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# Punitive Populism in Practice: The Criminalisation of Homelessness in Hungary

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► **Abstract** *The criminalisation of homelessness in Hungary took a significant turn in 2010 with the introduction of the offence of using a public space as a habitual dwelling, better known as the criminalisation of street-based sleeping. This paper, after presenting the current legislation, will introduce the theoretical background of the criminalisation of homelessness, namely social exclusion, exclusive criminal policy, and punitive populism. It is argued that the offence of criminalising homelessness is not only the result of a severe criminal policy, but also a manifestation of punitive populism. The second half of the paper examines the practice that has developed since 2018, using statistical data and fieldwork. The tables show that although since 2018 it is illegal to use a public space as a habitual dwelling in the whole territory of Hungary, the authorities apply this offence only on seldom occasions. Using fieldwork, interviews were conducted with police officers and social care workers, mapping the exact process of the procedure, looking for reasons why the offence is rarely applied, and the causes for the spikes in the number of procedures in certain periods.*

► **Keywords** *homelessness, criminalisation, Hungary, punitive populism*

## Introduction: Criminalisation of Homelessness in Hungary

In Hungary, the criminalisation of homelessness<sup>1</sup> became a significant concern in December 2010, when a public order regulation was changed and residing in public places became a criminal offence. The regulation was later implemented into the Act on Offences, which has been adopted in the meantime (Act on Offences, 2012). The Commissioner for Fundamental Rights (ombudsman) has initiated an *a posteriori* review challenging the provision in front of the Constitutional Court. The Commissioner argued that the purpose of the regulation is not to protect public order but to force people experiencing homelessness to use social services, which violates the right to human dignity enshrined in the Hungarian Constitution, the Fundamental Law of 2012. In 2012, the Constitutional Court ruled that the legislation was unconstitutional and annulled the law in its decision 38/2012. (XI. 14.)(38/2012. (XI.14.), 2012).<sup>2</sup>

The legislator subsequently amended the Constitution to pre-empt another decision of the Constitutional Court condemning the criminalisation of homelessness. According to the Fourth Amendment to the Fundamental Law amendment introduced in 2013, a new Article XXII (3) of the Fundamental Law stated that a local authority may, *in the interests of public order, public safety, public health and the protection of cultural values, declare unlawful using a public space as a habitual dwelling in respect of a specific part of public space*. Overwriting decision 38/2012. (XI. 14.) of the Constitutional Court<sup>3</sup>, as of 15 October 2013, according to the amendment of the law, *using a public space as a habitual dwelling* has again become punishable by a fine (Act on Offences Section 179/A.) According to the legislation, non-payment of the fine was to be converted into a detention. Therefore, between 2013 and 2018, if a person experiencing homelessness “committed” the offence of *using a public space as a habitual dwelling*, they had to pay a fine to avoid detention.

Five years later, in 2018, the Fundamental Law was amended again and *using a public space as a habitual dwelling* has become uniformly prohibited everywhere in Hungary. In accordance with the 2018 amendment to the Fundamental Law, Section 178/B of the Act on Offences defines the offence of *using a public space*

<sup>1</sup> In this paper, the author uses the term criminalisation of homelessness in its narrowest sense, to refer to the criminalisation of *using a public space as a habitual dwelling*, *‘életvitelszerű közterületen tartózkodás’* in Hungarian.

<sup>2</sup> For a detailed analysis on the Constitutional Court’s decision, see the study of Attila Láposy and István Ambrus. (Láposy and Ambrus, 2021).

