



Hungarian Helsinki Committee

## HUNGARIAN HELSINKI COMMITTEE

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### **Criminalization of homelessness in Hungary**

*– Legal background –*

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The Law on Misdemeanours originally set out that living on public premises and storing related personal property on public premises constituted a petty offence, and those living in public premises may have been punished with a fine or with confinement. "Anti-homeless" rules were also criticized by UN experts on extreme poverty and on housing who called on Hungary to reconsider the legislation on criminalizing homelessness.<sup>1</sup> In its Decision 38/2012. (XI. 14.) the Constitutional Court of Hungary abolished, among others, the respective provisions of the Law on Misdemeanours, stating that criminalizing the status of homelessness is unconstitutional, since it violates human dignity. At the adoption of the Fourth Amendment of the Fundamental Law in March 2013, the arguments of the Constitutional Court were not taken into consideration and the Fourth Amendments enabled the Parliament or local governments to criminalize homelessness.<sup>2</sup>

In relation to the Fourth Amendment of the Fundamental Law, Bill T/10749 on the amendment of the Law on Misdemeanours was submitted to the Parliament by the Government on 12 April 2013, and was adopted on 30 September 2013 as Act CXLIX of 2013. Act CXLIX of 2013 introduced three new petty offences: "infringing the rules of residing on public premises for habitation" (criminalizing homelessness as such), "construction without the consent of the owner" (aiming to counter illegal settlements, built by homeless persons), and the "unauthorized sale on public premises".

As a result, the Law on Misdemeanours sets out the following with regard to residing in public premises.

- The petty offence of "infringing the rules of residing on public premises for habitation" is committed if a person resides for habitation on certain parts of the public premises, determined by local government decrees, or World Heritage sites, and if he/she does not leave the premises upon request of the police, etc.
- Accordingly, the Law on Misdemeanours also explicitly authorizes (but does not oblige) local governments (with respect to the capital the metropolitan government) to determine that parts of the public premises which are prohibited for homeless persons in terms of living there. It is important to note that the law only says that local governments may declare certain parts of the public premises prohibited in order to "preserve the public order, public safety, public health and cultural values", but contains no further restriction in this regard. Accordingly, local governments will in practice – in contrast to what is suggested by the official reasoning of the Bill – be able to declare almost their whole city/town a prohibited zone, and e.g. will easily be able to "push" homeless persons to the outskirts of cities.
- Act CXLIX of 2013 also provides a definition for residing for habitation: this "may cover conducts on the basis of which it may be established that a person resides for habitation in the designated area, without the intent to return to a domicile or place of residence, or to other accommodation, with the aim of residing in the designated area for a longer period of time, and the circumstances of residing

<sup>1</sup> See: Hungary's homeless need roofs, not handcuffs – UN experts on poverty and housing, 15 February 2012, <http://www.europe.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=9994&LangID=E>

<sup>2</sup> Text of the relevant provision included into the Fundamental Law under Article XXII (3): "An Act of Parliament or local government decree may outlaw the use of certain public space for habitation in order to preserve the public order, public safety, public health and cultural values."



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in the designated area or the person's behaviour may lead to the conclusion that the person carries out his/her activities in the designated area serving typically as a domicile – especially sleeping, cleaning up, eating, dressing, keeping animals – regularly and in a recurring way with small intervals in the designated area.”

- According to the new law, committing the petty offence of “infringing the rules of residing on public premises for habitation” will result in sentencing homeless persons to community work, or, if they do not agree to community work, a fine may be imposed. According to Article 14 (2) of the Law on Misdemeanours currently in force, the minimum for community work is six hours of work, while the maximum is 180 hours. It may be added here that according to Article 92 (1) d) and 92 (3) of the Law on Misdemeanours the costs of the medical examination necessary to be allowed to carry out community work shall be covered by the homeless person sentenced, however, there is a possibility to request cost exemption.
- As to the amount of the fines: under Article 11 (1) of the Law on Misdemeanours currently in force, the amount of the fine may vary between 5,000 HUF and 150,000 HUF. If the fine is not paid (which is a highly likely scenario in case of homeless persons with very limited financial resources), it shall be converted to confinement under Article 12 (1) of the Law on Misdemeanours, in a way that one day of confinement stands for 5,000 HUF of fine.
- Furthermore, Act CXLIX of 2013 introduced a special “three strikes rule”: if a homeless person committing the petty offence above was brought to account already twice in the preceding six month for residing on public premises (which would not be surprising e.g. if in the given city most of the premises are declared a prohibited zone), he/she may be sentenced to imprisonment. Under Article 9 (1) of the Law on Misdemeanours as currently in force, the length of imprisonment varies between one day and 60 days.

To sum it up, local governments now have practically unlimited power to declare certain public premises a prohibited area and it is a very likely scenario for homeless persons that they end up in confinement because they live on the streets.