**Decriminalization of homelessness and poverty**

**Response to the questionnaire by the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing**

**15 September 2023**

**Federal Institute for the protection and promotion of Human Rights**

The Federal Institute for the Protection and Promotion of Human Rights (FIRM/IFDH) is an independent institution created by the Act of 12 May 2019 in accordance with the Paris Principles on national institutions for the promotion and protection of human rights. It is accredited with a B status by the Global Alliance of National Human Rights Institutions (GANHRI). Its mandate covers all matters relating to the protection of fundamental rights at the federal level of government for which no other independent body for the protection and promotion of human rights has been designated.

This letter contains a response to the questionnaire by the UN Special Rapporteur on extreme poverty and human rights and the UN Special Rapporteur on the right to adequate housing on ‘Decriminalization of homelessness and poverty’ (deadline for submission: 15 September 2023).

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).**

Begging and ‘aggravated’ vagrancy used to be criminal offences at the national level, but were removed from the Criminal Code in 1993 (Law of 12 January 1993 containing an emergency program for a more solidarity-based society). At the same time, also the Law of 27 November 1891 to curb vagrancy and begging was repealed. This law allowed for the arrest and detention of persons in cases of ‘simple’ vagrancy. Under these instruments, persons were considered vagrants when they fulfilled the cumulative conditions of having no fixed abode, no means of subsistence and no regular trade or profession.

Since 1993, there are no instruments at the national or regional level criminalizing begging or other life-sustaining activities. However, at the local level, many municipalities impose restrictions on such activities. Such restrictions are contained in local police regulations, which are adopted on the basis of the so-called ‘police powers’ of municipalities to take measures to protect public order within the territory of the municipality (on the basis of Articles 133, first limb and 135, § 2 of the New Municipal Law of 24 June 1988). Municipalities in principle have the choice to make infractions of municipal police regulations punishable by either criminal or administrative sanctions. In the former case, these infractions can be sanctioned with a criminal ‘police’ sanction, the lowest category of criminal sanctions (a prison sentence of 1 to 7 days, a fine of up to 200 euros, or 20 to 40 hours of community service). However, in practice, ‘police’ prison sentences are not executed and, the government envisages the suppression of these sentences in the context of the overall revision process of the Criminal Code (which is scheduled to be completed before the end of parliamentary term in the first half of 2024). However, in practice, municipal police regulations are mostly punishable by municipal administrative sanctions, which have been introduced (by the Law of 24 June 2013 on municipal administrative sanctions) to compensate for the fact that, in the past, infractions of these regulations were *de facto* not prosecuted by the judicial authorities. A municipal administrative sentence can consist of a fine of maximum 350 euros (or 175 euros with regards to minors from the age of 14 years onwards), or, alternatively, of community service or mediation. Such sanctions are imposed by a sanctioning officer – formally part of the executive branch – and can be appealed against before the police courts (or the juvenile courts in case they are imposed on minors).

*Begging*

Together with the Combat Poverty Service, the Federal Human Rights Institute recently conducted a study of all existing local police regulations regarding begging. This study was published early 2023 and is available [in French](https://www.federaalinstituutmensenrechten.be/fr/publications/la-reglementation-de-la-mendicite-sous-langle-des-droits-humains) and [in Dutch](https://www.federaalinstituutmensenrechten.be/nl/publicaties/bedelreglementen-vanuit-een-mensenrechtenperspectief). The study shows that, at the time of writing, in 305 out of 581 Belgian municipalities, there exists a municipal police regulation which bans certain forms of begging. According to the study, 87 municipalities have a general ban on begging in public places. In 54 municipalities, begging is banned in specific places. In some of these municipalities, begging is prohibited in a particular zone in the tourist and/or commercial centre. Other municipalities ban begging in front of particular buildings (like shops, official buildings and railway stations) or in particular places (like cemeteries and car parks). In 17 municipalities, begging is prohibited during specific periods. Often, prohibitions concern specific ways of begging. The most common form are bans on aggressive and/or intrusive formers of begging, which is prohibited in 160 municipalities (= roughly ½ of the municipalities with begging regulations in place). Other common form of prohibited begging are: begging which hinders the circulation of traffic or pedestrians (130 municipalities), begging by knocking/ringing the bell at the door (107 municipalities), begging with animals (98 municipalities), begging with or by children (94 municipalities), begging using certain objects e.g. which are of a nature to intimidate people (75 municipalities), begging by showing mutilations or injuries (35 municipalities) and 'covert' begging (for instance by pretending to sell items) (33 municipalities).

In the report, the lawfulness of the different types of begging regulations is examined from the viewpoint of the relevant case law from both the European Court of Human Rights (in particular the *Lacatus v. Switzerland* case*)* and the Belgian Council of State, the superior administrative court. In a number of judgments, the Council of State has examined the legality under Belgian law of certain begging regulations. According to the Council of State, the powers of municipalities under the New Municipal Law are limited to the maintenance of public order. Accordingly, general bans on begging are not lawful, since begging in itself does not disturb public order. Local police regulations can only prohibit particular forms of begging that do disturb public order. The proportionality principle moreover requires that such prohibitions are proportionate (in terms of scope, time and space) to the threat to public order. In the report, the Federal Human Rights Institute and the Combat Poverty Service conclude that 253 out of the 305 begging regulations contain provisions which are not compatible with the case law of either the European Court of Human Rights or the Council of State.

It must be noted that the scope of the study is limited to the content of municipal police regulations. It did not examine to what extent and how (e.g. sanctions, administrative detention, informal move on orders) these regulations are enforced in practice, so we’re not in a position to comment on this question.

