protect the society against migration rooted in crime for profit. That this type of criminality had increased with the freedom of movement, and it had to have consequences. This meant, in practice, that it applied to EU destitute migrants which were here for short periods of time and were facing homelessness.

We lost two times in court in 2020 and in 2021, but the Supreme Court accepted the case which was due in February 2022. In March 2022 the Supreme Court ruled in our favor and stated that the expulsion and the ban were a too hard punishment for a petty offence.

In parallel, EFTA was looking further into the case and was in a dialogue with the Ministry of Justice which claimed that the Instruction would be revised. It was finally and withdrawn in October 2022. The Ministry had given up the idea of revising it and just chose to withdraw it.

The Instruction has contributed towards shaping a negative association between homelessness, poverty and criminality and had a discriminatory effect taking into consideration that it was mostly applied to certain groups.

The human perspective was totally lacking. Poverty and, implicitly homelessness were regarded by the authorities as a premise for engaging in criminality. The Instruction and its legality in the Norwegian society contributed to the dehumanization of a whole group of people, as if poverty and homelessness weren’t enough in terms of vulnerability.

**Sweden**: Sweden has strong civil society organisations that defend the rights of people who live in homelessness. As one of those organisations, we can see a difference between governments over time when it comes to having softer or harder legislation in this area. However, Sweden has had throughout the last decades more or less the same approach to legislation on how to treat people living in vulnerable situations. During the pandemic, however, extra resources were made available by the authorities, such as allocating funds to civil society organisations to enable them to meet the needs of the target group.

1. **Measures and services available at national, regional or municipal level to support people living in poverty and in situations of vulnerability from having to resort to begging, sleeping, washing, defecating or performing other hygienic activities in public places, because they lack access to employment, social assistance, adequate housing, public showers and toilets.**

**Germany:** In Bremen there is an 'accepted place' for people with illegal substance dependencies near the main train station as a place to stay. This accepted place is an area equipped with containers that also provide some limited shelter from the weather. There is a restroom facility for men available there, and furthermore, this area is in close proximity to the temporary drug consumption room (in 2024, the stationary drug consumption room is scheduled to open in the immediate vicinity).

In Germany, we have a well-developed network of emergency housing assistance, including emergency aid during the winter months. What makes Germany unique is that we have a law ( §§67ff. SGB XII), which grants a right where individuals facing special life circumstances coupled with social difficulties are entitled to receive assistance to overcome these difficulties when they are unable to do so on their own.

**Romania**: Romania offers very few services for homeless people or families. The most common help comes in the form of a monthly cash allowance. This monetary compensation used to conform to the minimum monthly wage, but this sum has not been updated since 2008. This allowance is no longer sufficient to cover the food needs or other basic expenses. In terms of housing, homeless people have access only to night shelters. These are facilities meant to accommodate people only temporarily, at night. Permanent housing for homeless people is not available in Romania. The country also offers limited welfare benefits to homeless people. In short, very little is being done to support persons that experience acute poverty.

**Serbia**: The Law on Social Housing, adopted in 2009, failed to explicitly mention homelessness as an issue, and left out homeless people when defining a list of especially vulnerable groups who should be considered a priority in all social housing programs (GRS, 2009). In early 2012, progress was made with the adoption of a National Strategy of Social Housing which: Places an obligation on the government to reduce and eradicate homelessness, suggests embracing an extensive definition of homelessness, such as the one contained in ETHOS classification, and carrying out a set of measures to enhance the capacities of institutions to combat homelessness and to increase the accommodation available for homeless people (GRS, 2012). Following the Strategy, an Action Plan was adopted, but instead of developing measures further, the document offered an even less detailed understanding of homelessness, and completely left out an increase of accommodation capacities, one of the two measures stated in the Strategy.

In 2011, the amendments to Law on Residence allowed persons without a permanent place of residence to acquire ID cards. This was previously impossible, and placed enormous difficulties on homeless people in accessing their entitlements (health and social care, etc.) as citizens of Serbia.

