**Decriminalization of homelessness and extreme poverty:**

**input regarding Brazil, France and Poland**

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**1. Introduction**

Adopted by Human Rights Council Resolution 21/11 in September 2012, the *Guiding Principles on Extreme Poverty and Human Rights* ([A/HRC/21/39](http://www.undocs.org/A/HRC/21/39)) underline that States should “repeal and reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.” Furthermore, States should “review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay.”

Additionally, the *Guidelines for the Implementation of the Right to Adequate Housing* ([A/HRC/43/43](http://www.undocs.org/A/HRC/43/43)), specify that “States should prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces. The forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living.” They further recommend: “States should provide, within their justice system, alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing.”

Similarly, in June 2020 the Human Rights Council called in Resolution [43/14](http://www.undocs.org/A/HRC/RES/43/14)on States to “take all measures necessary to eliminate legislation that criminalized homelessness.”

In June 2021, the United Nations *Special Rapporteur on the Right to Adequate Housing* and the *Special Rapporteur on Extreme Poverty and Human Rights* have sent a request to all Member States of the Council of Europe and to European and National City Networks and Associations for information concerning any laws and regulations that may still be in place in several European countries at national, federal state or local level which may result in criminalization of persons living in extreme poverty or homelessness.

On 30 August 2021, the cited Special Rapporteurs invited all other States, local Governments, civil society organizations, National Human Rights Institutions, national associations working with the homeless, and other relevant stakeholders to submit information on laws and regulations at national, federal state or local level that may still prohibit or sanction begging, staying, sleeping, easting or undertaking any other life sustaining activities in public spaces.

The present Report was elaborated in attention to the above-mentioned call for inputs. It aims at contributing to the work of the Special Rapporteurs by identifying and systematizing relevant information regarding Brazil, France and Poland.

**2. Contributions regarding Brazil**

**2.1. Criminal legislation related to begging and other conducts**

In Brazil, the *Criminal Misdemeanour Act* ([Decree-Law No. 3.688/1941](http://www.planalto.gov.br/ccivil_03/decreto-lei/del3688.htm)) established, *inter alia*, possible prison and fine sanctions for the misdemeanours of “idleness”, “public annoyance”, “begging” and “drunkenness” in its articles 59 to 62[[3]](#footnote-3):

Article. 59. Giving oneself habitually to idleness, being nonetheless valid for work, without having an income to ensure sufficient means of subsistence, or providing for one’s own subsistence through illicit occupation:

Penalty – simple imprisonment, from fifteen days to three months.

Single paragraph. The supervening acquisition of income, which assures the convicted sufficient means of subsistence, extinguishes the penalty.

Article 60. Begging, for idleness or greed:

Penalty – simple imprisonment, from fifteen days to three months.

Single paragraph. The penalty is increased from one-sixth to one-third, if the misdemeanour is committed:

a) in a vexatious, threatening or fraudulent manner;

b) by simulating disease or deformity;

c) in the company of an alienated person or a person under the age of eighteen.

Article 61. To annoy someone, in a public place or accessible to the public, in an offensive manner:

Penalty – fine, from two hundred thousand réis to two contos de réis.

Article 62. To publicly present oneself in a state of intoxication, in a way that causes scandal or endangers the safety of oneself or others:

Penalty – simple imprisonment, from fifteen days to three months, or fine, from two hundred thousand réis to two contos of réis.

Single paragraph. If drunkenness is habitual, the offender is to be admitted to a house for custody and treatment.

While articles 60 and 61 were formally revoked by Federal Law No. 11.983/2009 and Federal Law No. 13.718/2018, the other described misdemeanours remain formally valid.

Additionally, the Brazilian *Penal Code* ([Decree-Law No. 2.848/1940](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm)) established the crime of “intellectual abandonment” in its Article 247 as, *inter alia*, the conduct of “[a]lllow[ing] someone under the age of eighteen, subject to his/her power or entrusted to his/her guard or supervision, to beg or serve as a beggar to excite public commiseration. Penalty – detention, from one to three months, or fine.”[[4]](#footnote-4) This norm also remains formally valid.

**2.2. Crimes of necessity and the principle of insignificance**

In Brazil, as in other nations, necessity can be argued as a possible justification or an exculpation for breaking the law. In the case of Brazil, this is a legislated possibility.[[5]](#footnote-5) One common application of this norm relates to the so-called “hunger theft” (“furto famélico”), a situation where food is stolen to mitigate hunger or starvation.[[6]](#footnote-6)

In addition to the argument of necessity, legal literature and caselaw developed a concept or doctrine called “the principle of insignificance”. According to this doctrine, minor nonviolent offences, such as taking objects of small or no value, do not provoke a relevant impact on society so as to justify the triggering of a costly penal system.[[7]](#footnote-7) In Brazilian Tax Law, an administrative norm adopts a similar logic and recommends public attorneys not to sue tax debts in Court when their value is less than 20 thousand reais. Attorneys are then required to look for less expensive alternatives of coercing or pressing debtors to pay, because the average cost of a judicial suit would surpass the debt in question.[[8]](#footnote-8)

In practice, however, arguments of necessity or insignificance are not always observed or accepted by the police, prosecutors and courts. In 2020, for instance, it was reported that, during the same week, one Supreme Court Justice absolved a woman who was facing charges for taking a piece of meat from a supermarket, while another Supreme Court Justice denied an appeal to free a man who was imprisoned for taking two bottles of shampoo.[[9]](#footnote-9) As a result, desperate individuals living in extreme poverty are jailed for neglectable offences.

