
The Growing Criminalization of Homelessness in Hungary – A Brief Overview

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Introduction

Hungary is in the news these days. Most recently, the country appeared in international headlines because of the latest modification of the constitution (now officially called Fundamental Law), which represents a significant step in the codification of an increasingly authoritarian legal and political regime. Besides other issues such as infringing on the freedom of the press and the independence of the Supreme Court and introducing measures that penalize poverty, the intensive criminalization of street homelessness has been a hallmark of the current government. In the following, we first provide a historical background to these recent events by examining state policies towards homelessness in the past few decades. Then, we present the legal developments that have led to Hungary becoming the first country in the world that specifically allows for the penalization of street homelessness in its highest law.

Housing Poverty in Hungary under State Socialism

While large-scale housing poverty has been a great problem in Hungary throughout the 20th century, the eruption of visible homelessness is usually associated with the country's transition from state socialism to capitalism in the late 1980s. In order to understand the "sudden" appearance of homelessness, we will examine policies regarding housing and homelessness under state socialism, discuss the causes that led to the greater visibility of homelessness around the regime change, and explore the ways in which the Hungarian state is currently dealing with this problem.

Together with all its political and social contradictions, the four decades of state socialism (from 1948/49 to 1989) played a significant role in addressing the severe housing crisis that had plagued Hungary since the end of the 19th century. In 1952,

all apartment buildings were nationalized and public housing was centrally distributed. Standards were introduced regarding the number and size of rooms that each person was entitled to. To respond to the acute housing shortage, hundreds of thousands of prefabricated housing estates were constructed. Partly as a result of these efforts, housing conditions improved significantly for all segments of society; overcrowding was less rampant and the provision of basic infrastructure such as electricity, water and sewage also improved significantly (Ferge, 2002).

Despite these improvements, a survey in the 1970s suggested that Hungarians identified housing as their most pressing problem (Szelényi, 1990), which had several reasons. First, there was still an acute shortage of urban housing as a result of both immigration and natural population growth. Second, and probably more importantly, the distribution of housing was closely connected to social inequalities as well as personal and political connections. Third, despite significant public investment, inadequate housing continued to affect many people. According to the 1980 census, out of 10.7 million Hungarians, 191 000 people lived in institutions for children or youth, 92 000 lived in workers' hostels, barracks or service apartments, 60 000 in work therapy institutions and 33 000 in other social institutions. Around 30 000 people were estimated to be effectively homeless and a similar number of people lived in places like huts, train cars, caves, storage rooms and garages (Oross, 2001, p.113).

In addition to the construction and distribution of public housing, workers' hostels played an important role in the housing strategy of the socialist state. In 1960 the number of workers' hostel residents reached a high of 208 000 (Gyóri, 1997, p.3). While the hostels were originally intended as a temporary solution, they often became the permanent residence of marginalized citizens. In 1985 20 percent of hostel residents did not have any other place to stay and the majority of residents came from severely disadvantaged backgrounds (Oross, 2001, p.114).

The socialist regime had a difficult time dealing with people who did not have a permanent home or were engaging in what was considered "deviant" behaviour. Because structural reasons could not be cited for the existence of poverty, criminalization and institutionalization were standard government responses to homelessness. People without a permanent home were often deported to correctional facilities, hospitals or psychiatric institutions and the elderly poor – who sometimes resorted to begging – were committed to social homes (Horváth, 2012). Alcoholics were sent to a work therapy institution, which combined the elements of a jail and a workhouse. People who got arrested for the "dangerous avoidance of work" were punished by a fine, compulsory work, short-term detention and/or municipal expulsion. In 1985 alone, 5 780 people were prosecuted for this offence (Gyóri, 2010).

Although the capitalist transformation of Eastern European economies started long before the Hungarian Socialist Workers Party stepped down in 1989 and free and democratic elections were declared, the early years of the 1990s represented a huge break with the previous political and economic regime. An 'everything-is-up-for-grabs' atmosphere characterized the first years of capitalism. Wealth was radically redistributed through the highly unregulated privatization of public assets, firms, land and housing (Ferge and Tausz, 2002, p.176). In addition to privatization, both foreign direct investment and national debt were extremely high, which made Hungary extremely vulnerable to global economic trends.

