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# A Crime to Sleep in Camps – Denmark and International Human Rights

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➤ **Abstract\_** *People experiencing homelessness are often punished for their everyday activities in public spaces. In some countries, they are put in prison for begging and sleeping on the street. This paper zooms in on the situation in Denmark and the rules criminalising street-based sleeping in so-called 'intimidating camps'. The preparatory works to these rules reveal that the camp prohibition was intended to primarily affect migrants of a Roma ethnic origin experiencing homelessness in Denmark. Caselaw shows that most of the individuals who have been punished for violating the camp rules come from Romania, Bulgaria, and Albania. The Danish legislation is a de facto criminalisation of the homeless, which has serious human rights implications and has caused a severe risk of discrimination against migrants experiencing homelessness based on their nationality and/or ethnic origin. On that basis, this think piece calls for a repeal of the criminalisation of homelessness in Denmark and underlines a need for an unambiguous prohibition of discrimination in the daily works of the Danish police force.*

➤ **Keywords\_** *criminalisation, sleeping rough, migrants experiencing homelessness, human rights, discrimination, Denmark*

## Danish legislation prohibits sleeping in camps

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In 2017 it became illegal to set up and stay in 'intimidating camps' in Denmark.<sup>1</sup> The goal of the new Public Order was to prohibit camps that could create insecurity and intimidation in the immediate local area. A person violating the camp prohibition typically receives a fine of DKR 1 000 (€ 135). Further, in 2018 the Danish Police Act was amended to provide a legal basis for the police to issue zoning bans to people violating the camp prohibition.<sup>2</sup> A person setting up or staying in a camp, besides receiving a fine, can be banned from staying in the local municipality where the violation took place.<sup>3</sup> As a result of a zoning ban, the person cannot travel back and forth or visit the municipality. The maximum period for a zoning ban is two years, but it has typically been issued for a fixed period of three months. If a zoning ban is violated, the sentence is imprisonment for up to one year and six months. Denmark had a right-wing government when adopting the camp legislation in 2017. Since then, a Social Democratic government took power in 2019. An amendment to the provisional camp legislation was adopted in 2021 to make the zoning ban permanent, which illustrates broad political support for the criminalisation of 'intimidating camps'.<sup>4</sup>

## In Denmark, fewer people are sleeping on the street

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The Danish Centre for Social Science Research, VIVE, does regular national counts of people experiencing homelessness (PEH). The last national count from week six of February 2022 illustrates a drop in the number of PEH from 6 431 in 2019 to 5 789 in 2022 (Benjaminsen, 2022). The number of people sleeping rough on the street has also dropped. In 2017, 648 individuals with permanent residence were sleeping rough. In 2019, the number was 732, and in the last count, the number of people sleeping on the street was 535. Of those 535 individuals in 2022, 23% reported that they have no income at all (Benjaminsen, 2022). VIVE indicates that the reason for the drop in the number of people sleeping rough could be a rise in the number of shelter rooms in Denmark and new emergency shelters opened due to the COVID-19 pandemic (Benjaminsen, 2022).

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<sup>1</sup> Section 3(4) Ordensbekendtgørelse [Public Order Regulation]. "Intimidating camps" is a non-official translation by the author of the Danish term "utryghedsskabende lejre".

<sup>2</sup> Bill No. L 118 of 13 December 2017. Bill was adopted by Act No. 131 of 27 February 2018 amending Politilov [Police Act].

<sup>3</sup> Section 23(2) Politilov [Police Act] and Section 6(3) Ordensbekendtgørelse [Public Order Regulation].

<sup>4</sup> Act No. 288 of 27 February 2021 amending Politilov [Police Act].

The above numbers do not include the estimated number of migrants without permanent Danish residence who experienced homelessness in Denmark. In 2019, 205 of the estimated 519 migrants experiencing homelessness in Denmark were sleeping on the street. In 2022, 115 out of 322 migrants experiencing homelessness were sleeping rough. VIVE explain that the drop in migrants experiencing homelessness in Denmark is probably reasoned by the COVID-19 pandemic with travel restrictions and lockdowns (Benjaminsen, 2022). Most of the migrants experiencing homelessness without permanent residence in Denmark were registered in Copenhagen, and 85% of them come from other European Union member states (Benjaminsen, 2022). The national count does not report how migrants experiencing homelessness provide for themselves while in Denmark.