Cases of arrests and imprisonment of this fashion are frequent. As an illustration, in São Paulo a homeless woman was arrested for taking ramen, soda and a juice-type powdered drink mix from a supermarket. The items cost 21 reais (approximately 3 or 4 dollars) and she claimed she was very hungry and concerned with her five children. She was set free by a judicial order after two weeks in jail.[[10]](#footnote-10) In Rio Grande do Sul, two men were arrested after taking pieces of cheese, ham and bacon from the courtyard of a supermarket. It appears that the products were expired and left in a disposal area, where they would be eventually crushed. The first instance judge did acquit these men on grounds of insignificance. The Prosecution, however, appealed the acquittal under the justification that, even though it was a minor offense, those men had criminal records.[[11]](#footnote-11)

**2.3. Confiscation of personal belongings**

There have been several news reports of State agents forcefully confiscating personal belongings and documents from people living in the street, coming from different cities in Brazil throughout the years, *v.g.*: a 2014 report about Belo Horizonte, São Paulo, Rio de Janeiro, Salvador, Porto Alegre and Brasília, in the context of the preparations for the 2014 World Cup in Brazil;[[12]](#footnote-12) 2014 and 2018 reports about Belo Horizonte;[[13]](#footnote-13) 2017 reports about São Paulo[[14]](#footnote-14); a 2018 report about Curitiba[[15]](#footnote-15); a 2021 report about Porto Alegre…[[16]](#footnote-16)

It is worth examining one of these instances from a closer look: the case of Belo Horizonte, one of the largest cities in the country, and how practices of confiscation were disputed before judicial authorities. It is instructive in terms of the legal arguments that are constantly present in debates about practices of confiscation. It is also instructive in terms of the role that local regulation play in such themes.

In November 2012, *e.g.*, a Popular Action was filed against the Municipality of Belo Horizonte and the State of Minas Gerais (Process No. 1355234-45.2012.8.13.0024) claiming that agents from city and State governments forcibly approached and seized documents and personal belongings of homeless people, depriving them of the minimum material conditions for survival. The plaintiff asked the Judiciary to determine the halt of “any actions that imply the illegal seizure of personal belongings and/or identification documents of these people”.[[17]](#footnote-17)

The lower court denied the plaintiff’s motion under the justification that the Public Administration has the power to restrict the use and enjoyment of freedom and property in favour of the interest of the community, and that State agents were only collecting debris that could pose health risks to the general population as a legitimate use of their “police power” or “administrative power” (“poder de polícia”). This decision was overruled after an appeal to the second instance, the Court of Justice of the State of Minas Gerais, on 22 July 2013. According to the Court, defendants were obligated “to refrain from acts that violate the fundamental rights of homeless residents, especially the seizure of identification documents and personal belongings necessary for survival, with the exception of any type of illicit object or substance”.[[18]](#footnote-18)

Following this ruling, the Municipality of Belo Horizonte issued an administrative norm (“Instrução Normativa Conjunta No. 01, de 2 de dezembro de 2013”) to define what would amount to personal belongings. The norm adopted a narrow definition that opened the gate for new acts of confiscation that included objects beyond the carry-on capacity of each individual without the aid of a cart. The norm was criticized for its consequences, and also for the conditions of its elaboration; it was claimed, *v.g.*, that the administrative norm was issued without any consultation with the affected population.[[19]](#footnote-19)

**2.4. Anti-beggar architecture**

“Hostile architecture” refers to private and public urban design that adopts elements aimed at hindering the presence of homeless people in certain public spaces. Examples of hostile architecture include constructions and objects such as electric fences, barbed wires, railings on the perimeter of squares and lawns, lances on walls and guardrails, metal beams in commercial doors, stones in open areas, water dripping at intervals under marquees and public benches with widths that are intentionally lower than recommended by ergonomic standards and / or with curved or irregular geometries.[[20]](#footnote-20)

There have been reports of hostile architecture – sometimes also called “anti-beggar architecture” – being adopted in major Brazilian cities throughout the years. In the largest of them, São Paulo, examples followed from 1994 to the present: i) in September 1994, there were reports of the construction of buildings without marquees or surrounded by bars and the installation of showers to wet the floor below the marquees and thus chase away those who seek shelter at night; ii) in 2005, the city government began installing concrete ramps in the underground passage that connects “Avenida Paulista” Avenida Doutor Arnaldo” so as to make it impossible for passers-by to remain (they were informally called “anti-beggar ramps”); iii) in 2007, the city government installed “anti-beggar benches” at an important public square, “Praça da República” – public benches with iron partitions to prevent people from lying on them; iv) in 2014, the city government built cobblestone beds around pilasters in the northern part of the city, where people used to sleep; v) in 2021, cobblestones were installed under the “Dom Luciano Mendes de Almeida” viaduct to avoid the presence of homeless people and were subsequently met by opposition from religious and social activist Father Julio Lancellotti (a prominent figure in the defence of the homeless).[[21]](#footnote-21)