Hungarian society paid a huge social price for the economic transition. The structural adjustment that took place between 1988 and 1995 destroyed more economic assets than the Second World War (Tamás, 2008). The introduction of foreign capital and modern technology rendered existing skills and infrastructure obsolete and many unskilled workers redundant. Between 1989 and 1992, around one third (1.5 million) of all jobs disappeared. Both relative and absolute poverty increased over threefold (Ferge, 2002, p.15) and one of the most visible outcomes of the regime change was the sudden surfacing of homelessness in public spaces. Over the winter of 1989-1990 hundreds of homeless people engaged in a series of protests to demand work and shelter, which brought this long hidden problem to the attention of both politicians and the general public.

After 1989, the socialist system of public housing was completely dismantled. The property rights of publicly owned apartments were transferred to local municipalities, which sold the majority of their newly acquired housing stock. While in 1980, 25 percent of all housing in Hungary, and 55 percent of all housing in Budapest was owned by the state, by the end of 1996, the share of public housing decreased to about 5 percent nationally, and 13 percent in Budapest (Günther, 2000). The apartments that remained in municipal ownership turned out to be of very low quality. Most of them are located in the most disadvantaged areas of the city, in poorly maintained buildings and without basic amenities. As municipalities are not interested in preserving or improving their housing stock, the condition of social housing has further deteriorated.

Homelessness Today

In today's Hungary, poverty remains one of the most pressing social issues. The number of people living under the subsistence minimum is estimated to be 3.7 million, or nearly 40 percent of the population (Központi Statisztikai Hivatal, 2011, p. 2). Millions of people are also affected by housing poverty. The number of people living in substandard and/or extremely overcrowded conditions is 1.5 million. In 2012 413

000 households had arrears in utilities beyond 3 months (Hegedüs & Horváth, 2013, p. 47) and tens of thousands have been in danger of eviction because of mortgage default. In 2011, overall household debt in Hungary was the sixth largest in the European Union (Habitat for Humanity Magyarország, 2012, p.3). In addition, 300 000 people live in segregated communities where poverty and unemployment are highly concentrated, and 50 percent of Roma citizens live in racially segregated areas with inferior infrastructure (Habitat for Humanity Magyarország, 2012, p.22). One million people cannot heat their homes properly and the occurrence of cold-related deaths is ten times higher than in other developed countries (Koltai, 2012).

It is difficult to say exactly how many people are directly affected by homelessness today. The number of "effectively homeless people" or those who live on the street or in shelters is at least 30 000 and it is estimated that around 100 000 people are affected by some form of homelessness every year (HVG, 2012). In Budapest (population close to two million) at least 4 000 people live in public spaces at any one time and around 6 000 individuals sleep in various institutional settings such as night shelters, temporary shelters and homeless hospitals. The populations most likely to become homeless include young people growing up in foster care, the un- and underemployed, former prison inmates, people with mental health or substance abuse issues (Győri, 1995), and the victims of domestic violence (Buzás and Hoffmann 2010). While the majority of homeless people are men between the ages of 38 and 44 (Győri and Maróthy, 2008, p.16), the proportion of homeless women has risen from 10 percent to 25-30 percent since the regime change (Buzás and Hoffmann 2010). Although in general, the educational level of homeless people is not significantly different from the general population, many of them are trained in obsolete professions, and young homeless people tend to have very low qualifications (Győri and Maróthy, 2008, p.17).

Today, Hungary has no comprehensive national housing strategy and social housing policies are extremely limited. The ratio of social housing is one of the lowest in Europe (2-3 percent) and social housing residents are among the most vulnerable members of society (Hegedüs, 2009). The amount of the monthly housing subsidy for low-income households is so low that it does not even cover basic housing expenses. While the winter moratorium on evictions suspends all court-ordered evictions between December 1 and March 1, it does not apply to squatters who tend to come from the most marginalized communities.

Public support for housing is not only limited in scale and scope but also very unevenly distributed. In fact, between 2000 and 2004, the only post-transition period characterized by a proactive housing policy, state subsidies favoured the acquisition of private property and supported the more privileged sections of society. Despite plans to launch a social housing program and other initiatives to support low-income

Hungarians, state-sponsored subsidies for mortgage loans turned out to be by far the best financed and most far-reaching, which mainly benefited the well off in society. In this period, a total of 60 percent of all state subsidies for housing went to the upper 20 percent of the population (Hegedüs, 2009).