<sup>3</sup> It is not unprecedented in post-2010 Hungarian legislation to amend laws, even the Fundamental Law, for political purposes. This phenomenon has been addressed in depth by several authors in recent years (Halmay, 2018; Drinóczi and Bień-Kacala, 2019; Kazai, 2019).

as a *habitual dwelling*. A number of judges filed motions to the Constitutional Court challenging the legislation. The Constitutional Court examined the issue again in 2019, but in its decision of 19/2019. (VI. 18.) it did not annul the provision. At the same time, it established, as a constitutional requirement, that the sanction for *using a public space as a habitual dwelling* could be lawfully applied if the person who is experiencing homelessness' placement in the social service system was verifiably guaranteed at the time of the offence (19/2019. (VI.18.), 2019). The Constitutional Court in 2019 decided on almost identical legislation as in 2012, but came to a different outcome. There are some possible explanations for this, such as the change to the Fundamental Law and the change in the composition of the Constitutional Court. This judgement is the subject of intense criticism and raises significant questions about the political loyalty of the Constitutional Court to the governing party (Chronowski and Halmai, 2019).

Since 2018, imposing a fine is not possible anymore, but using a public space as a habitual dwelling is punishable by detention or community service. The regulation states that, within 90 days, the police may issue a warning for the first three offenses. On the fourth occasion, it is mandatory for the police to start an offence procedure.

It is also important to note that the definition of a habitual dweller is vaguely defined in Section 178/B. paragraph (5). According to this provision, "use as a habitual dwelling shall be construed to mean all behaviours on the basis of which it can be established that the public space is used as a dwelling for long-term stay **without the intention of returning** to any domicile, place of residence or other accommodation and the circumstances of the use of the public space or the **behaviour suggest** that the activity generally carried out in the public space used as domicile, including, in particular, sleeping, bathing, eating and animal keeping, is carried out recurrently at **short intervals** and regularly in the public space by the perpetrator"(emphasis added by the author). Some parts of this definition are ambiguous: there is no further explanation of how the authorities decide on the habitual dwellers intention of returning to any domicile, no further description of how a behaviour can suggest that the activities mentioned are generally carried out in a public place, and it is also unclear how long a "short interval" can last.

The provision does not describe the detailed procedure of the police, but the exact process is being governed by an internal police instruction which is not available to the public. No comprehensive research on the application of the law has been carried out since 2018. This paper is about the criminalisation of homelessness in Hungary. After presenting the offence of *using a public space as a habitual dwelling*, the criminological context is introduced. Following this is an examination of the

application of the offence through statistical data and fieldwork interviews. A description of the methodology in more detail follows at the beginning of the section on empirical research.

This paper will first introduce the theoretical background of the criminalisation of homelessness and then use statistical data analysis and field research to examine the application of the law.

## Analytical Framework

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The analytical framework of this article presents social exclusion and punitive populism. However, it is important to refer to previous debates that have appeared in the *European Journal of Homelessness*, which have discussed different aspects of the criminalisation of homelessness. O'Sullivan (2012) argues that European states are increasingly managing homelessness through punitive measures—such as anti-begging laws and restrictions on public space usage—reflecting a broader policy shift toward exclusion and control rather than social inclusion. This analysis is complemented and expanded by several international contributions in Volume 7 of 2013, which demonstrate how similar dynamics play out across different contexts. Gaetz (2013), drawing on Canadian data, shows how punitive responses push individuals experiencing homelessness deeper into the justice system, reinforcing marginalisation, while Sylvestre (2013) emphasises that such measures are often rooted in neoliberal political agendas that prioritise regulation and surveillance over social support. Dyb (2013) discusses the Nordic welfare states, showing that even in these traditionally supportive environments, there is a noticeable drift toward punitive policy. Doherty (2013) contributes a spatial perspective, arguing that the governance of public space is central to the criminalisation of homelessness, with urban authorities aiming to render poverty invisible in cityscapes, while Mahs' (2013) article examines the intersection of punitive measures and welfare state interventions concerning homelessness. The studies illustrate a cross-national trend of instead of responding to homelessness as a complex social issue, governments increasingly treat it as a matter of public order, resorting to criminal law and exclusionary urban policies that deepen social marginalisation.