**2.5. Reports of threats, aggressions and massacres**

In its 1997 *Report on the Situation of Human Rights in Brazil*, the Inter-American Commission on Human Rights (IACHR) referred, *inter alia*, to the issues of police violence and impunity, including violence against street children. The Report mentions, for instance, how the Legislative Commission on Human Rights of the state of Bahia had received, in 1995, information about five massacres attributed to the state military police, three of which involved children.[[22]](#footnote-22)

The 1997 Report also describes the formation of death squads by former police officers (including members that were expelled from the police), off-duty police officers looking for extra income and others, and their activities in many Brazilian states (*v.g.* Rio de Janeiro, São Paulo, Rio Grande do Norte, Pernambuco, Acre, Amazonas, Alagoas, Espírito Santo, Minas Gerais, Mato Grosso do Sul, Pará, Sergipe). These paramilitary units were linked to the extrajudicial killings of adults, adolescents and small children alike – usually poor people and persons seen as suspected criminals in urban areas, and labour union leaders in rural areas. The Commission referred to facts from the mid-1980s to the mid-1990s, and highlighted how the killings remained largely unpunished.[[23]](#footnote-23)

Two cases in point of actions of death squads against persons living in the street were the Candelária Massacre (“Chacina da Candelária”) in Rio de Janeiro, and the Massacre of Sé (“Chacina da Sé”) in São Paulo. During the Candelária Massacre, on the night of 23 July 1993, an armed group opened fire against eight homeless persons, including six children, who were beside the Candelária Church.[[24]](#footnote-24) During the Massacre of Sé, a series of armed attacks against homeless persons between 19 and 22 August 2004 with 15 victims, 7 of which were deceased.[[25]](#footnote-25)

Following a country visit that took place in 2018, the IACHR concluded and published a new *Report on the Situation of Human Rights in Brazil* in 2021. The Commission noted that, even though Brazil maintained a democratic system governed by the rule of law, the country remained characterized by extreme social inequality based on structurally embedded discrimination against the poor and street people, among other disadvantaged groups.[[26]](#footnote-26) Two instances of violence against persons living in the street were specifically addressed: reported complaints by street people regarding abuses and mistreatment by the police in São Paulo[[27]](#footnote-27); a shocking forced sterilization of an Afro-descendant woman living in the streets of Mococa, state of São Paulo, as a result of a court order.[[28]](#footnote-28)

The problem of police violence against persons living in the street was also voiced in the context of Precautionary Measures adopted by the IACHR in 2019, in favour of Christian priest Julio Lancellotti and homeless person Daniel Guerra Feitosa. According to the Commission’s Resolution on the case (Resolution No. 11/2019), i) there had been previous reports from persons living in the streets of São Paulo about police abuse and mistreatment; ii) priest Julio Lancellotti was the object of continuous statements aimed at discrediting and stigmatizing his work on behalf of the homeless that resulted in an atmosphere of animosity against him; iii) there had been threats and calls for priest Lancellotti’s death, some of them presumably coming from police officers; iv) the petitioners informed the Commission that, on different occasions, priest Lancellotti was intimidated and, once, physically assaulted, by members of the police force known as Civil Guard while mediating an argument between the guards and the homeless persons; v) Daniel Guerra Feitosa was reportedly threatened and approached with violence by military police officers and guards; verbal threats included statements that they would “turn him off” and “bury him alive”.[[29]](#footnote-29)

**2.6. Impediments to the activities of street vendors**

People living in poverty and extreme poverty, including the homeless, are often subjected to informal work in different forms. A common one, especially in urban areas, is the work of street vendors.

These workers have been denouncing the criminalization and other impediments against their activities under pretended reasons of urban policy or of a sanitary nature, when in fact these would be means to favour larger market enterprises. In this sense, *e.g.*, the National Union of Brazilian Street Workers, Street Vendors and Marketers (“União Nacional das Trabalhadoras e Trabalhadores Ambulantes, Camelôs e Feirantes do Brasil”, or “Unicab”) issued a public statement to the Parliament against what they see as “urban policies [with] exclusionary, inhumane ideals [that] put money above life”.[[30]](#footnote-30)

According to Unicab, the rise in unemployment rates put more people under the need to work as street vendors as a means to guarantee the survival of their families, while the increasing mercantilization of urban public spaces makes it more difficult or impossible for vendors to carry out their subsistence activities. Street vendors face constant obstacles to their “right to work on urban land” (in the words of Unicab), coming from the public administrative law of the municipalities through demanding licenses and permits that, “when issued, which is increasingly rare, are still precarious and discretionary” in the sense of being subject to capricious and/or sudden revocation.[[31]](#footnote-31)