With regards to social services, the emergency responses to the “homeless crisis” of 1989 have been institutionalized without addressing the root causes of the problem. The main aim of the relatively broad network of drop-in centres, overnight shelters, temporary shelters and street social work is not to prevent homelessness or secure permanent housing, but to feed, clothe and temporarily shelter people in emergency. At the same time, there are still not enough shelter beds to host all homeless people and many existing shelters are in a poor condition. While there are some small-scale initiatives to improve services, there is hardly any room for general improvement; public financing for homeless and other social services has continuously declined since 2006. At the same time, the institutionalization of emergency solutions distracts attention and resources from long-term solutions and leaves the underlying causes of social injustice intact.

Codifying the Criminalization of Homelessness

From a legal perspective, the post-transition Hungarian state has taken numerous steps to hide the problem of homelessness from public view. While there were a number of local laws against begging and rummaging through garbage, the process accelerated in the early 2000s, when the Mayor of Budapest first ordered the removal of homeless people from underground pedestrian passages (Török and Udvarhelyi, 2006). Another alarming sign came in 2009 when the Mayor of the 11th district declared “homeless-free zones” in one of the biggest districts of Budapest. However, legislation tended to become even stricter and more all-encompassing in the ensuing years. In the following, we will describe some of the most important government actions from 2010 to 2013.

In 2010 the Hungarian Parliament passed a law, which allowed local municipalities to ban the “inadequate use” of public spaces. Taking this opportunity, the general assembly of Budapest adopted a decree, which prohibited the use of public spaces for “habitual residence” and the storage of belongings for this purpose. This was declared to be a petty offence and could result in a fine of up to 50 000 HUF (about €165). The decree applied to all public spaces in the city. Moving further on this path, this kind of legislation was raised to the national level in December, 2012 and was placed into Act 69 of 1999 on Petty Offences. If someone was found in violation of the newly adopted clause, they could be sentenced to confinement or a fine of up to 50 000 HUF. There was one exception: local governments that did not provide

appropriate shelter could not apply this regulation. However, what was meant by “appropriate shelter” was never defined, which made it possible to apply the law almost universally.

In the spring of 2012, a new law was adopted: Act 2 of 2012 on Petty Offences. Article 186 of the new law declared that if someone uses public space in a way that is “different from its original designation” – for habitual residence or for the storage of personal property used for habitual residence – they commit a petty offence. The sanction was initially a fine, but in the case of non-payment it could be transformed into incarceration. If repeated, this crime became punishable by a maximum fine of 150 000 HUF (approximately €500).

Importantly, the law also allowed the imposition of an on-the-spot fine, which created a highly unjust practice: if someone admitted to committing the petty offence on the premises, they were excluded from any further legal remedy. *The City is for All*, a Hungarian homeless rights advocacy group and the Hungarian Civil Liberties Union (HCLU) encountered a number of cases where the “perpetrators” did not realize what they were signing. However, once this statement was made, it could not be revoked anymore.

Decision of the Constitutional Court [38/2012. (XI. 14.)]

In November 2012, the Hungarian Constitutional Court annulled the above article of the Petty Offences Act as well as the section of the Law on Local Governments, which made it possible to penalize “flagrantly anti-communal behaviour.” The plenum listed a number of reasons for its decision.

First, it emphasized that the annulled legislation had a Janus-face, as very similar actions were sanctioned by both administrative law (“flagrantly anti-communal behaviour”) and the petty offences law (rough sleeping).

Second, the Court emphasized that the fact that someone lives in public space does not infringe on other people’s rights, cause damage or endanger the habitual use of space or public order. As a result, there is no reason to define this as a petty offence.

Third, as the Court highlighted, a petty offence requires the subjective fault of the offender (intention or negligence). However, as homelessness is a social condition, the facts are independent of the person and the terms of subjective fault cannot be detected. In this way, by establishing objective liability, the law punished a social status rather than a specific behaviour.

Fourth, the legislation under discussion did not make a difference between substantive and procedural norms, which has weakened the rule of law. Specifically, while the Law on Local Governments has authorized municipalities to create sanctions for “anti-communal” and “flagrantly anti-communal” behaviour, it left the definition of these terms to the discretion of the authorities.

Fifth, according to the statement of the Court, there is no constitutional argument to limit somebody’s freedom of movement and human dignity. As a result, the state does not have the right to force homeless people to live in shelters or any other places.