For many years the non-profit organisation Projekt Udenfor has conducted an annual night count of people sleeping on the street on a particular night in late summer in Copenhagen.<sup>5</sup> At the latest count during the night of 25 August 2022, the organisation registered 128 individuals sleeping rough in the city of Copenhagen; the highest that the organisation has registered since 2017. Of these, 15 were Danish nationals, 74 were foreign nationals, and 39 were of unknown nationality. In comparison, Projekt Udenfor registered 60 people sleeping on the street in August 2019. The night counts by Projekt Udenfor illustrate an opposite trend than the more comprehensive national VIVE statistics documenting a general fall in the number of people sleeping rough in Denmark. The cause of this apparent contrast requires further research and could be due to methodology, including the time of year and geography of the counts.

## **Camps are considered problematic**

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The Danish government referred to a mix of rationales when describing the background for the prohibition of 'intimidating camps' and other new anti-nuisance rules in 2017. The justifications dealt with safe citizens and neighbourhoods as well as the concerns of tourists, businesses, and investors. Generally, these arguments are often heard when anti-nuisance rules are adopted (Saelinger, 2006). At the time, more migrants were coming to Denmark to earn money by getting temporary jobs and collecting deposit bottles. Some of the migrants were experiencing homelessness and sleeping on the street. There were complaints of people sleeping in camps and causing a mess in the larger cities of Denmark. The then-mayor of Copenhagen, Frank Jensen, urged the Parliament to enact new legislation to help

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<sup>5</sup> Data provided by Projekt Udenfor in an e-mail of 8 September 2022.

solve the problems of 'Roma people' living on the streets and creating insecurity.<sup>6</sup> Existing laws seemed inadequate and new regulations to prohibit intimidating camps were put forward. The then-Minister of Justice, Søren Pape Poulsen from Konservative (Conservative People's Party), introduced the suggested zoning ban with the following words: "The government wants to take action against migrants who camp in public places. [...] Such conditions could involve large nuisances to the local environment in the form of noise, disturbance, and unhygienic and revolting sanitary conditions. This could give rise to disturbance of public order or the safety of individuals or the public."<sup>7</sup>

Politically, it was clear that the goal of the camp legislation was to target migrants experiencing homelessness and more specifically the so-called Roma camps in Copenhagen. The examples below are illustrative of a racist discourse practised by members of the government and the Danish Parliament when articulating a need for the camp legislation. The then-legal spokesperson for Venstre (Liberal Party of Denmark), Preben Bang Henriksen, stated in late 2016 that the camp legislation in his opinion was only drafted for the police to be able to take action against the "Roma camps".<sup>8</sup> In the spring of 2017, the then-foreigner spokesperson for Venstre, Marcus Knuth, said: "The Roma occupation must be stopped: they exploit us, they harass us and they destroy the street scene with garbage and excrements."<sup>9</sup> Also, the then-Minister of Justice, Søren Pape Poulsen, stated that "we have to go as far as possible to get Roma people out of here."<sup>10</sup> Later in 2018, the party leader for the Social Democratic Party, Mette Frederiksen, who is the current prime minister of Denmark, criticised the camp legislation for affecting Danish PEH who were sleeping on the street:

It is completely indefensible 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.<sup>11</sup>

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<sup>6</sup> Berlingske, *København lider under romalejre og tiggeri*, (11 September 2016). DR, *Frank Jensen til regeringen: Hjælp med at få styr på romaer på gaden* (31 maj 2017).

<sup>7</sup> Statement by then-Minister of Justice, Søren Pape Poulsen, regarding Bill No. L 118 (13 December 2017).

<sup>8</sup> Information, *Kritikere: Regeringen kriminaliserer hjemløse* (29 December 2016).

<sup>9</sup> Berlingske, *Roma-besættelsen skal stoppes* (22 May 2017).

<sup>10</sup> Berlingske, *Justitsminister efter roma-alarm: "Vi skal gå lige til grænsen for at få romaer ud"* (31 May 2017).