## Social exclusion

The phenomenon of homelessness cannot be understood without exploring the notion of social exclusion, and therefore any solution to the problem of homelessness requires a complex approach to the problem. To this day, there is no consensus on what the exact definition of homelessness is, although it can play an important role both in defining who is included in the group and in policy decisions (Pik, 1995). There are several interpretations, the most common of which defines homelessness

in relation to housing, the lack of it, and the factors that determine the quality of the housing. Some interpretations, on the other hand, focus on personality, psychological components, lack of relationships, lack of homeliness, and adult or childhood traumas. Other interpretations describe homelessness as a complex life situation caused by social exclusion, marginalisation, and loss of existence (Győri, 2020). The European Federation of National Organisations Working with the Homeless (FEANTSA) is a European NGO with the aim of eradicating the phenomenon of homelessness. It was founded in 1989 and brings together more than 130 member organisations from 27 Member States. FEANTSA has developed the ETHOS (European Typology of Homelessness and Housing Exclusion) and ETHOS Light typologies, aiming to provide a common language on homelessness. ETHOS is a comprehensive framework for experts and academics and ETHOS Light is intended as a harmonised definition of homelessness for statistical purposes (FEANTSA, 2021). ETHOS divides homelessness into four categories, from the narrowest to the broadest. These are rooflessness, houselessness, insecure housing, and inadequate housing.

In Hungary, homelessness became a significant and visible phenomenon after the regime change. Unemployment resulting from the loss of full employment also had a severe impact on poverty. In addition, the State radically withdrew from housing subsidies during these years: between 1989 and 1995, the share of housing subsidies in GDP fell from 8.6% to 1.8% (Misetics, 2017). To analyse housing poverty and the resulting homelessness, we need to look at the conceptualisation of homelessness and the criminological concept of social exclusion.

Ferge (2000), a Hungarian sociologist, argues that the advantage of the notion of exclusion is that it gives a direct sense that it is not only about material poverty, but also about exclusion from other sources, opportunities, actions, rights, in other words, it is a complex problem. She believes that exclusion is, in fact, a consequence of social disintegration and ultimately a dysfunction of society. According to her, social exclusion is a social phenomenon and responsibility: the excluded are excluded from society (Ferge, 2000). According to Lévy (2006), exclusion is a dynamic, multifaceted process in which those affected are completely or partially excluded from the social, economic, political, or cultural opportunities, organisations, and institutions that serve social integration. Lévy (2006) also sees it as a social phenomenon based on growing inequality and insecurity. Bradley (2013) defines social exclusion as a dynamic process characterised by marginalisation, social isolation, dislocation, disconnection, and vulnerability. From each of these definitions of exclusion, we can see that exclusion should be seen as a complex process, composed of several factors and based on growing inequalities.

### ***Exclusive criminal policy***

Criminal policy is broadly defined as the set of objectives and tasks undertaken by the State to deal with crime, offenders, and other crime-related phenomena, and the design and operation of institutions to deal with them. The term refers to both the knowledge base and the policy. In late modern criminal policy, we can distinguish between exclusive and inclusive models. The two models are almost nowhere to be found in their pure form, but rather at the two ends of a scale, with criminal policies tending to resemble one or the other (Borbíró, 2016). While the basic principle of inclusive criminal policy is inclusion and the social integration of problematic social groups and individuals, exclusionary criminal policy is characterised by the control and exclusion of such groups and individuals. The exclusive model is also characterised by, amongst other things, symbolic language, the dichotomy of 'us' and 'them', the use of criminal law to address social problems, extensive criminalisation, active formal regulation of behaviour, and more severe penalties. The impact of exclusive criminal policy is also reflected in social policy, as the role of social policy varies depending on what activities are criminalised by the legislator, in what circumstances, and how. Exclusive criminal policy narrows the scope for social policy in favour of punishment and criminal law, which therefore relies more on instruments of control rather than support (Borbíró, 2016).

