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CALL FOR INPUT: DECRIMINALIZATION OF HOMELESSNESS AND EXTREME POVERTY

The Danish Institute for Human Rights welcomes the call for input on decriminalization homelessness and extreme poverty.

The Institute would like to draw attention to the following points:

QUESTIONS

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 IN PUBLIC

In Denmark, begging in public is criminalized in Section 197 of the Danish Criminal Code and the prohibition is being actively enforced by the Danish authorities (see below for statistics). The wording of the prohibition is as follows (in Danish):

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

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

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

Begging is thus criminalized in two ways. Firstly, there is a national prohibition on begging in public, cf. Section 197, Subsection 1 of the Danish Criminal Code. It is a prerequisite for punishment pursuant to the provision that a warning has first been issued by the police. If this is the case, then begging is subject to up to six months' imprisonment. If there are mitigating circumstances, the penalty may be waived by the court. There is no possibility of imposing a fine. In practice, a person receives a seven-day suspended prison sentence for a first-time offence.¹

Secondly, in 2017 the Danish Parliament introduced a new Subsection to the provision, removing the requirement of a warning by the police in cases where the person begs on a pedestrian street, at stations, in or near supermarkets or in public transportation, cf. Section 197, Subsection 2 of the Danish Criminal Code. According to the preparatory works to the legislative act, these places were selected as it is particularly troublesome for other people to be exposed to begging in such areas and because these are areas where begging is most common. In such places, begging is punishable regardless of whether the behaviour of a person begging in the specific situation has caused insecurity for an individual or the public. If an act of begging falls within the Subsection this is deemed an aggravating circumstance upon deciding on the appropriate level of penalty. It is also regarded as an aggravating circumstance if a person comes to Denmark with the purpose of begging in such places.² Consequently, begging in these places is subject to a 14-day unsuspended prison sentence for a first-time offence.³

Begging is defined as personally approaching others to ask for alms in a way which causes an inconvenience to the public.⁴ A personal approach can be verbal as well as non-verbal and e.g., take the form of a cardboard sign, attempted eye contact and gestures. It follows from case law of the Danish courts that a personal approach doesn't need to address others directly and that the behaviour of a person doesn't need

¹ See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, section 2.1.1., available here <https://www.retsinformation.dk/eli/ft/201612L00215>.

² See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, the remarks to § 1 (link in note 1).

³ See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, section 2.1.2., (link in note 1).

⁴ Commission report on the Danish Criminal Code, 1912, page 282-283, available here, <http://www.krim.dk/undersider/retskilder/betaenkning-afgivet-af-kommissionen-nedsat-til-at-foretage-et-gennemsyn-straffelovgivning-1912.pdf>.

to be intrusive or aggressive to be seen as causing inconvenience to the public.⁵

In the period from 2012-2022, the Danish courts and the Danish Prosecution Service has consistently issued convictions⁶ against persons for begging in public. The number of convictions regarding begging in public in Denmark and the number of individual persons involved⁷ in the period 2012-2022 are as follows:

- In 2012, nine convictions involving nine persons,
- in 2013, nine convictions involving nine persons,
- in 2014, 14 convictions involving 12 persons,
- in 2015, 23 convictions involving 17 persons,
- in 2016, 57 convictions involving 35 persons,
- in 2017, 56 convictions involving 48 persons,
- in 2018, 40 convictions involving 32 persons,
- in 2019, 20 convictions involving 14 persons,
- in 2020, 23 convictions involving 20 persons,
- in 2021, 11 convictions involving 7 persons, and
- in 2022, 19 convictions involving 14 persons.⁸

In the period the total number of convictions are 281 involving 217 persons. 6 percent of the convictions involve persons with Danish nationality. 94 percentage of the convictions involve persons with other nationality than Danish. If we only look at convictions involving persons with a Romanian nationality, such persons are involved in 63 percentage of the cases indicating that such persons may be at a higher risk of being impacted by the rules. The convictions can be illustrated in the following way.

Figure 1: Number of convictions distributed by nationality of the convicted person

⁵ See e.g., Eastern High Court of Denmark, 25 April 2018, 11. Department S-2237-17.

⁶ This includes judgments by the courts and decisions by the Prosecution Service on dismissal of indictment.

⁷ A person is included in the statistics if during a specific year a person has been convicted at least one time for begging in public. The same person can appear more than once in the overall number if the person has been convicted for begging in public more times spanning over more than one year.

⁸ Numbers received from The Danish Prosecution Service drawn from the case processing system of the Danish Police (POLSAS).