Faced with rapidly increasing needs, the social care system does not provide a satisfactory response. The effective amount of social assistance is not sufficient to cover the costs of housing and other basic necessities; obtaining the assistance takes a very long time, is administratively complex; and many of those in need of social assistance are not adequately informed of their rights.

The Law on Social Care defines the social care system in Serbia (GRS, 2011). It does not recognize homeless people as an explicit vulnerable group. The only service specifically targeting homeless people is a shelter service, reduced almost exclusively to the provision of emergency accommodation in extreme cases of homelessness. The Law, however, delegates jurisdiction to local government, thus derogating the weight of the responsibility and failing to assign financial responsibility for ending-homelessness-policies to the state. The length of stay in the shelters varies from 30 days to up to 6 months, maximum 12 months, according the Law on the rights of users of temporary housing services in social protection, passed in 2021.

Furthermore, Serbia has not adopted a concrete plan to solve the issue of homelessness. It is discussed in the draft strategy of social protection in the Republic of Serbia for the period from 2019 to 2025.

**Norway:** All the offers designated for destitute EU migrants are currently run by nonprofit organizations and are partially funded by the public sector.

A national subsidy scheme was established in 2013 to support humanitarian offers for destitute EU migrants. The target group consists of ‘’EU citizens who come to Norway without own means and without the right to public benefits and who primarily are in the country for begging’’. The pot has always been of 20 million kr and is distributed between nonprofit organizations and municipalities that provide emergency shelters, sanitary facilities and food distribution.

Some years ago we started a collaboration with the Urban Environment Agency who is managing the public toilets in Oslo. You usually have to pay to get access and none of them is accepting cash, so you can’t get access unless you have a bank card. This is often not the situation for EU destitute migrants, so in the past years we are getting some cards which are providing free access to the public toilets which we normally distribute in our outreach work.

[Our department](https://kirkensbymisjon.no/bymisjonssenteret/tilbud/fattige-tilreisende/department-for-destitute-migrants/) is running an emergency shelter for women and couples with a capacity of 80 places, a laundry, deposit lockers, outreach work, counselling & advice and V4 (externally financed). We still fund parts of our offers by own money.

The Red Cross is running an emergency shelter for men with a capacity of 55 places. The Salvation Army is running the Migration Centre, offering access to shower facilities, breakfast, counselling and follow up cases (mainly work exploitation and social services related). Caritas is running a Resource Centre offering guidance on how to make a CV, look for work, accessible Norwegian courses and legal advice and follow up on work exploitation related cases.

**Sweden:** In 2022 Sweden adopted its first national homelessness strategy since 2009, covering the period from 2022 to 2026. As part of the strategy, the National Board of Health and Welfare (Socialstyrelsen) has been tasked with providing national support for the implementation of the Housing First approach. This evidence-based method is aimed at reducing homelessness, particularly among individuals with high support needs. The government has also instructed the National Board of Health and Welfare to allocate funds through a targeted multi-year government grant to municipalities, to reinforce or introduce the Housing First method. A total of 70 million SEK was distributed among the municipalities in 2023.

Social services play an important role in preventing homelessness, both at a structural and individual level. For example, this may involve mapping homelessness in the municipality to provide a foundation for the development of a homelessness strategy and active participation in urban planning. It also involves offering various programmes to individuals. In its activities, the municipal social services committee must promote the individual's right to work, housing and education. Each municipality is responsible for social services in its area and has the ultimate responsibility for ensuring that individuals receive the support and help they need. The municipalities often ask us, civil society organisations, for support and assistance in order to achieve what is stated in the Social Services Act. Sometimes civil society organisations sell their services, and enter into not-for-profit public partnership agreements with the municipality. However, civil society organisations often find that people's needs are often not fully covered in all circumstances, and so they work beyond the scope of the municipality's request.