### ***Punitive populism***

In 2002, Gönczöl highlighted a paradigm shift in the United States, where social policy was confined within the framework of criminal policy (Gönczöl, 2002). Later, Ferge (2014) observed a similar trend, noting that the State was replacing the fight against insecurity, poverty, and growing inequality with a punitive policy. Gönczöl later encapsulated this shift as 'punitive populism', describing it as a process whereby the ruling political elite reacts to public pressure in a simplistic, spectacular, and a quick-win manner. Rather than addressing serious social conflicts in a substantive way, these elites resort to the extension of social control as a power engineering solution to gain votes (Gönczöl, 2015). Since the 1980s, the concept of punitive populism has gained traction in criminology, explaining the tendency to respond to crime and deviance not through professional social policy, but through increasingly harsh criminal policy measures. These responses often include disproportionate sentencing, the expansion of punishable acts, and the criminalisation of broader segments of the population.

Roberts et al. (2003) identify three key features of punitive populism: there is an excessive focus on how attractive certain actions are to voters; a disregard—whether intentional or negligent—for the real-world impacts of punitive policies; and reliance on oversimplified assumptions about public opinion, often derived from flawed methodologies.

There is a large overlap between the instruments of the exclusive criminal policy model and the instruments of punitive populism. However, there are two major differences between the two: the prominent role of the media and the preparation and professionalism of criminal policy. As to the first important difference, which Gönczöl (2022) highlights, populist power, through its rhetoric and the media it controls, creates new scapegoats (such as the migrants or the homeless), and constantly stirs up public anger, thereby framing public discourse. The public opinion it has inflamed naturally demands greater severity (Gönczöl, 2022).

In Hungary, where the majority of media outlets are under government control, this mechanism is particularly effective. The State uses its media dominance not only to disseminate propaganda and manipulate regulatory bodies (Nemeth, 2024), but also to dominate public discourse through tools like billboard campaigns, free pro-government publications, and 'national consultations'. These consultations frame public opinion through biased questions and reach the entire population. Social media offers some degree of pluralism, but political messages often remain confined within ideological bubbles (Polyák et al., 2022).

Referendums have also been co-opted to serve similar purposes. Rather than facilitating democratic participation, they are often initiated by the Government to reinforce its policy agenda. For example, the 2016 referendum against migration and the 2022 referendum on anti-LGBT legislation served as tools to mobilise support and focus public attention on government-defined issues. As Tóth (2022) argues, in the Hungarian context, referendums function less as instruments of democratic input, and more as tools for consolidating authoritarian governance.

The second aspect, by which the instruments of exclusive criminal policy can be distinguished from punitive populism, is the quality of the process of legislation. This is expressed, among other things, in the lack of preparation of legislation and the absence of impact assessments (Kunos, 2023). Research shows that after 2010, the public negotiations required by the legislation have largely evaporated. This has been reflected in the abolition of institutionalised consultation forums, which have been replaced by new ones. At the same time, the Government has created its own partners, with which it only formally consults (Gajduschek, 2016). It should also be noted that since 2010, the governing party coalition has held two-thirds of the seats in the Hungarian parliament almost uninterruptedly. Consequently, no support other than that of the governing party coalition is needed, even on crucial issues requiring qualified majorities. This has shortened parliamentary debates considerably, as the will of one political force can be fully exercised. Instrumentalised legislation is a general problem in Hungary, which is also a serious problem for the rule of law. Kazai (2019) examines the instrumentalisation of legislation in Hungary by analysing the flaws of the Hungarian parliamentary law-making and the wide-range of proce-

dural deficiencies. Bárd and Kazai argue that in the case of Hungary, the formal elements of the rule of law are frequently neglected as “the lack of preliminary consultations and impact assessments during lawmaking, the enactment of significant legislative reforms in accelerated procedures without any adequate justification, the adoption of ad hominem laws, or the unclarity and unpredictability of legislation are all manifest violations of the formal understanding of the rule of law” (Bárd and Kazai, 2022, p.165).

The lack of preparation of legislation, the absence of impact assessments and consultation, and the absence of substantive parliamentary debate in the area of criminal legislation are particularly problematic, as the most severe sanctions are attached to breaches of these rules.