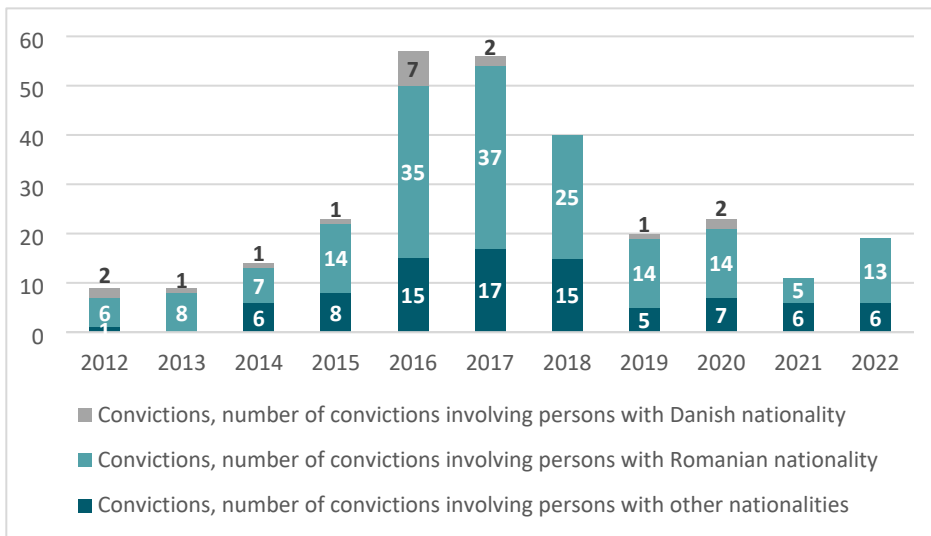
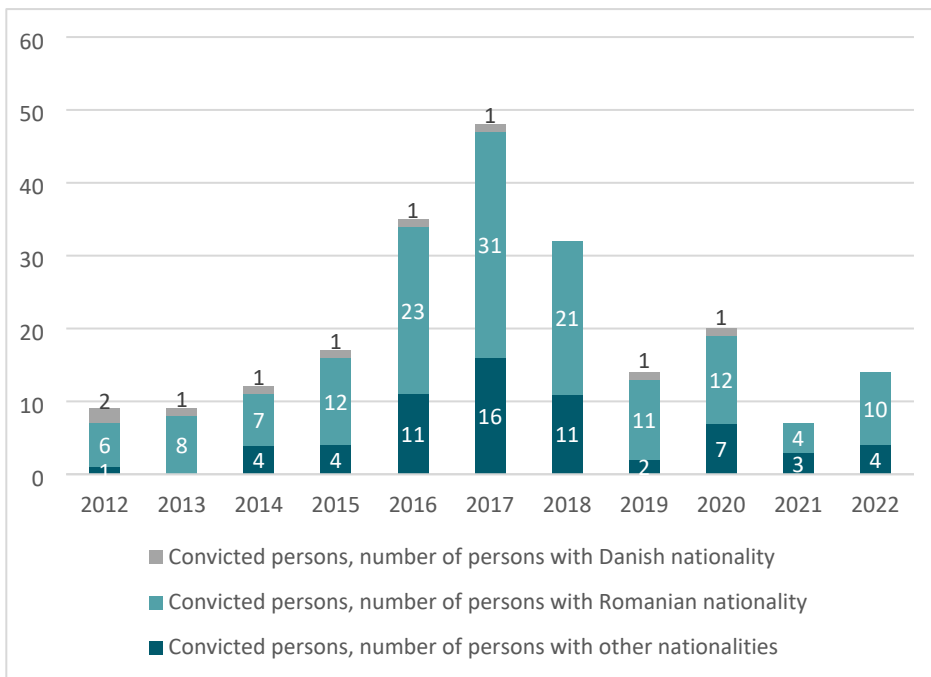


Figure 2: Number of convicted persons distributed by nationality of the convicted person



Source: The Danish Prosecution Service, numbers from the case processing system of the Danish Police (POLSAS). The numbers are subject to uncertainty as they are plotted in manually and drawn at a specific time and as late registrations may occur.

Note: The Danish Criminal Code, Section 197, Subsection 1 and Subsection 2, combined. It is not possible to get data specifically for Subsection 1 and Subsection 2 as they are both registered under the same code in POLSAS.

SLEEPING IN PUBLIC

In Denmark, establishing or residing in a camp of permanent nature that are suitable to creating insecurity in the community is criminalized in Section 3, Subsection 4, of the Danish Administrative Order on Public Order. The wording of the prohibition is as follows (in Danish):

§ 3, stk. 4: På steder, hvortil der er almindelig adgang, er det forbudt at etablere og opholde sig i lejre af permanent karakter, som er egnede til at skabe utryghed i nærområdet.