<sup>11</sup> DR.dk, *Mette Frederiksen: Politiet skal ikke give forbud til danske hjemløse – S-formand vil have justitsministeren til at indskærpe zoneforbud over for politiet* (21. november 2018).

## The meaning of ‘intimidating camps’

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In Denmark, it is generally not illegal to spend the night outside in places of ordinary access. However, with the camp legislation, 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. The camp legislation does not specify in detail what characterises an ‘intimidating camp’. In the preparatory works, the meaning of a *camp* is described as a place where travellers and wandering persons arrange sleeping or rest areas.<sup>12</sup> There must be a certain degree of establishment of the sleeping area. In general, the setting up of a single mattress or sleeping bag will not in itself be sufficient to constitute a camp. If the sleeping area has a more lasting character e.g., the setting up of a tent or a tarp, it may constitute a camp.<sup>13</sup>

To assess whether a camp is *intimidating*, the preparatory works describe that the number of people in the camp can be emphasised.<sup>14</sup> It is relevant if the camp is in a busy place, and if the camp leads to noise, traffic nuisances, or other inconveniences. The police can also focus on the general behaviour of the people in the camp and whether they commit criminal offenses in the area around the camp, including waste dumping or showing harassing and threatening behaviour. The camp does not necessarily have to cause concrete feelings of intimidation among other people. The only requirement is that the camp in question is suitable for creating such insecurity or intimidation.<sup>15</sup>

Following the adoption of the camp legislation in 2017, the prohibition was criticised by some parliamentarians for affecting Danish PEH who were sleeping rough.<sup>16</sup> It was also criticised for providing the police a too large margin of interpretation in assessing whether people were sleeping in ‘intimidating camps’.<sup>17</sup> A political agreement was therefore reached in 2020 to underline that the camp legislation should only prohibit camps that had a permanent character.<sup>18</sup> On that basis, the

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<sup>12</sup> Minister of Justice, Answer to question No. 213 from the Parliament’s Legal Committee of 3 February 2017.

<sup>13</sup> Id.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> TV2/Lorry, *Rammer danske hjemløse: Minister holder fast i udskældt lov* (13. december 2018).

<sup>17</sup> Danish Institute for Human Rights. DIHR, *Hearing statement – DOK. NR. 20/01488-3* (12 June 2020).

<sup>18</sup> Forståelsespapier, *Enighed om reglerne om utryghedsskabende lejre* [Paper of Understanding – Agreement about the rules on intimidating camps] (4 May 2020).

camp legislation was softened and only 'intimidating camps' of a permanent nature are prohibited today.<sup>19</sup> The police were furthermore given the power to issue first warnings instead of having to immediately issue zoning bans.

A 2020 Order on zoning bans describes what constitutes *permanence* in an insecurity-creating camp.<sup>20</sup> The police can emphasise whether the physical arrangement has a cover, mattresses, a campfire, or a tent. Personal belongings, food, waste, urine, or faeces in the vicinity of the place are also relevant. A simple sleeping accommodation that can be packed together quickly will not be considered to constitute a camp of a permanent character.

### Intimidating campers in court

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An unpublished city court case from 2019 deals with a Romanian man and his adult son who were charged with violating the camp legislation.<sup>21</sup> In the early morning of 21 August 2018, the police found the two men sleeping at a store entrance on a pedestrian street in Copenhagen. The police argued that the two men had established an 'intimidating camp'. In court, the defendants argued that they only slept at the location for a short time and cleaned up before leaving the place. Ruling on the case, the court explained that the men were lying on a widespread duvet with blankets around them and that they had some bags under their heads, as well as a bag with bottles/cans and a converted baby pram containing some belongings standing by them. The court emphasised that the defendants only lay there to sleep when they became tired at night collecting bottles and that they typically slept there for one or two hours. According to the court, there was no information that the defendants had made any physical arrangements on the spot, neither in terms of shielding from the cold nor the wind. Finally, the court did not find that the defendants had made a mess with trash or the like. Altogether, the court concluded that it had not been proven that the defendants had established or stayed in a camp and the two men were acquitted.