Unicab also denounces the lack of inclusive and participatory municipal laws to protect the street vendor as the vulnerable worker that he/she is, and also the culture of considering the vendors not as workers, but as “small individual entrepreneurs”. The latter disfavours unionization and the means that the street vendor – “[t]his precarious worker without labour rights and without the proper recognition of the contribution he/she makes to the urban economy” – has to achieve policies in his and her favour. In the words of the workers themselves as organized by Unicab: “We are hostage to the patronage of politicians that guarantee licenses and concessions in exchange for a vote”; if there is any change in municipal politics, “all guarantees fall to the ground”.[[32]](#footnote-32) In contrast with this situation, Unicab mentions that there are positive examples in other countries, such as India, that could be examined by Brazil so as to make street vendors as a legitimate group “not [to be] treated as a deviation from the formal market from which it can only be reinserted.”[[33]](#footnote-33)

**3. Contributions regarding France**

The present analysis comprises information about legislation and caselaw in France. For this purpose, the Institute reviewed a study conducted by *Jurislogement*[[34]](#footnote-34) in 2012[[35]](#footnote-35) in light of current accesses to varied sources, such as the official French legislative website, doctrinal works, press notes and the official French Courts’ website (see references *infra*).

**3.1.** **Criminal legislation related to begging and other conducts**

The ancient [Penal Code of 26 February 1810](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071029/LEGISCTA000006150843/#LEGISCTA000006150843) essentially criminalized vagrancy and begging acts in public space in its [articles 269 to 281](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071029/LEGISCTA000006150843/#LEGISCTA000006150843) of the Chapter “Crimes against public peace”[[36]](#footnote-36). [Article 269](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006490085) established to be a vagabond as a crime. The conduct was further defined by [article 270](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000006490086), according to which a vagabond is anyone without confession or domicile, nor means of subsistence, and who do not usually exercise either occupation or profession. [Articles 274 to 276](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006071029/LEGISCTA000006166084/#LEGISCTA000006166084) established the sanction of prison to any person found begging in public space, whether there exist or not a public establishment to receive these people.

The referred legislation was revoked by the [Act of December 16, 1992](https://www.legifrance.gouv.fr/loda/id/LEGIARTI000006491916/1994-03-01/), having effect on March 1st, 1994. Contemporary legislation includes the following provisions related to offences that can indirectly affect the homeless:

* To solicit, on a public street, the delivery of funds, values or goods in an aggressive manner or under the threat of a dangerous animal is a crime punishable by six months of imprisonment and a fine of 3,750 euros ([Article 312-12-1 of Penal Code](https://www.legifrance.gouv.fr/codes/section_lc/LEGITEXT000006070719/LEGISCTA000006165329/#LEGISCTA000006165329)).
* To keep a small child in the street or in a space assigned to collective passenger transport in order to solicit the generosity of passers-by is considered deprivation of care and is punishable by seven years of imprisonment and a fine of 100,000 euros ([Article 227-15](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000043409247)).
* To set up a meeting on land with the aim of establishing a dwelling there, be it temporary or not, is punishable by one year of imprisonment, a fine of 7,500 euros and, when the settling involves motor vehicles, the seizure or confiscation of such vehicles (Articles [322-4-1](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000037594927) and [322-15-1](https://www.legifrance.gouv.fr/codes/id/LEGIARTI000006418309/#LEGIARTI000006418309)).
* To offer goods or services for sale in public spaces without official authorization (street selling), in violation of regulatory (administrative) provisions, is punishable by six months of imprisonment and a fine of 3,750 euros ([Article 446-1](https://www.legifrance.gouv.fr/loda/id/LEGIARTI000023708835/2011-03-16/)).

**3.2.** **Administrative legislation related to begging and other conducts**

According to [article L. 2212-2](https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000029946370/) of the French General Code of Local Authorities (“Code général des collectivités territoriales”), municipal (city/town) governments may exercise police power or administrative power (local “pouvoir de police”, “police municipale”) to ensure “good order, public safety, security and sanitation.” Under this legal basis, anti-begging regulation (“Arrêtés Anti-Mendicités”) were considered as means i) to protect the safety and the convenience of the passage in the streets, quays, squares and public ways; ii) to repress attacks on public peace; iii) to maintain good order in places where large gatherings take place – *v.g.* fairs, markets, public celebrations and ceremonies, shows, games, cafes, churches and other public places; iv) to prevent or remedy unfortunate events that could be caused by the straying of harmful or ferocious animals.

According to [article R. 610-5 of the Penal Code](https://www.legifrance.gouv.fr/loda/article_lc/LEGIARTI000006419486/), any violation of these administrative norms can be punished with the imposition of a small fine of 38 euros. On 30 July 2015, Senator Patricia Schillinger submitted Written Question No. 17468 to the Ministry of the Interior demonstrating her concern with this small fine as not being dissuasive enough and asking what are the Ministry’s plans to strengthen the mayor's police powers in situations where he or she is confronted with public order disturbances caused by acts of begging.[[37]](#footnote-37)

