

# Fact-Fiction

## The States' Hypocritical Conception of Prevention of Homelessness through Criminalisation in Denmark and Hungary

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17th European Research Conference on Homelessness

Leuven 2023

# Structure

“The picture is clear  
'Cause I'm still fact  
she's fiction”

Lyrics to Fact-Fiction song  
by Mads Langer

- ▶ There is a trend in Denmark and Hungary to reduce the visibility of homelessness through criminalisation
  - ▶ Denmark
  - ▶ Hungary
  - ▶ Conclusions

# Current situation in Denmark - National count of homelessness (February 2022)

## Number of people sleeping rough (homeless migrants not included):

- ▶ 535 individuals sleeping rough (23 % has no income at all)
  - ▶ last count in 2019 had 732 individuals sleeping rough

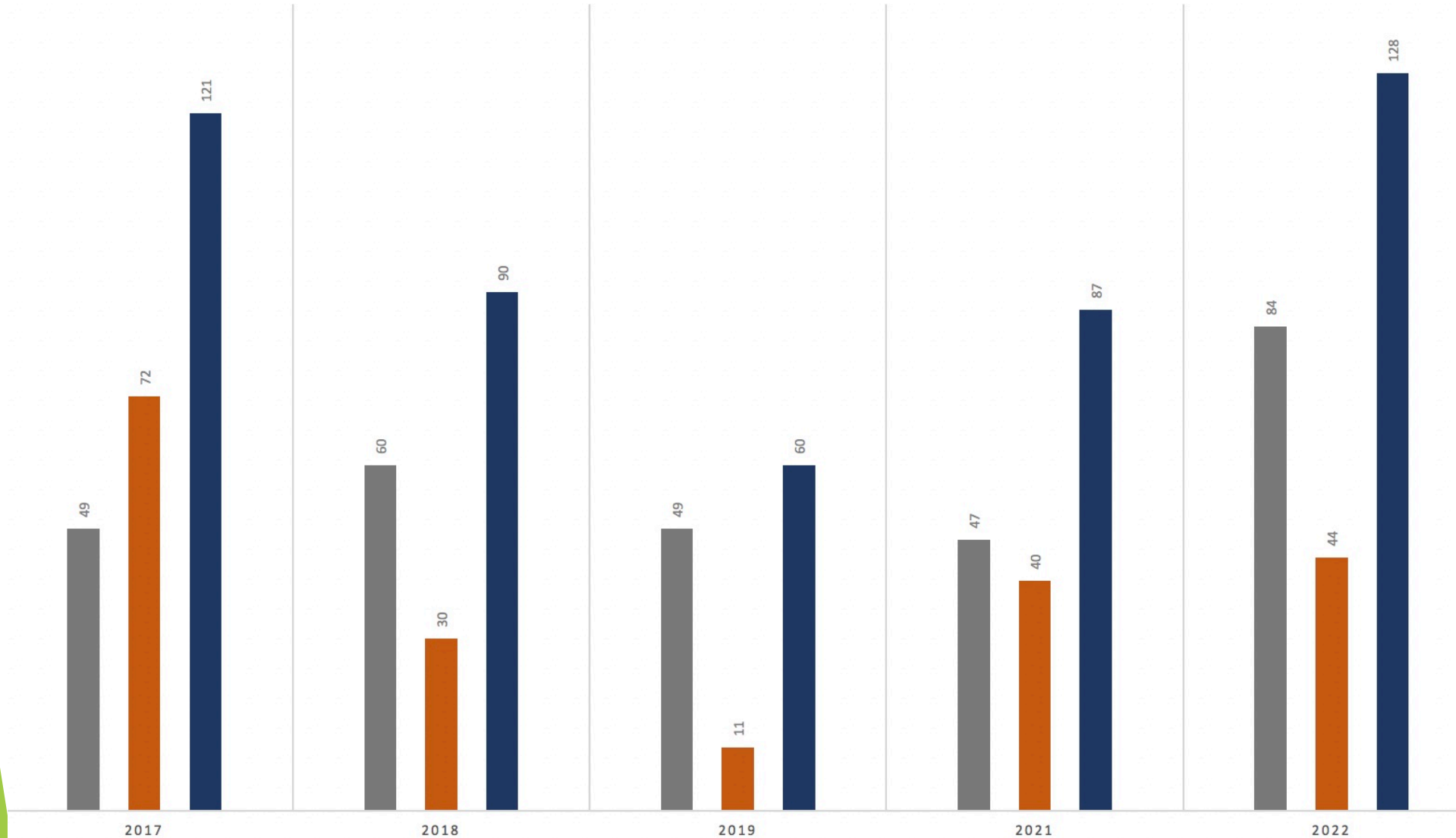
## Number of homeless migrants:

- ▶ 322 homeless migrants (85 % come from other EU countries)
  - ▶ last count in 2019 had 519 homeless migrants
- ▶ 115 homeless migrants sleeping rough
  - ▶ last count in 2019 had 205 homeless migrants sleeping rough

*Lars Benjaminsen, Hjemløshed i Danmark 2022, VIVE*

# Annual Night Count in Copenhagen Aug/Sep

■ Sleeping alone ■ Sleeping in groups ■ Total



Source: Projekt Udenfor (2022)

# Criminalisation of homelessness in Denmark

- ▶ Historical development:
  - ▶ 1708: poverty law criminalised all begging
  - ▶ 1860: special law criminalised all begging and vagrancy
  - ▶ 1930: penal code criminalised all begging in section 197
- ▶ Recent development since 2017:
  - ▶ 2017: penal code section 197 amended to increase penalties for "intimidating begging"
  - ▶ 2017: public order regulation section 3(4) amended to criminalise sleeping rough in "intimidating camps"
  - ▶ 2018: public order section 6(3) amended for the police to issue zoning bans to people violating the camp prohibition

# Political discourse leading to the ban on “intimidating” camps and begging

The clear goal of the camp and begging legislation from 2017 was to target migrants experiencing homelessness:

- ▶ “We have to go as far as possible to get Roma people out of here.” (Søren Pape Poulsen, then-Minister of Justice)
- ▶ “The Roma occupation must be stopped: they exploit us, they harass us, and they destroy the street scene with garbage and excrement.” (Marcus Knuth, Venstre)
- ▶ “It is completely reckless that the zoning ban affects Danish homeless people. Winter is approaching now, and as a Social Democrat, I will have no part in the fact that Danish homeless people, who are forced to sleep on the street because they do not have a home, can be thrown out of their own city.” (Mette Frederiksen, current prime minister)



Pictograph at the Trinitatis Church Square in Copenhagen

# Criminalisation of “intimidating begging” - a toughened begging ban

- ▶ The criminalisation of begging in Section 197 of the Danish Penal Code:
  - ▶ All begging is criminalised
  - ▶ Begging taking place in a pedestrian street, at train- and bus stations, in or at supermarkets, or in public transportation is defined to constitute “intimidating begging”
  - ▶ The location determines whether begging is “intimidating”. It is not a requirement that the begging has created intimidation in the concrete situation
  - ▶ Punishment for “intimidating begging” is typically 14 days of unconditional prison
  - ▶ In 2020 a sunset clause was revoked making the prohibition of “intimidating begging” permanent

# Implementation of the ban against “intimidating begging”

Statistics on convictions - Period from June 2017 to May 2023:

- ▶ 129 convictions for begging
- ▶ 102 individuals have been convicted for begging (once or several times), including:
  - ▶ 1 individual from Denmark
  - ▶ 12 individuals from Bulgaria
  - ▶ 74 individuals from Romania

Source: Director of Public Prosecutions (May 2023)



# Danish Supreme Court - U.2022.1451H

## Begging at railway station

- ▶ A Lithuanian man was convicted for begging at the central railway station in Copenhagen
- ▶ The Supreme Court stated that Denmark has a welfare system with a social safety net and that Danes and foreigners have access to public assistance if they cannot meet their basic needs in other ways
- ▶ The Court also stated that there was no discrimination. The reason for the over-representation of foreigners among convicted individuals was that predominantly foreigners were begging
- ▶ The Supreme Court ruled on 2 February 2022 that a sentence of 60 days in prison was not a violation of the Lithuanian man's human rights