There is only one published court ruling on the camp legislation.<sup>22</sup> In this ruling, the Supreme Court found that the deportation of a homeless man, who had violated the camp legislation, was legal. The deportee from Romania had slept in a public park in Copenhagen with four other men. The police report from the early morning

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<sup>19</sup> Vejledning nr 9419 af 29/6/2020 om meddelelse af zoneforbud [Regulation No. 1094 of 29 June 2020 on zoning bans].

<sup>20</sup> *Id.*, p.4.

<sup>21</sup> Københavns Byret, Dom afsagt den 6. marts 2019 i sag SS 4-4970/2019 [Copenhagen City Court judgment of 6 March 2019 in case No. SS 4-4970/2019].

<sup>22</sup> Dom i Ugeskrift for Retsvæsen U.2018.1211H – TfK2018.346H [Ruling published in Weekly Law Journal U.2018.1211H – TfK2018.346H].

of 6 June 2017 describes the five Romanians and the camp they established: “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. A little away in a bush, the police found a cut soda bottle, in which there were faeces with a metal spoon stuck in it. There were also faeces on the grass. The police estimated it was human faeces.” In court, the deportee 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, however, concluded that the matter constituted an ‘intimidating camp’.

Both rulings concern the Public Order Regulation before the amendment in 2020 introducing the requirement of *permanence* of an insecurity-creating camp.

### **Affected by the camp legislation**

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Civil society organisations and the municipality of Copenhagen reported that PEH since 2017 have been harder to find and that it has become more difficult to provide help and assistance. One reason may be that the camp legislation has resulted in PEH sleeping in hidden places, alone, or outside the city of Copenhagen (Justesen, 2022). Criminalisation like the Danish camp legislation may therefore impact the delivery of homeless services by further reducing the opportunities available to the people experiencing homelessness and the spaces for potential solutions to their problems (Tosi, 2007). Even though the camp legislation is framed to target migrants experiencing homelessness, the reality is that it risks making all street-based sleepers feel more unsafe in their daily life. Besides the immediate negative effects on the individual being punished, the criminalisation, therefore, involves the peril of pushing all PEH into further marginalisation. They simply become less visible, and risk being punished for their existence in public spaces. Furthermore, criminalisation is a stigma that deepens the situation of exclusion and threatens the possibility of social integration making it harder for PEH to eventually find housing or jobs (Evangelista et al., 2013).

## The number of camp and zoning bans has gone down

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Since 2017, PEH have received fines and zoning bans due to the camp legislation. Some have also been administratively deported. Only the Police of Copenhagen has used the legal basis in the camp legislation. From a 2021 status on intimidating camps to the Danish Parliament, it was found that the Police of Copenhagen issued 554 camp bans and 231 zoning bans in the period between April 2017 and the end of 2020.<sup>23</sup> The 2022 status on intimidating camps describes that only three camp bans and no zoning bans were issued in 2021.<sup>24</sup> Furthermore, no zoning bans were issued in 2022.<sup>25</sup>

The Police of Copenhagen reported in 2021, that the city of Copenhagen had experienced a “measurable drop in the number of camps” and that the camp legislation had “a preventive effect”.<sup>26</sup> The police also described that in 2019 and 2020 “migrants to a greater extent than before have found other places than public parks and that homeless people to a lesser extent have established camps.”<sup>27</sup> In 2022, the Police of Copenhagen reiterated that the camp legislation had a preventive effect and that the tendency with fewer camps would have continued even if the extraordinary COVID-19 situation had not arisen.<sup>28</sup>

Most of the individuals who received a camp ban were migrants from European Union member states.<sup>29</sup> Out of the 557 camp-bans issued between April 2017 and the end of 2021, 425 were given to individuals experiencing homelessness from Romania, 24 to individuals from Albania, and 22 to individuals from Bulgaria. Only 13 Danes received a camp ban.<sup>30</sup> There is no detailed information about individual nationalities in the 231 cases of zoning bans. But the 2021 status on intimidating camps describes that 192 zoning bans were given to EU citizens, 33 zoning bans were given to third-country nationals, and only six zoning bans were given to Danish citizens.<sup>31</sup>

<sup>23</sup> Justitsministeriet, Status for indsatsen mod utryghedsskabende lejre, REU Alm. del Bilag 261 [Ministry of Justice, Status on the work against intimidating camps] (23 March 2021).