The Ministry of the Interior’s response was published in the Senate Official Journal on 30 June 2016 and emphasized that the general police power which the mayor has under Article L. 2212-2 need to be exercised with proportionality and in attention to the varied circumstances of time and place; towards the legitimate goals of promoting good order, public safety, security, public tranquility and sanitation; and with equilibrium vis-à-vis fundamental freedoms, including the freedom of circulation. In this sense, a general ban on begging on the entire territory of a municipality, for example, can be disproportional and too excessive of a constraint to be rendered legitimate. Regarding the question of the non-dissuasive nature of the penal fine repressing the contravention of a municipal decree, the Ministry of Interior clarified that the general increase of this fine can result either from the amendment, by legislative means, of article 131-13 of the penal code (which sets the value of first-class fines at 38 euros), or by amending article R. 610-5 of the same code relating to first-class fines. In both cases, this general increase in the amount of the fine incurred would have to be assessed in the light of the principles of necessity and proportionality of penalties. The Ministry of Interior also stressed the importance of any discussion or legislative reform be carried out in attention to the jurisprudence regarding anti-begging regulation.[[38]](#footnote-38)

The conditions[[39]](#footnote-39) to enact a valuable regulation were established at the decision of [Conseil d’Etat, on 6 june 2003](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000008183112/), the highest Administrative Court of France. It states that the mayors have to justify their norms under two main circumstances: (1) a real threat to the public order must be demonstrated and (2) there must be specific time and space for the norms’ application. In the concrete case, the mayor of Prades had issued an Administrative Norm that prohibited begging during spring season period, from Tuesday to Sunday, from 9AM to 8PM, in the city centers and in two specific areas. The Conseil d’Etat found this norm to be legal.

In 2015, the municipality of Saint-Etiènne issued an Administrative Act prohibiting the conducts of sitting or lying on the street, grouping with dogs, and broadcasting music or emitting a loud voice.[[40]](#footnote-40) A Human Rights association suited the municipality arguing that the Act violated basic rights. Firstly, the judge, and then, the magistrate of the Chamber Appeal argued that the mayor was acting under the police rights in establishing public order and tranquility. It was only on [16 July 2021 that the Conseil d’État](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000043799716) declared the Act void for violating the freedom of circulation (right to come and go), among other violations.

The lower administrative courts took the conditions stated by the Conseil d’Etat in 2003 into account in different instances, and even before the cited 2003 ruling. On June 5, 1996, the mayor of Nice prohibited begging from 15 July to 15 September 1996 under the following circumstances: begging while sitting or lying down when this constitutes an obstacle to the free movement of pedestrians; requesting money in an aggressive manner at cafés, public parks, traffic lights and around the cathedral. While examining the legitimacy of this norm in a concrete case, the Administrative Appeal Court (“Court Administrative d’Appel”) of Marseille considered that the Act was specific enough, reason why it was declared valid (CAA de Marseille, December 9, 1999, n°97MA01478).[[41]](#footnote-41) In other situations, when the elements of real threat and specific time and space were considered absent, the administrative norms were considered legally invalid ([CAA Douai, 13 novembre 2008, n°08DA00756](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000020220311/); [CAA de Bordeaux, 27 avril 2004, n° 03BX00760](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007506326/); [CAA de Bordeaux, 26 avril 1999, n°97BX01773](https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007492679/); TA de Montpellier, 24 décembre 1997, n°972625; TA de Montpellier, 21 Mai 1997; TA de Pau, 22 novembre 1995)[[42]](#footnote-42).

Similar practices and norms continue to be implemented in more recent times. For example, on 25 April 2019, the mayor of Strasbourg issued an order limiting and prohibiting all kind of beggars in the street around the Christmas Marked and touristic points. The order was active until 30 September, and then from 23 November to 31 December, from 10AM to 8PM. The order prohibited the prolonged occupation when it presents an obstacle to the free movement of people, to undermine public tranquility or public health, whether it is accompanied or by solicitations with regard to passers-by or not. Moreover, it prohibited the regrouping of dogs in a prolonged or continuous manner in a public street, even when the dogs were accompanied by their masters and kept on a leash[[43]](#footnote-43).

As these practices and norms continue to be implemented, so their legal validity remains debatable before the Courts. Two current examples concern the municipalities of Bayonne and Metz.

On 18 September 2020, the mayor of Bayonne issued an administrative norm limiting groupings that would undermine peace, security and public order, as well as the storage or installation of equipment without authorization, the storage of linen, the heating of foodstuffs, the deposit of food for pets or the watering of canines, and the broadcasting of any music, be it amplified or not. By a [decision of 22 December 2020](https://blog.landot-avocats.net/wp-content/uploads/2020/12/mendicite-etc.pdf), the judge considered that Article 3 was too general and absolute, thus lacking the properties of proportionality and necessity. This decision suspended the norm until a subsequent final ruling.[[44]](#footnote-44)

On 15 December 2020, the mayor of Metz prohibited begging in several sectors of the city, from Monday to Saturday, between 9AM and. The Human Rights League and the Abbé Pierre Foundation asked as administrative court to suspend the administrative norm. A [decision on 2 February 2021](http://strasbourg.tribunal-administratif.fr/content/download/179322/1759502/version/1/file/2100209.pdf) granted their request and ordered the suspension of the norm. The judicial authority considered that there was serious doubt about the proportionality of the limitations to the freedom to come and go that derived from the norm.[[45]](#footnote-45)