As mentioned above, the current text of the offence of *using a public space as a habitual dwelling* was adopted in 2018. The impact assessment sheet of the offence is only one page long. The legislation was passed without the involvement of civil society organisations, and moreover, despite their protests (Szabálysértési Munkacsoport, 2018). The largest Hungarian NGO working on homelessness, Menhely Foundation, was later called upon by the Constitutional Court to express its opinion. The Foundation pointed out that the capacity of homeless services is not sufficient to accommodate people living in public spaces (Menhely Alapítvány, 2018). In the meantime, however, there have been several media reports in the captured media to justify the legislation.<sup>4</sup> Overall, it can be concluded that the criminalisation of homelessness is not only a textbook example of a legislation of exclusive criminal policy, but also the manifestation of punitive populism. In this case, punitive populism uses exclusive criminal policy measures as instruments, resulting in measures such as the criminalisation of homelessness.

### ***Implementation of the legislation***

#### **Statistical analysis of the application of the law**

Since the research began, requests for statistics from the police on *using a public space as a habitual dwelling* have been lodged. The latest data used for this study is until September 2024. A summary Table is prepared below showing the sanctions for *using a public space as a habitual dwelling*.

<sup>4</sup> The captured media has sought to justify the criminalisation of homelessness on a number of occasions during the 2018 change in legislation. Hirado.hu is the online platform of public media. See e.g., : <https://hirado.hu/belfold/belpolitika/cikk/2018/06/14/a-kormany-intezkedesei-a-hajlektalan-emberek-meltosagat-szolgaljak>; <https://hirado.hu/belfold/kozelet/cikk/2018/10/02/magyarorszag-kiemelt-figyelmet-fordit-a-hajlektalanokra>; <https://hirado.hu/belfold/kozelet/cikk/2018/10/14/az-ellatorendszer-jelenti-a-valodisag-segitseget-a-hajlektalanoknak>; <https://hirado.hu/belfold/kozelet/cikk/2018/10/11/fulop-a-tarsadalom-egesz-et-szolgalja-a-hajlektalanokrol-szolo-jogszabaly>.



**Table 1: Using a public space as a habitual dwelling between October 15, 2018 and September 14, 2024**

Using a public space as a habitual dwelling	2019	2020	2021	2022	2023	2024. I.-IX.	2019-2024. IX.
On-the-spot warnings	345	243	210	174	182	394	1 548
Number of prosecutions	5	3	2	4	6	9	29
<b>Detentions</b>							
Number of detentions	0	0	0	0	2	3	5
Total length of detentions (day)	0	0	0	0	30	25	55
<b>Community services</b>							
Number of community service penalties applied	1	0	0	1	0	1	3
Total extent of community services applied (hours)	49	0	0	50	0	28	127

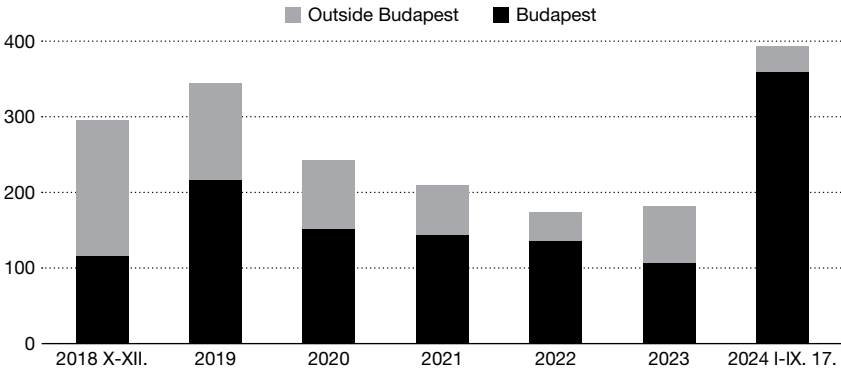
As the Table shows, the police only rarely initiate an offence procedure for *using a public space as a habitual dwelling*, and it is even rarer for it to result in a sanction. The number of on-the-spot warnings issued is much higher, therefore monthly data on warnings issued were requested to see at which time of the year the number of warnings increases, which are summarised in the Table below.