<sup>24</sup> Justitsministeriet, Status for indsatsen mod utryghedsskabende lejre, REU Alm. del Bilag 291). [Ministry of Justice, Status on the work against intimidating camps] (27 June 2022).

<sup>25</sup> Information is provided through the Freedom of Information Act (Offentlighedsloven). Decision by the Police of Copenhagen in Case No. 0100-10170-0309-22 (23 September 2022).

<sup>26</sup> Justitsministeriet, Status for indsatsen mod utryghedsskabende lejre (23 March 2021).

<sup>27</sup> Id.

<sup>28</sup> Justitsministeriet, Status for indsatsen mod utryghedsskabende lejre (27 June 2022).

<sup>29</sup> Information is provided through the Freedom of Information Act (Offentlighedsloven). Decision by the Ministry of Justice in Case No. 2021-0940-2116 (21 May 2021).

<sup>30</sup> Numbers deduced from Decision by the Ministry of Justice in Case No. 2021-0940-2116 (21 May 2021) requested through the Freedom of Information Act and from Ministry of Justice, Status on the work against intimidating camps (27 June 2022).

<sup>31</sup> Justitsministeriet, Status for indsatsen mod utryghedsskabende lejre (23 March 2021)



It remains uncertain why so few camp and zoning bans have been issued in 2021 and 2022. One reason may be the introduction of the *permanence* requirement in 2020. Another reason could be the COVID-19 pandemic with travel restrictions and lockdowns. However, even though few migrants experiencing homelessness have received camp bans during the last couple of years, some still experience getting fined for sleeping on the street. Instead of invoking the camp prohibition, the Police of Copenhagen seems to apply other sections of the Public Order Regulation, including section 7 prohibiting unauthorised persons from staying on stairs, in gates or entrances, in basements or attics, in gardens or outbuildings, on construction sites, or the like (Andersen, 2022). A precise number of bans according to section 7 of the Public Order Regulation has not been found.

### **The camp legislation may be discriminatory**

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Generally, one of the most prominent target groups of public fear and control measures in Europe is migrants. Migrants experiencing homelessness are particularly at the receiving end of criminalising measures aiming to repress ‘undesirables’ in public places (Tosi, 2007). In Denmark, the trend is similar. The preparatory works to the Danish camp legislation as well as the political debate in 2016 and 2017 show that the camp legislation was initiated because of issues related to migrants who were sleeping on the street in the larger cities of Denmark. The enforcement of the camp legislation is organised in a special Foreigner Control Section (Udlændingekontrolsektion) of the Police of Copenhagen, and, as documented, most of the punished individuals come from Romania, Bulgaria, and Albania. In individual court cases on the camp legislation, there appears to be no investigation into why there is such an imbalance in nationality and/or ethnic origin in the issuance of camp and zoning bans.

In a statement to the Danish National Police, the Foreigner Control Section has briefly explained how the camp legislation is enforced in Copenhagen.<sup>32</sup> A case begins when the Foreigner Control Section receives a report from a citizen or business about a possible intimidating camp and such reports do not establish the identity of individuals staying in the camp in question. The Foreigner Control Section will then undertake inspections based on the report and the identity of individuals staying in the camp will be established at such inspections – not before. According to the police, this practice details that nationality and ethnic origin are immaterial when

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<sup>32</sup> Information is provided through the Freedom of Information Act (Offentlighedsloven). Decision by the Police of Copenhagen in Case No. 0100-10170-0309-22 (23 September 2022).

camp and zoning bans are issued.<sup>33</sup> The line of reasoning by the police can be questioned since not all cases seem to be initiated because of reports from citizens and businesses. Numbers from the Foreigner Control Section document that more camp bans are issued than reports received.<sup>34</sup> No information has, however, been found on how the Foreigner Control Section has initiated the rest of the cases.

Altogether, these elements clearly indicate that foreign individuals experiencing homelessness have experienced differential treatment based on their nationality and/or ethnic origin in Denmark. More detailed knowledge about the way the Police of Copenhagen enforce the camp legislation is, however, necessary to finally conclude whether discrimination has taken place or not.