# Criminalisation of “intimidating camps”

- ▶ 2017: The public order regulation was amended to prohibit setting up and staying in “intimidating camps”. A person violating the camp prohibition typically receives a fine of DKR 1 000 (€ 135).
  - ▶ If the police assess that a concrete stay and behaviour has a camp-like character, which is suitable for creating insecurity or intimidation, the police have the authority to intervene.
- ▶ 2018: The police act and public order regulation were amended to provide a legal basis for the police to issue zoning bans to people violating the camp prohibition. Besides receiving a fine, a person setting up or staying in a camp can be banned from staying in the local municipality where the violation occurred.
- ▶ 2020: The camp legislation was softened to only prohibit “intimidating camps” of a permanent nature.
- ▶ 2021: The provisional camp legislation, including the zoning ban, was made permanent.

# Implementation of the ban against “intimidating camps”

- ▶ The Police of Copenhagen have issued 557 camp bans between 2017 and the end of 2021
- ▶ Individuals receiving camp bans include:
  - ▶ 425 individuals from Romania
  - ▶ 24 individuals from Albania
  - ▶ 22 individuals from Bulgaria
  - ▶ 13 individuals from Denmark

# Danish Supreme Court - U.2018.1211H

## Sleeping in a park

- ▶ A man from Romania had slept in a public park in Copenhagen with four other men.
- ▶ The police report describes: "On the grass, they had arranged themselves with mattresses, duvets, sleeping bags, and blankets. Under the mattresses were cut cardboard boxes, which were used as a base. Around them were seen their other belongings, some of them packed in baby carriages. Several of the persons lay asleep under the duvets."
- ▶ In court, the Romanian man argued that he had not violated the camp legislation because the camp was not suited to give rise to intimidation. He explained that they had just been sleeping in the park. "They had not approached other people by a threatening or harassing behaviour, or committed crimes in the form of thefts, and no one in the immediate area had complained about them."
- ▶ Without further argumentation, the Supreme Court concluded that the matter constituted an "intimidating camp", and that the deportation of the Romanian man was legal.

# Velkommen



Cykling er ikke tilladt med mindre andet er skiltet

Læg affald i affaldskurven.

Pas på planter, blomster og træer.



## Signs prohibiting overnight stay in Copenhagen

- ▶ In Denmark, it is legal to stay overnight in places where there is general access - as long as you do not disturb public order or stay in an "intimidating camp"
- ▶ But... In 150 public parks and green areas in Copenhagen, signs with order rules prohibit overnight stay
- ▶ The park order rules are enforced by the police and violations may lead to expulsion and a fine



# The case of City Hall Square in Copenhagen

- ▶ January 2016: Signs prohibiting overnight stay put up at City Hall Square
- ▶ February 2023: Two women convicted for sleeping in City Hall Square
- ▶ June 2023: City Council decided to sign the Homeless Bill of Rights (signing will take place on October 10, 2023)
- ▶ September 2023: Proposal to take down the signs (to be decided by City Council on October 3, 2023)



## The Homeless Bill of Rights

**I. The right to housing**  
The most important right a homeless person has is the right to housing. Services that support access to appropriate accommodation must be accessible to all homeless people.

**II. Access to decent emergency accommodation**  
Where housing cannot be immediately provided, the right to access decent emergency accommodation must be maintained for all homeless people.

**III. The right to use public space and to move freely within it**  
People who are homeless should be granted the right to use public space, and to move freely within it, with no greater restrictions than apply to others.

**IV. The right to equal treatment**  
The Council is committed to ensuring that our staff and services uphold the right to equal treatment for all, without discriminating against those who do not have a home.

**V. The right to a postal address**  
People who are homeless often experience restricted access to the labour market and public services because they cannot provide a postal address. People who are homeless have the right to an effective postal address.

**VI. The right to basic sanitary facilities**  
The right to access basic sanitary facilities must be provided for. This includes running water (drinking fountains), showers, and toilets, of a standard that allows a dignified level of hygiene to be maintained.