**4. Contributions regarding Poland**

**4.1. Criminal legislation related to begging and other conducts**

In 2013, researcher Łukasz Browarczyk reported that, even though homelessness and staying in public spaces or sleeping in the streets were not subject to penalty in Poland *per se*, homelessness was still often associated with behaviours that are subject to punishment, such as begging or vulgar and obscene behaviour.[[46]](#footnote-46) The year before that, Housing Rights Watch produced a document mapping these punishments. Housing Rights Watch is an interdisciplinary European network of associations, lawyers and academics who declare their commitment with promoting the right to housing. In 2012, the organization conducted a survey of national laws that penalise or criminalise the behaviour of people who are homeless. Poland was one of the assessed countries. The resulting memorandum listed many criminal offences directly or indirectly affecting homeless people. They included provisions related to begging, trespassing, bathing in forbidden areas, theft from a garden, indecent behaviour, fouling and littering, and minor forest damage.[[47]](#footnote-47)

The present note is the result of a study that included Browarczyk’s remarks, the memorandum from Human Housing Watch and other doctrinal sources, as well as the direct examination of Polish legislation.

\* \* \*

According to Article 58 (1) of the Polish Petty Offences Code[[48]](#footnote-48) ([Act of 20 May 1971](http://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19710120114/U/D19710114Lj.pdf)), individuals who have the means of subsistence or are able to work, and yet beg in public, shall be punished by reprimand, fines and even restriction of liberty.[[49]](#footnote-49) Furthermore, Article 58 (2) establishes that individuals who beg in an insistent or fraudulent manner shall be punished by detention or restriction of liberty.[[50]](#footnote-50) The term related to *begging* in this legislation is read as equivalent to not only collecting money, but also accepting non-pecuniary donations such as clothes or food.[[51]](#footnote-51)

In addition to the provisions related to begging, the Petty Offences Code include provisions related to offences that can indirectly affect the homeless:

* Any individual not leaving the public premises upon the directions of a competent authority shall be subject to arrest or fine (Article 50).[[52]](#footnote-52)
* Bathing in a forbidden place is subject to punishment by reprimand and fine (Article 55).[[53]](#footnote-53)
* Anyone who pollutes or litter places that are available to the public, such as roads, streets, gardens, lawns or green area is subject to punishment by reprimand or fine (Article 145).[[54]](#footnote-54)
* Any individual stealing from someone else’s garden shall be penalized by the request of the injured party to a fine or a reprimand (Article 123).[[55]](#footnote-55)
* Any individual committing any indecent behavior shall be punished by a fine or a reprimand (Article 140).[[56]](#footnote-56)
* Extracting and collecting different branches of trees and other plants is subject to punishment by fine or reprimand (Article 153).[[57]](#footnote-57)
* Any individuals not leaving the premises of the forest, field, garden, pasture and other places at the request of the entitled person shall be subject to a fine or a reprimand (Article 157).[[58]](#footnote-58)

**4.2. Attempts to remove homeless people from public places**

Researcher Łukasz Browarczyk reported that, due to their difficult life situation, homeless people were entitled to state aid to be provided by local authorities (or commune entities) in the forms of shelter, clothing and food.[[59]](#footnote-59) According to Article 49 of the Act on Social Assistance of 12 March 2004, a homeless person is entitled to get included in an individual program overcoming homelessness, consisting in supporting a homeless person in solving her life problems, in particular family and housing problems, and help in finding employment.[[60]](#footnote-60) The assistance is provided through different programs of social welfare or services centers.[[61]](#footnote-61) This assistance, however, was characterized as insufficient and inadequate. Reported inadequacies included limited or absent support to homeless people with addictions in terms of outreach programmes, as well as insufficient numbers of low-threshold facilities (i.e., those that accept residents under the influence of alcohol).[[62]](#footnote-62)

In this context, many homeless adapted to live at or near railway stations or shopping centres. According to Browarczyk, the best solution would be the adoption of effective social policies to assist the homeless; in their absence, it was reported that managers of building and premises where the homeless tend to gather attempt to remove the homeless from their areas with the aid of uniformed services (border guards, police, railroad guards) and paramilitary organisations. Browarczyk considers that these removals should be understood as another form of punishing the homeless; a punishment that prevents them from leading a socially accepted existence.[[63]](#footnote-63)