### **Studies show a general problem of ethnic profiling in the Danish police force**

There is limited research on possible discriminatory police behaviour in Denmark. A literature study about ethnic minorities and crime refers to older studies from 2000 and 2014 and conclude that discrimination against ethnic minorities cannot be ruled out (Nielsen et al., 2019a). The study indicates that ethnic minorities in Denmark are stopped more often and controlled through proactive policing.

A large 2022-study from the Danish Institute for Human Rights documents ethnic profiling by detailing that persons with a non-Danish ethnic background are more likely to be charged and arrested for a crime for which they are subsequently not convicted than persons of Danish ethnic background (Søndergaard, 2022). The study includes figures from Statistics Denmark covering the period 2009-2019 and includes rulings on 2.5 million charges and 270 000 arrests (Søndergaard, 2022). The report from the Danish Institute for Human Rights is the most comprehensive Danish study on ethnic profiling so far. It is a general study and does not provide information about possible ethnic profiling when it comes to issuing camp and zoning bans by the Police of Copenhagen. The study does, however, prove significant ethnic differences in the general meetings between individuals and the police (Søndergaard and Hussein, 2022).

<sup>33</sup> Information is provided through the Freedom of Information Act (Offentlighedsloven). Decision by the Police of Copenhagen in Case No. 0100-10170-0309-22 (23 September 2022).

<sup>34</sup> Id. Table deduced from the decision by the Police of Copenhagen:

	2018	2019	2020
Number of reports from citizens and businesses regarding 'intimidating camps'	169	61	20
Number of camp-bans issued	178	99	4

The daily activities of the police will necessarily include some profiling when the police perform investigations and categorise individuals according to certain characteristics. Profiling, however, risks constituting discrimination when the nationality or ethnic origin of individuals is taken as a starting point (Hussein, 2022). There is no definition of ethnic profiling in Danish law, but the European Commission against Racism and Intolerance defines profiling in the following way: “The use by the police, with no objective and reasonable justification, of grounds such as race, colour, language, religion, nationality or national or ethnic origin in control, surveillance or investigation activities.”<sup>35</sup>

Current complaint mechanisms about police dispositions and conduct do not receive a high number of cases of possible discrimination. In 2020, the Danish National Police identified fewer than five individual complaints of ethnic discriminatory police dispositions.<sup>36</sup> Dispositions differ from police conduct, which is dealt with by the Independent Police Complaints Authority. This authority handles the investigation and issues decisions in individual complaints of police misconduct. In the period from 2016 to 2020, there were altogether 133 complaints dealing with “racism/discrimination”.<sup>37</sup> Out of the 133 complaints, 49 were filed in 2020. In the year 2020, the Danish Independent Police Complaints Authority only found a reason to criticise police conduct in one case.<sup>38</sup>

Through the years, the Danish police have been criticised for discriminatory behaviour and it has been argued that a broader structural approach should be established to effectively combat possible discrimination within the police.<sup>39</sup> However, in 2021 in an open consultation in the Parliament, the then-Minister of Justice, Nick Hækkerup, declined to make an external evaluation of the extent of racial discrimination within the Danish police force.<sup>40</sup>

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<sup>35</sup> European Commission against Racism and Intolerance – ECRI, General Policy Recommendation No. 11 on Combatting racism and racial discrimination in policing (adopted on 29 June 2007), p.4.

<sup>36</sup> Rigspolitiet og Rigsadvokaten (2021), *Overblik – Klager over Politiets Dispositioner i 2020* [Overview – Complaints about dispositions by the Police in 2020], p.13.

<sup>37</sup> Interview with Charlotte Storgaard, Chief Executive, The Danish Independent Police Complaints Authority (23 February 2022).

<sup>38</sup> Id.

<sup>39</sup> Elvir Abaz, *Debat – Politiet skal tage racisme alvorligt – og holde sig fra dumsmarte bemærkninger*, Jyllands-Posten (10 June 2020). Politiken, *Politikere er dybt uenige: Har vi et problem med racisme og diskrimination i dansk politi?* (29 March 2021). Sikandar Siddique, *Kroniken – Anker Jørgensen og Olof Palme ville ikke tro deres egne ører, hvis de hørte, hvad Mette Frederiksens regering står for*, Politiken (5 June 2021).