**VII. The right to emergency services**  
Homeless people should have the right to emergency services – social services, health services, the police and the fire service – on equal terms with any other resident of the Council area.

**VIII. The right to vote**  
People experiencing homelessness should be included on the electoral register and given the necessary documents to prove their identity when voting in elections, without being discriminated against because of their housing situation.

**IX. The right to data protection**  
Homeless people have the same right to data protection as other citizens and the same right to exercise control over their personal records (health, housing, any criminal record) and information.

**X. The right to privacy**  
A homeless person's right to privacy must be respected and protected to the fullest extent possible in all types of accommodation, including any communal accommodation structure or informal accommodation they may occupy.

**XI. The right to carry out practices necessary to survival within the law**  
Homeless people should have the right to carry out practices necessary to survival within the law. Survival practices such as begging, or foraging for discarded food should not be criminalized, banned, or arbitrarily confined to specific areas.

 HOUSING RIGHTS WATCH

# Lessons from the regulations (1)

- ▶ The Police of Copenhagen:
  - ▶ city of Copenhagen has experienced a “measurable drop in the number of camps”
  - ▶ “migrants to a greater extent than before have found other places than public parks” and “homeless people to a lesser extent have established camps”
  - ▶ camp legislation “had a preventive effect”
- ▶ The Minister of Justice in June 2023 reiterated:
  - ▶ criminalisation has a “preventive effect”
  - ▶ efforts against camps “have had a great effect”, and “there has been a measurable drop in the number of camps” since 2018
- ▶ Conclusion by the Danish government: Criminalisation works!

# Lessons from the regulations (2)

- ▶ But...
- ▶ Criminalisation has immediate negative effects on individuals being punished
- ▶ Criminalisation is framed to target migrants experiencing homelessness but all people sleeping rough risk feeling more unsafe in their daily life
- ▶ Criminalisation has made it more difficult to provide help and assistance. Civil society organisations and the municipality of Copenhagen report that people sleeping rough have been harder to find
- ▶ Criminalisation pushes all people experiencing homelessness into further marginalisation. They become less visible



# Lessons from the regulations (3)

- ▶ **Conclusion:** Criminalisation is a stigma that deepens the situation of exclusion and threatens the possibility of social integration

- ▶ Example - Letter from Copenhagen landlord to tenants:

“We have a large problem with the homeless on our property.[...] The homeless relieve themselves, make a mess and spend the night in corners and covered areas/passages.[...] Everyone must help try to get them away (push them away). In other words, wake them up and tell them to find another place.”

# Criminalisation of homelessness in Hungary (1)

Historical development (vagrancy punished since 1794, begging since 1912)

- ▶ Before transition (1990)
  - ▶ homelessness was penalised as deviance during communism if coupled with other delinquencies (since 1950s)
  - ▶ Commuters were lodged in workers' hostels
  - ▶ No response to people in housing needs, no poverty alleviation policies but also no housing crisis
- ▶ After transition
  - ▶ Large state employers closed down and commuter workers' hostels dismantled
  - ▶ First winter: faith based organisations and NGOs open first night shelters
  - ▶ Stepwise development of accommodation based services (emergency shelters - app. 4300 beds, temporary shelters - app. 5600 beds)
- ▶ After 2010
  - ▶ Repression („order“ instead of „support“)
  - ▶ „divided social policy“ (Győri 2018)
  - ▶ „penal populism“ (Boda et al 2022)

# Criminalisation of homelessness in Hungary (2)

Punitive settings since 2010:

- ▶ 2010: Change of the Construction Act (use of public space for purposes of living and storing of goods)
- ▶ 2011: Regulatory Offenses Act, then revisited in 2012
- ▶ 38/2012 Decision of the Constitutional Court (if there is no homeless provision, it cannot be punished)
- ▶ 2013: Change of the Constitution - living in a public place in protected areas and areas defined by local governments prohibited
- ▶ Local decrees revisited by the Constitutional Court in 2016
- ▶ 2018: 7th Change of the Constitution: „Using a public space as a habitual dwelling shall be prohibited.”
- ▶ Regulatory Offenses Act amended to incorporate the change - if it can be supposed that the person sleeps / washes him/herself / eats / clothes / looks after animals permanently or with small breaks (if punitive behaviour or further offenses cannot be proved), he/she can be punished if he/she does not leave the public space for a homeless service.
- ▶ The basis for the punishment is lack of cooperation with the enforcing body - the police. The „three strikes” rule exacerbates enforcement.