1. \* Views on behalf of Facts and Norms Institute. [↑](#footnote-ref-1)
2. ⊥ Facts and Norms Institute is an independent academic institution based in the Global South, with members present in all continents. The Institute’s mission is straightforward: to promote a rational, human rights-based approach to social issues. For more information, please visit [www.factsandnorms.com](http://www.factsandnorms.com) [↑](#footnote-ref-2)
3. Original text (in Brazilian Portuguese): “Art. 59. Entregar-se alguém habitualmente à ociosidade, sendo válido para o trabalho, sem ter renda que lhe assegure meios bastantes de subsistência, ou prover à própria subsistência mediante ocupação ilícita: Pena – prisão simples, de quinze dias a três meses. Parágrafo único. A aquisição superveniente de renda, que assegure ao condenado meios bastantes de subsistência, extingue a pena. Art. 60. Mendigar, por ociosidade ou cupidez: Pena – prisão simples, de quinze dias a três meses. Parágrafo único. Aumenta-se a pena de um sexto a um terço, se a contravenção é praticada: a) de modo vexatório, ameaçador ou fraudulento; b) mediante simulação de moléstia ou deformidade; c) em companhia de alienado ou de menor de dezoito anos. Art. 61. Importunar alguém, em lugar público ou acessível ao público, de modo ofensivo ao pudor: Pena – multa, de duzentos mil réis a dois contos de réis. Art. 62. Apresentar-se publicamente em estado de embriaguez, de modo que cause escândalo ou ponha em perigo a segurança própria ou alheia: Pena – prisão simples, de quinze dias a três meses, ou multa, de duzentos mil réis a dois contos de réis. Parágrafo único. Se habitual a embriaguez, o contraventor é internado em casa de custódia e tratamento.” [↑](#footnote-ref-3)
4. Original text (in Brazilian Portuguese): “Art. 247 - Permitir alguém que menor de dezoito anos, sujeito a seu poder ou confiado à sua guarda ou vigilância: [...] IV - mendigue ou sirva a mendigo para excitar a comiseração pública. Pena - detenção, de um a três meses, ou multa.” [↑](#footnote-ref-4)
5. See, *e.g.*, Brazilian *Penal Code* ([Decree-Law No. 2.848/1940](http://www.planalto.gov.br/ccivil_03/decreto-lei/del2848.htm)), articles 23, item I, and 24 (describing state of necessity as a condition that excludes the illicit nature of the conduct). See, also: Wikipedia contributors. "[Necessity (criminal law)](https://en.wikipedia.org/wiki/Necessity_%28criminal_law%29)." *Wikipedia, The Free Encyclopedia*. Wikipedia, The Free Encyclopedia, 26 Aug. 2021. [↑](#footnote-ref-5)
6. See, *e.g.*, Cruz, Isabela. [Grupos políticos lucram com punitivismo da Justiça](https://www.nexojornal.com.br/entrevista/2021/10/14/%E2%80%98Grupos-pol%C3%ADticos-lucram-com-punitivismo-da-Justi%C3%A7a%E2%80%99). *Nexo Jornal*, 14 Oct. 2021. [↑](#footnote-ref-6)
7. Cruz, Isabela. [Grupos políticos lucram com punitivismo da Justiça](https://www.nexojornal.com.br/entrevista/2021/10/14/%E2%80%98Grupos-pol%C3%ADticos-lucram-com-punitivismo-da-Justi%C3%A7a%E2%80%99). *Nexo Jornal*, 14 Oct. 2021. [↑](#footnote-ref-7)
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24. See, *e.g.*, Wikipedia contributors, ['Candelária massacre'](https://en.wikipedia.org/wiki/Candel%C3%A1ria_massacre), Wikipedia, The Free Encyclopedia, 7 July 2021; Inter-American Commission on Human Rights.Report on the Situation of Human Rights in Brazil. OEA/Ser.L/V/II.97 Doc. 29 ver. 1. 29 September 1997, Chapter 3, paragraphs 27-28 (referring to the Candelária Massacre and how a survivor of the Massacre, young Eduardo de Araujo, aged 14, was shot and killed on 6 November 1994; and how Wagner Dos Santos, a 23-year-old car washer and principal witness to the Candelária Massacre, had suffered successive attempts on his life); Inter-American Commission on Human Rights, [Press Release No. 14/00](http://www.cidh.org/Comunicados/English/2000/Press14-00.htm), 29 September 2000 (referring to the Massacre of Candelária against street children and to how a survivor and former street child, Ms. Elizabeth Cristina de Oliveira Maia, was murdered a week before the hearing that would take her account as a key witness in the context of criminal proceedings against police officers who were accused of perpetrating the Massacre). [↑](#footnote-ref-24)
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48. Code of Petty Offences of the Republic of Poland of 20 May 1971, as amended, consolidated version NS. Of Laws of 1971 No. 12, item 114 [Original text (In Polish language): Kodeks wykroczeń U S T AWA z dnia 20 maja 1971 r. Dz. U. 1971 Nr 12 poz. 114] [↑](#footnote-ref-48)
49. Original text (In Polish Language): “Art. 58. § 1. Kto, mając środki egzystencji lub będąc zdolny do pracy, żebrze w miejscu publicznym, podlega karze ograniczenia wolności, grzywny do 1500 złotych albo karze nagany.” [↑](#footnote-ref-49)
50. Original text (In Polish Language): “Art. 58. § 2. Kto żebrze w miejscu publicznym w sposób natarczywy lub oszukańczy, podlega karze aresztu albo ograniczenia wolności.” [↑](#footnote-ref-50)