<sup>40</sup> Open consultation in Parliament’s Legal Standing Committee on 1 June 2021 about discriminatory behavior among police officers.

## Concluding discussion – The Danish camp legislation violates international human rights

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Street-based sleeping in Denmark has historically been seen as a symptom of social problems. The thinking was that people turned to sleep rough because of social inequalities, marginalisation, and discrimination or because of drug addiction and/or mental health conditions, which should all be addressed in a framework of social and health policies (Borevi, 2021). The camp legislation of 2017 illustrates that a framework revolving around criminalisation and punishment has gained more ground (Borevi, 2021). It also shows that Denmark attempts to eliminate homelessness by directing efforts toward making PEH invisible, rather than meeting their needs. This is done by de-socialising the problem of camps in public urban spaces and reducing it to a principle of order (Tosi, 2007).

Public spaces are an essential part of the daily lives of PEH. This is particularly the case for people who spend their nights on the street. People need an adequate, safe, and stable physical space to develop and carry out basic functions, such as sleeping, washing, and socialising (Ferrerias and Evangelista, 2018). When homelessness is penalised, it reflects deep-rooted prejudices about PEH. As underlined by the then Council of Europe Commissioner for Human Rights, Nils Muiznieks, being homeless is not an individual choice:

Living and sleeping rough in public spaces constitutes a huge risk to one's health, social well-being and security. Everyone, including homeless people, would prefer adequate and safe housing if it were available and affordable. (Evangelista et al., 2013, p.9)

The UN Special Rapporteur on extreme poverty and human rights uses the expression “penalization measures” to refer to policies, laws, and administrative regulations used to punish, segregate, and control people living in poverty.<sup>41</sup> The logic underpinning such punitive regulations is to safeguard and protect the public from the actions of PEH inhabiting public spaces, which in turn can cleanse city centres and attract capital (Tosi, 2007). Such criminalisation does, however, violate several international human rights.

This is also the case with the criminalisation in Denmark of sleeping in intimidating camps. It disrespects the human rights of persons experiencing homelessness or living in extreme poverty. It follows from legally binding international and European human rights conventions that the following rights are violated:

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<sup>41</sup> Special Rapporteur on extreme poverty and human rights, Report on extreme poverty and human rights. UN Doc. A/66/265 (4 August 2011), par. 3.

- Right to life and human dignity;
- Right to freedom from cruel, inhuman, and degrading treatment;
- Right to freedom of movement;
- Right to security of persons and freedom from arbitrary arrest and detention;
- Right to privacy and family life; and
- Right to adequate housing

In essence, violations of most of these human rights stem from a refusal to guarantee PEH their universal right to adequate housing. That is, if governments invested in adequately housing unsheltered people, there would be no homelessness and no push to criminalise it (Tars et al., 2021).

UN institutions have repeatedly adopted specific guidelines condemning the criminalisation of homelessness. The Danish camp legislation goes against these and has been directly criticised by the Committee on Economic, Social and Cultural Rights, which in 2019 called upon Denmark to repeal the legal provisions criminalising conduct associated with poverty and lack of adequate housing, such as begging and street-based sleeping.<sup>42</sup> Also, the High Commissioner for Human Rights in her follow-up to the Universal Periodic Review in 2022 encouraged Denmark to repeal “the legal provisions criminalising conduct associated with situations of poverty and of deprivation of the right to adequate housing, such as begging and rough sleeping.”<sup>43</sup>

The Danish prohibition of ‘intimidating camps’ and the legal basis to issue zoning bans undoubtedly restrict the enjoyment of the rights of PEH in Denmark. In general, it is permitted to limit human rights if the State has legitimate grounds like public safety, public order, and public health or because of the rights and freedoms of others. Such restrictions must meet standards of legality and necessity. Any restrictive measures must therefore be appropriate, and limitations must not be more severe than necessary.<sup>44</sup>

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<sup>42</sup> The Committee on Economic, Social and Cultural Rights, Concluding observations on sixth periodic report of Denmark, UN Doc. E/C.12/DNK/CO/6 (12 November 2019), par. 47 and 48(c).