*Begging on public transport*

In addition to begging regulations at the local level, several public transport companies prohibit begging on vehicles or in stations. Those regulations are enshrined in laws or decrees. These bans concern begging on trains and in railway stations (SNCB-NMBS; Infrabel) and on public transport (metro, tram, bus) in Brussels (STIB-MIVB). The regulations governing passengers’ behavior on Flemish (De Lijn) and Walloon (TEC) public transport do not contain similar provisions.

The Law of 27 April 2018 on railway policing provides that "*begging is prohibited in railway vehicles and it is prohibited to cause a nuisance in stations by begging in an intrusive or aggressive manner*." (art. 10). Any breach of this provision can be punished by a prison sentence of 8 days to five years, and a criminal fine of at least € 200. The Law also provides that these penalties may be replaced by an administrative fine of € 100 (which may be increased to € 250 or 350 in case of a repeat or a second repeat offence). However, relatively few offences have been recorded: 7 in 2017, 4 in 2018 and 3 in 2019, according to the minister's reply to a parliamentary question (no. 518 of 27 May 2021). In Brussels, the government decree of 13 December 2007 laying down certain conditions for the operation of public transport prohibits "*begging, vending or exercising any other activity without authorisation from the company*" (art. 3, 10°) in the vehicles of the Brussels public transport company (STIB-MIVB). The offence is sanctioned by an administrative fine of € 107 in 2023.In 2017 and 2018, respectively, 91 and 57 such fines were imposed (see article [here](https://www.rtbf.be/article/mendicite-sur-le-reseau-de-la-stib-pres-de-150-p-v-dresses-en-deux-ans-10186059)).

*Rough sleeping*

In the absence of a study of the regulation of other types of life-sustaining activities, we’re not in a position to comment on the question as to the extent to which these are prohibited under municipal police regulations. Nonetheless, we are aware of the existence of certain local police regulations which prohibit rough sleeping, or which prohibit being at certain public places at night-time. Moreover, Article 133, second limb New Municipal Law grants mayors broad powers to take the necessary measures to preserve public order, safety or health, including by way of recourse to the local police, which may include measures affecting rough sleepers.

In Brussels, a number of mediatized police actions took place to demolish unauthorized camp sites by asylum seekers and migrants (e.g. at Parc Maximilien in 2015 and 2019, or around Petit-Château, where new asylum applications are registered, in March 2023) or to remove rough sleepers from the Brussels South railway station (in August 2023), purportedly to address unhygienic and unsafe conditions. Also a number of police actions took place to remove large groups of squatters from unoccupied office buildings (e.g. at Rue des Palais in February 2023) – while, in the past, squatting was addressed by civil remedies before the justice of the peace, squatting was made a criminal offence by the Law of 18 October 2017 on the unlawful entry into, occupation of or residence in someone else’s property (amending and introducing Articles 439 and 442/1 of the Criminal Code).

These actions cannot be considered in isolation from the increase in homelessness as a result of the housing crisis in Brussels and the crisis regarding the reception of asylum seekers. Since 2022, Belgium is confronted with an increase in asylum applications, which has not been met by a commensurate increase in the capacity of the reception network. As a result, large groups of asylum seekers are not provided with the (timely) access to accommodation they are entitled to under EU law, often despite domestic court rulings in their favor. The systemic failure by Belgian authorities to enforce final judicial decisions concerning the reception of asylum seekers was criticized by the European Court of Human Rights in the judgment of *[Camara v. Belgium](https://hudoc.echr.coe.int/?i=001-225884)* of 18 July 2023, in which the Court found a violation of Article 6 ECHR (the right to a fair trial).

Finally, it must be noted that Belgium has not accepted the right to housing (Article 31) under the European Social Charter. In 2019, the European Committee on Social Rights strongly encouraged Belgium to accept this provision (*[Troisième rapport](https://rm.coe.int/3eme-rapport-belgique-2019/1680994eac) relatif aux dispositions non acceptées de la Charte sociale européenne*).

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

Article 40 of the Criminal Code provides for the possibility to impose a ‘replacement’ prison sentence for persons who have not paid their criminal fine in a timely manner. The length of the ‘replacement’ sentence is decided by the judge in the conviction judgment but may not exceed three days for criminal police sentences (for petty offences), three months for misdemeanours and six months for felonies. However, the government envisages the abolishment of the ‘replacement’ prison sentence for fines in the context of the overall revision of the Criminal Code (see above). A failure to pay a municipal administrative sanction (see above) cannot result in the imposition of a ‘replacement’ prison sentence.

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.**

None of the mentioned activities constitutes a criminal offence, even though certain activities may be subjected to regulation at the local level on the basis of the New Municipal Law (see above). Recently, a number of modifications took place regarding the regulation of sex work. While before, sex work itself was not considered as a criminal offence, there was uncertainty regarding the extent to which the facilitation of sex work could be considered as falling within the scope of the criminal law, which inter alia provided an obstacle in practice for the conclusion of lawful contacts (e.g. rental, insurance, or accounting contracts). The Law of 21 March 2022 containing modifications of the Criminal Code with regard to sexual criminal law has clarified that, from now on, the facilitation of prostitution is only criminally punishable when it is aimed at achieving an abnormal profit (Article 433quater of the Criminal Code) – without prejudice to the criminalization of human trafficking. Also advertising for one’s own sexual services no longer constitutes a criminal offence. The government is currently working on a bill providing for the possibility for sex workers to conclude a lawful labor contract, with a view to enabling better social protection.

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.**

We’re not in a position to respond to this question.

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.**

We’re not in a position to respond to this question.