51. Witold Klaus. [Criminalization of Beggars: The Cases and Consequences of the Phenomenon](https://czasopisma.inp.pan.pl/index.php/cceel/article/view/2081/klaus_criminalisation_of_begga_eel.2019.11.pdf). *Contemporary Central & East European Law*, 1(133), p. 132-141, 2019, p. 136. [↑](#footnote-ref-51)
52. (Original text in Polish language): “Art. 50. Kto nie opuszcza zbiegowiska publicznego pomimo wezwania właściwego organu, podlega karze aresztu albo grzywny.” [↑](#footnote-ref-52)
53. (Original text in Polish language): “Art. 55. Kto kąpie się w miejscu, w którym jest to zabronione, podlega karze grzywny do 250 złotych albo karze nagany.” [↑](#footnote-ref-53)
54. (Original text in Polish language): Art. 145. Kto zanieczyszcza lub zaśmieca miejsca dostępne dla publiczności, a w szczególności drogę, ulicę, plac, ogród, trawnik lub zieleniec, podlega karze grzywny do 500 złotych albo karze nagany. [↑](#footnote-ref-54)
55. (Original text in Polish language): “Art. 123. § 1. Kto z nienależącego do niego ogrodu bezprawnie zabiera w nieznacznej ilości owoce, warzywa lub kwiaty, podlega karze grzywny do 250 złotych albo karze nagany: Article 123. § 2. Ściganie następuje na żądanie pokrzywdzonego; Article 123. § 3. W razie popełnienia wykroczenia można orzec nawiązkę do wysokości 50 złotych.” [↑](#footnote-ref-55)
56. (Original text in Polish language): “Art. 140. Kto publicznie dopuszcza się nieobyczajnego wybryku, podlega karze aresztu, ograniczenia wolności, grzywny do 1500 złotych albo karze nagany.” [↑](#footnote-ref-56)
57. (Original text in Polish language): “Art. 153. § 1. Kto w nienależącym do niego lesie: 1) wydobywa żywicę lub sok brzozowy, obrywa szyszki, zdziera korę, nacina drzewo lub w inny sposób je uszkadza, 2) zbiera mech lub ściółkę, 3) zbiera gałęzie, korę, wióry, trawę, wrzos, szyszki lub zioła albo zdziera darń, 4) zbiera grzyby lub owoce leśne w miejscach, w których jest to zabronione, albo sposobem niedozwolonym, podlega karze grzywny do 250 złotych albo karze nagany: Article 153. § 2. Jeżeli czyn godzi w mienie osoby najbliższej, ściganie następuje na żądanie pokrzywdzonego.” [↑](#footnote-ref-57)
58. (Original text in Polish language): “Art. 157. § 1. Kto wbrew żądaniu osoby uprawnionej nie opuszcza lasu, pola, ogrodu, pastwiska, łąki lub grobli, podlega karze grzywny do 500 złotych lub karze nagany.” [↑](#footnote-ref-58)
59. Łukasz Browarczyk. “Criminalization of Homelessness in Poland”. Guillem Fernández Evangelista (coord.), Samara Jones (ed.). [*Mean Streets: A Report on the Criminalization of Homelessness in Europe*](https://www.housingrightswatch.org/sites/default/files/Mean%20Streets%20-%20Full.pdf). Housing Rights Watch, 2013, p. 93. [↑](#footnote-ref-59)
60. (Original text in Polish language): “Art. 49. 1. Osoba bezdomna może zostać objęta indywidualnym programem wychodzenia z bezdomności, polegającym na wspieraniu osoby bezdomnej w rozwiązywaniu jej problemów życiowych, w szczególności rodzinnych i mieszkaniowych, oraz pomocy w uzyskaniu zatrudnienia.” [↑](#footnote-ref-60)
61. “Article 49. 2. An individual program of getting out of homelessness is developed by a social worker of a social welfare center, and in the case of transforming a social welfare center into a social services center pursuant to the provisions of the Act of 19 July 2019 on the provision of social services by a social services center - by a social worker of the social services center , together with a homeless person and is subject to approval by the head of the center, and in the case of transformation of a social welfare center into a social services center pursuant to the provisions of the Act of 19 July 2019 on the provision of social services by the social services center - by the director of the social services center.”; (Original text in Polish language): “Art. 49. 2. Indywidualny program wychodzenia z bezdomności jest opracowywany przez pracownika socjalnego ośrodka pomocy społecznej, a w przypadku przekształcenia ośrodka pomocy społecznej w centrum usług społecznych na podstawie przepisów ustawy z dnia 19 lipca 2019 r. o realizowaniu usług społecznych przez centrum usług społecznych – przez pracownika socjalnego centrum usług społecznych, wraz z osobą bezdomną i podlega zatwierdzeniu przez kierownika ośrodka, a w przypadku przekształcenia ośrodka pomocy społecznej w centrum usług społecznych na podstawie przepisów ustawy z dnia 19 lipca 2019 r. o realizowaniu usług społecznych przez centrum usług społecznych – przez dyrektora centrum usług społecznych.” [↑](#footnote-ref-61)
62. Łukasz Browarczyk. “Criminalization of Homelessness in Poland”. Guillem Fernández Evangelista (coord.), Samara Jones (ed.). [*Mean Streets: A Report on the Criminalization of Homelessness in Europe*](https://www.housingrightswatch.org/sites/default/files/Mean%20Streets%20-%20Full.pdf). Housing Rights Watch, 2013, p. 93, 95, [↑](#footnote-ref-62)
63. Łukasz Browarczyk. “Criminalization of Homelessness in Poland”. Guillem Fernández Evangelista (coord.), Samara Jones (ed.). [*Mean Streets: A Report on the Criminalization of Homelessness in Europe*](https://www.housingrightswatch.org/sites/default/files/Mean%20Streets%20-%20Full.pdf). Housing Rights Watch, 2013, p. 95-96. [↑](#footnote-ref-63)