<sup>43</sup> Letter from High Commissioner for Human Rights, Michelle Bachelet to Minister of Foreign Affairs Jeppe Kofod (21 February 2022) on the implementation of international human rights obligations.

<sup>44</sup> The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (E/CN.4/1985/4, annex) and the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (E/CN.4/1987/17, annex).

The primary objective of the human rights framework is not to permit limitations by governments. It is to protect the rights of individuals. Therefore, Denmark has the burden of demonstrating that the restrictions of the camp legislation are legitimate, reasonable, and proportionate to the aim sought. Restrictions that do not conform to these requirements constitute violations of human rights norms.<sup>45</sup>

When adopting the Danish camp legislation, the government argued that camps gave rise to intimidation and the disturbance of public order. Camps were also seen as a threat to the health and safety of individuals or the public. These criteria may be legitimate and reasonable. However, considering the severe marginalising impact of the criminalisation on individuals sleeping on the street, particularly on the individuals who are punished for sleeping in camps, the criminalisation cannot be deemed proportionate. In conclusion, the Danish camp legislation violates international human rights and should be repealed.

The prohibition of discrimination is central to both international human rights law and EU law. Besides violating several human rights, the enforcement of camp and zoning bans, therefore, risks infringing the international and European prohibitions of discrimination. The criminalisation of homelessness often targets people who are identified as poor based on their income, looks, and appearance. In Denmark, the impact of criminalisation is particularly experienced by migrants experiencing homelessness, and Danish practice illustrates a severe risk that the camp legislation is enforced in a discriminatory manner. It, therefore, constitutes a potential human rights violation in the form of discrimination if camp and zoning bans are not justified by the concrete behaviour of an individual but by the person's nationality, ethnicity, social status, or affiliation with a socially disadvantaged group.

The Danish police are governed by an unwritten principle of equality applicable under general administrative law. The general principle means that the police must treat equal matters in full equality before the law. More specifically, there is a Police Act regulating the activities of the Danish police force. This Act, however, does not include a prohibition of discriminatory profiling. The Danish Act on Ethnic Equal Treatment implements the EU Racial Equality Directive No. 2000/43/EC, and even though the Act is supposed to have a broad scope, practice illustrates that it is unclear whether it encompasses law enforcement activities by the police (Hussein, 2022). The Act on Ethnic Equal Treatment seems to have the same gaps as the

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<sup>45</sup> Special Rapporteur on extreme poverty and human rights. Report on Extreme poverty and human rights. UN Doc. A/66/265 (4 August 2011), par. 20.

Racial Equality Directive, which allegedly does not cover the exercise of public authority, including by law enforcement.<sup>46</sup> Efforts are underway by the European Commission to propose new legislation to fill those gaps.<sup>47</sup>

Danish law, therefore, does not include a specific rule prohibiting discrimination when the police exercise public authority and this has been criticised by the UN Committee on the Elimination of Racial Discrimination stating its concern about the lack of a clear prohibition of racial profiling.<sup>48</sup> The Committee has recommended Denmark to ensure “that racial profiling is clearly defined and prohibited in legislation and that clear operational guidelines to prevent racial profiling during police stops, identity checks and other police measures are available to police [...]”.<sup>49</sup> To target such differential treatment and profiling within the police, discrimination in the daily works of the Danish police force should be unambiguously prohibited.

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<sup>46</sup> European Commission, *Report from the Commission to the European Parliament and the Council on the application of Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ('the Racial Equality Directive') and of Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation ('the Employment Equality Directive')* (19 March 2021). EU Doc. COM(2021) 139 final, p. 19.

<sup>47</sup> European Commission, *Communication from the Commission to the European Parliament, The Council, The European Economic, and Social Committee and the Committee of the Regions – A Union of equality: EU anti-racism action plan 2020-2025*, COM (2020) 565 final (18 September 2020), p. 4. European Commission, *Public consultation – Addressing possible gaps in the Racial Equality Directive* (17 January 2022 – 11 April 2022).

<sup>48</sup> Committee on the Elimination of Racial Discrimination, *Concluding observations on the combined twenty-second to twenty-fourth periodic reports of Denmark*, UN Doc. CERD/C/DNK/22-24 (1 February 2022), par. 20.

<sup>49</sup> *Id.*, par. 21.

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