Finally, by declaring that homelessness is a social problem that cannot be solved with the tools of criminal justice, the Hungarian Constitutional Court made it clear that making rough sleeping a petty offence is not only clearly against the rule of law, but also highly unjust.

Breach of Fundamental Rights

After the Constitutional Court annulled the above-mentioned regulations, the Fourth Amendment of the Fundamental Law, which came into effect in April 2013, incorporated provisions that authorized local governments to penalize habitual residence in public spaces. All international conventions such as The Charter of Fundamental Rights of the European Union, the Universal Declaration of Human Rights as well as the national constitutions of democratic states declare the right to human dignity, the right to the freedom of movement and the right to private life. However, even though the Hungarian Fundamental Law itself acknowledges human rights, the fact that it allows local governments to effectively prohibit street homelessness means that it does not meet basic human rights requirements.

In addition, the Fundamental Law fails to provide a strong enough guarantee for comprehensive social support. Article 34(3) of The Charter of Fundamental Rights of the European Union says that: “In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.” In contrast, the Hungarian Fundamental Law says that “Hungary shall strive to provide the conditions for housing with human dignity and to guarantee access to public services for everyone.” The phrase “shall strive” indicates that the Hungarian state does not recognize the right to social and housing assistance, it merely attempts to ensure it, even if it is not successful in doing so. All of this implies that the current Hungarian government is not really committed to addressing homelessness in a meaningful way.

Beyond the specific critiques regarding the penalization of homelessness, the opinion of the Hungarian Civil Liberties Union is that the whole structure of the Fourth Amendment violates innate human rights. In fact, several regulations introduced by the Fourth Amendment had been earlier annulled by the Constitutional Court because they were in breach of fundamental rights. Having the very same articles included in the Fundamental Law means that they are no longer *formally* unconstitutional. However, their *contents* continue to be against human rights as well as both universal and European values.

Taking a stand against criminalization

While The City is for All (AVM) mobilizes homeless people against criminalization, HCLU provides legal aid and pursues strategic litigation to support homeless people and demonstrate the illegitimacy of the current legislation. After the Constitutional Court's decision, all of the procedures that had been undertaken under the annulled law were ceased. However, HCLU warned that all former decisions should also be reviewed, and the fines imposed returned to citizens. In the end, HCLU was successful in convincing the Court to expand its verdict to address this issue.

In order to understand how many people had been affected by this law, HCLU filed a public information request. The response received indicates that between April and November 2012, altogether 39 545 000 HUF (around 132 000 EUR) were incurred as fines and the fine was replaced with incarceration in a total of 24 cases. There were big differences among the various counties of Hungary, which indicates that the execution of the law greatly depended on the practices and (financial) interests of local governments.

Based on the Fourth Amendment, the Petty Offences Act was modified and it came into force on October 15, 2013. According to the Act, there are certain areas – UNESCO world heritage sites – which are automatically “prohibited zones.” In addition, local governments have the right to designate further areas, where habitual residence is prohibited. Since the law was passed, HCLU has been monitoring law-making at the local level as well as the practice of penalization, while AVM requires public data on a monthly basis regarding the legal procedures initiated against homeless people under this Act.

Many local governments have passed decrees since they got the legal authorization to do so. As a result, almost the entire downtown of Budapest has become a prohibited area. Besides, we can already see that there are certain districts in Budapest (district IV and V), and two towns (Füzesabony and Várpalota), which began to persecute homeless people. Most of the above-mentioned authorities had

begun this practice even before the modification of the Petty Offences Act, which means that they had no legal possibility to do so. HCLU initiated legal supervision procedures in all these cases and turned to the competent prosecution as well.

Another highly questionable measure is that the petty offence procedure must be carried out in a designated homeless shelter. In Budapest, a building has been designated as an office where public servants are on duty 24 hours a day so that homeless people can be prosecuted any time.

Conclusion

Overall, the criminalization of homelessness is on the rise in Hungary and the Hungarian legislature has also failed to understand that people cannot be forced to move to homeless shelters against their will. Both *The City is for All* and HCLU want to take every possible step to stop this process, and intend to turn to the European Court of Human Rights. Finally we continue our work to protect the fundamental rights of people who are homeless and to advocate for more long-term solutions to the problem of extreme housing poverty.

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