**Table 2: On-the-spot warnings for using a public space as a habitual dwelling between October 15, 2018 and September 17, 2024**

On-the-spot warnings for <i>using a public space as a habitual dwelling</i> (2018. 10. 15. – 2024. 09. 17.)												
Year / Month	number of on-the-spot warnings											
	I.	II.	III.	IV.	V.	VI.	VII.	VIII.	IX.	X.	XI.	XII.
2018										218	63	15
2019	22	18	14	10	16	7	90	33	54	30	28	23
2020	9	10	15	9	2	7	26	15	37	90	21	2
2021	10	8	6	3	9	8	46	53	10	17	21	19
2022	11	12	9	5	27	13	11	10	45	20	10	1
2023	6	6	2	4	16	5	10	10	25	21	42	35
2024	48	79	88	44	36	20	26	23	30			

The number of warnings issued by area distribution were also reviewed. The data is summarised by the number of warnings issued for *using a public space as a habitual dwelling* in Budapest and the number of warnings issued outside Budapest (Figure 1). It is clear from the statistics that the police only rarely initiate a proceeding for *using a public space as a habitual dwelling*. After the entry into force of the current legislation, in the Autumn and Winter 2018, the number of cases was high for a short period. However, in nearly six years since then, the offence has been used very rarely. Detention and community service sanctions were imposed even less frequently (see Table 1).

**Figure1: Using a public space as a habitual dwelling in and outside Budapest**



The 2018 data are less relevant for the analysis of the application of the law, given the constitutional requirements of the 2019 Constitutional Court decision. In October 2018, a significantly higher number of warnings (218 cases), and the highest number of offence proceedings initiated (7 cases), were observed compared to later years. However, from 2019, the constitutional requirement of the Constitutional Court came into force, according to which offence proceedings can only be initiated if the person's place in the social care system was ensured at the time of the offence. Consequently, the subsequent analysis focuses on data from 2019-2024.

The number of on-the-spot warnings increased between July and September 2019, with a peak in July 2019, and then again between November 2023 to March 2024, with peaks in February and March (see Table 2). There is another peak in October 2020. The number of offence procedures remained persistently low.

The data series shows that from 2019 onward, each year, most warnings were issued in Budapest (see Figure 1). Taking into account that, according to the Central Bureau of Statistics' data, Budapest's population share in relation to the national one ranged between 17.5-18% in the period under review, the number of proceedings in Budapest is extremely high (KSH, 2024).

There are no accurate figures on how many people experiencing homelessness live in Hungary, nor on how many spend their nights in public spaces. The February Third Working Group conducts a survey of people experiencing homelessness every year. However, this is a qualitative survey conducted on a single day of the year, making it difficult to estimate the total number of people experiencing homelessness. For the 2023 survey, a total of 7 268 people experiencing homelessness provided evaluable responses, of whom 1 530 lived in public spaces (“2023. évi Gyorsjelentés a Február Harmadika Munkacsoport éves adatfelvételéről”). In October 2024, with the help of volunteers, the Shelter Foundation sought to gather information on the number and conditions of people experiencing homelessness. In the October 2024 survey, 461 people were recorded only in the centre of Budapest, as well as 31 empty sites that were apparently used as sleeping places for people without shelter (“Minden ember számít!” – Budapesti hajléktalan “népszámlálás” 2024 októberében”).

## Methodology of the Empirical Examination

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To explore how the dynamics of punitive populism and exclusive criminal policy manifest in practice, I conducted interviews with key actors involved in the procedure. These interviews provide empirical insight into how political narratives, media influence, and institutional practices shape everyday decision-making and professional attitudes within the system, by showing how the application of using a public space as a habitual dwelling works in practice. By linking the theoretical framework to firsthand experiences, the analysis helps reveal how punitive and exclusionary approaches influence the everyday workings of the criminal justice system.

Based on the analysis of statistics, several research questions were identified. This research focuses on two main issues. Firstly, the justification for the low number of cases for *using a public space as a habitual dwelling* compared to visible street-based sleeping. As part of this, it was also the intention to find out what explains the increase in the number of warnings and procedures in a given period. Information was also needed on how the procedure is implemented in practice and on the protocol used by the police to decide whether to initiate an offence proceeding.