A camp that is suitable of creating insecurity in the community covers a place in the open where a travelling, itinerant person set up sleeping or resting arrangements. It is only camps of a permanent nature that are criminalized which means camps that cannot be quickly packed up. An assessment of this includes whether the sleeping or resting place is established by a physical arrangement consisting of for instance a canopy, mattresses, a bonfire, or the erection of a tent. This assessment also includes whether the physical arrangement is of such a nature or to such an extent that the arrangement gives the impression that the camp will remain in the same place. It is not a requirement that the police have observed the camp several times.

In addition to the physical arrangement, the police may also consider whether there are personal belongings, food, litter, urine, or feces in the vicinity of the sleeping area that were not already there when the person went to sleep. If so, the nature of the personal belongings is considered. Relevant factors include whether there are thick mattresses or the like, or whether the personal belongings are ordinary personal belongings packed in bags, purses, or shopping carts.⁹

If a person violates the prohibition on setting up a camp that creates insecurity, a person can – in addition to a fine – receive a zonal ban on staying in an entire municipality for up to two years or receive a preceding warning of getting one.¹⁰ Zonal bans were introduced in

⁹ Instruction No. 9410 of 29 June 2020 on the granting of a zoning ban for violating the prohibition against establishing and staying in camps that are suitable for creating insecurity in the community, Section 3.1. Available in Danish at:

<https://www.retsinformation.dk/eli/retsinfo/2020/9410>.

¹⁰ Section 6, Subsection 3, of the Danish Administrative Order on Public Order.

2018. Persons who contravene this ban can be punished with a fine or imprisonment for up to 18 months.¹¹

The ban on camps was introduced in 2017 where it was not a requirement that a camp was of a permanent nature before being encompassed by the law. This was one aspect of the ban on camps that created insecurity and doubt as to when a sleeping arrangement was unlawful.¹² In an effort to clarify the ban on camps the new requirement as above mentioned was implemented in 2020.¹³

Before 2020 the ban was actively enforced. In the period of 2017-2019, 550 preliminary charges were given. In the period of 2020-2021 there were only 5 given.¹⁴ A similar drop can be identified in the issuing of zonal bans. In the period from 2018-2019 the police issued 160 zonal bans. In the period from 2020-2021 zero bans were issued.

However, there are also other prohibitions on sleeping in public that is penalized in the Danish Administrative Order on Public Order. Unauthorized persons are also prohibited from staying on stairs, in gates, in entrances or stairways to houses, in basements or attics, in uninhabited houses or apartments, in courtyards, gardens or outbuildings, on construction sites, in vehicles, railway carriages or similar.¹⁵ If the prohibition is not observed, the penalty is a fine.

¹¹ Section 18, Subsection 2, of the Danish Administrative Order on Public Order.

¹² See the political agreement paper on clarifying the rules on camps that are suitable of creating insecurity in the community of 4 May 2020. Available in Danish at: [Aftalepartier enige om præcisering af regler om utryghedsskabende lejre | Justitsministeriet](#).

¹³ Implemented in Statutory instrument No. 1094 of 29 June 2020 on amendment of statutory instrument on the police's protection of public order and protection of private individuals and public safety etc., and the police's access to institute temporary precautionary measures, Section 6, Subsection 3, of the Danish Administrative Order on Public Order.

¹⁴ Numbers received by the Copenhagen Police. The numbers were gathered for use in a status to the Danish Parliament of the efforts against camps that are suitable of creating insecurity in the community, 2020 and 2021.

¹⁵ Section 7, subsection 1, of the Danish Administrative Order on Public Order.

Furthermore, visitors to public facilities must comply with regulations on public order that are announced via signs, for example, and follow the instructions given by the supervisors. The same applies to rules of order which, after obtaining the opinion of the local council, have been approved by the Chief of Police for specific private and public areas.¹⁶ Failure to comply with such regulations is punishable by a fine.

It should be noted that it is generally not possible to assess to what extent the prohibitions in the Danish Administrative Order on Public order are being actively enforced by the police as such violations are registered under the same code in the case handling system that is used by the Danish police.

It was only possible to assess the prohibitions on camps and zonal bans as mentioned above as the data were collected due to a manual review and registration by the police departments as part of a political agreement to give a status to the Danish Parliament on these specific prohibitions in 2020 and in 2021. For such bans it is therefore not possible to assess whether they are being actively enforced from 2022 and onwards.

Yours sincerely,

Mikkel Lindberg Laursen

SENIOR ADVISER

¹⁶ Section 16 of the Danish Administrative Order on Public Order.