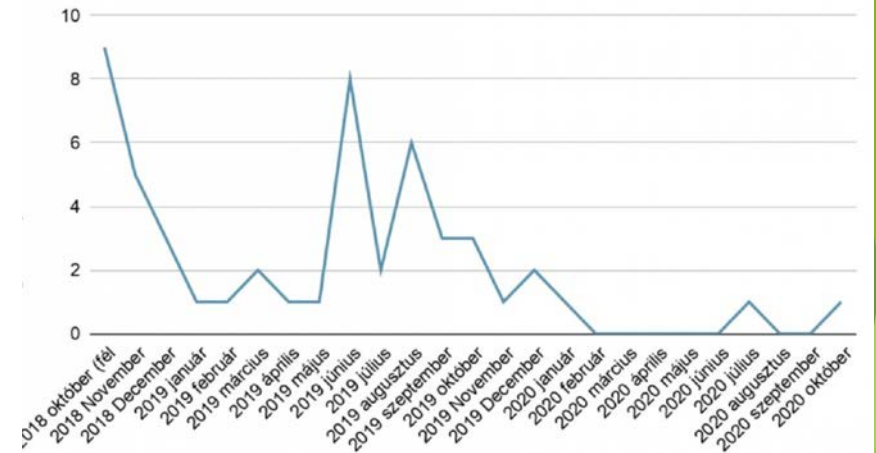
# Implementation of the rules

Before 2018: „Regulatory Offence Hot Spot” in Budapest - only used sporadically in the first half of 2013

After 2018: In the first half year (October 2018 to March 2019):

- ▶ 338 warnings - 90% of them in the first 3 months; 10 cases in court
- ▶ No increase in clients' use of shelters
- ▶ (Forced) referral to shelters in 10-20 cases
- ▶ Most cases launched in Budapest
- ▶ People were reported to hide - out of fear
- ▶ February 3 count data of 2019:
  - ▶ close to 80% of people spent the nights in shelters irrespective of the regulation
  - ▶ Out of 2226 rough sleepers 34% were warned during the last 6 months, and app. half of them were not warned (even informally)
  - ▶ Out of all homeless people 13% were warned
  - ▶ 60% of homeless people had ID checks

Number of cases launched



<https://qubit.hu/2021/01/11/hiaba-a-nagy-vihart-kavart-torveny-nem-igazan-buntetik-a-hajlektalanokat-magyarorszagon>

	2017	2018	2019	2020	2021
Fine (on the spot)			1 x 5000 HUF		1 x 50000 HUF
Public works			1 x 49 days		1 x 50 days
Fine	1 x 90000 HUF	3 x 90000 HUF			

<https://bsr.bm.hu/Document/Index>

# Lessons from the regulation

- ▶ The states criminalise topologically defined living situations that are used as a *proxy for (present and) future misbehaviour* towards the public, and thereby claim to prevent homelessness
- ▶ In the Hungarian context the proof for “effective living in the street”, which is the basis for punishment, would be the person's actual *oral statement* to the policemen about the reluctance to make use of an emergency shelter or day center *in the future* at the time of the police control in a public space (a reluctance to be lifted to such a service by the police)
- ▶ The anticipated behavioural component in the Hungarian context is disconnected from any regular citizen's obligations or strategies - no one could be otherwise made to use a social service, as per law all such services are voluntary

# Common conclusions

- ▶ Reduction of the visibility of homelessness is taken as a proof for the reduction of homelessness.
  
- ▶ The hypocritical components
  1. anticipation concept: behaviour sanctioned *before* it happens
  2. enforcing the actual topological proxy makes people flee their spots and hide elsewhere
  3. the reduction of the visibility of homelessness is taken as a proof for the reduction of homelessness
  4. "legitimized" by the evidence used to assess the level of homelessness (count methods)

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# Thank you for your attention



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