The second research question concerns the impact of criminalisation. In this context, there was interest in the effectiveness of the use of the offence to tackle homelessness, and how and in what proportion control and support are present in the established practice. In order to do this, the cooperation between the police and the social care system specialised for people experiencing homelessness was

examined. In addition, it was intended to gain a better understanding of the phenomenon of homelessness in public spaces and to explore the reasons for choosing or refusing the homeless care system.

The fieldwork was based on the public interest data on *using a public space as a habitual dwelling* described above. Since the local distribution of the procedures seemed to be predominantly in Budapest, the examination was limited to Budapest.

The research questions were approached from two directions. It was intended to answer questions about law enforcement through interviews with police officers and fieldwork in social care. With permission, the researcher recorded 8 semi-structured interviews with police officers. In addition, the researcher interviewed the head of the street service of a social care institution, and then took part in two-night visits to the area with the social workers of the institution, together with the officers of the local public area surveillance. All the interviews (both the police and the social sphere ones) were semi-structured interviews. The point of these interviews was to understand the application of the offence of *using a public space as a habitual dwelling*.

### ***Police interviews***

During the fieldwork, semi-structured interviews with police officers were conducted. The researcher was able to interview eight professionals who were involved in the practice of the offence of *using a public space as a habitual dwelling* and who had different perspectives on its application. For this reason, the interviewees included specialists in administration and law enforcement management, senior police officers in the public order department, a staff commander in charge of patrols, and patrol officers.

As the purpose of these interviews was to better understand the application of *using a public space as a habitual dwelling*, the questions asked aimed to find out what the procedure itself looks like, how long some procedural elements take, and whether there is a protocol for when a warning is applied. There was also interest in knowing what the cooperation between the police and the social sector looks like from the police perspective. The interviewees were asked if they had experience of such procedures and what they experienced in terms of whether the

proceedings were initiated more on formal detection or on citizen notification in order to understand if there is an incentive to enforce the offence and under what conditions other means (e.g., security measures) are used.<sup>5</sup>

### ***Data collection in street outreach services***

The aim of the interviews was to find out what factors in their practical experience led people experiencing homelessness to choose homeless social care and what their experience is of the application of *using a public space as a habitual dwelling*. For this purpose, a social service institution was contacted, where the head of the street social workers was interviewed and the researcher was able to participate in two-night visits with the street social service and the public area surveillance. The joint night-time visits of the street social services and the public area surveillance were piloted in the summer of 2024, with two social workers and two officers of the public area surveillances working together on one visit. This gave the researcher the opportunity to talk to all four staff members of the street service and observe their work.<sup>6</sup>

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<sup>5</sup> The interviews were based on the following questions:

1. *What is the procedure to be followed by the police officer when initiating an offence procedure for using a public space as a habitual dwelling? How long does it take to initiate the offence procedure and how long is the procedure itself?*
2. *Is there a uniform internal protocol on the cases in which the police initiate proceedings for using a public space as a habitual dwelling? If so, what is the substance of the protocol? If not, what criteria does the police officer apply in deciding whether to initiate proceedings or to issue a warning?*
3. *What criteria does the police officer take into account when repeating warnings? At what intervals does the police officer issue warnings?*
4. *Is there regular cooperation between the police and the relevant social partners? If so, please provide details.*
5. *How often do you take action on the grounds of using a public space as a habitual dwelling? Are these measures typically taken on the basis of own observations, complaints or referrals?*
6. *How is the initiation of offence proceedings for using a public space as a habitual dwelling reflected in the police performance evaluation?*
7. *When does the police apply security measures? Is the security measure reflected in the police performance evaluation?*
8. *Is it possible to take someone to a homeless shelter as a coercive measure?*

<sup>6</sup> The rules for the operation of the street service are laid down in the SZCSM (Ministry of Social and Family Affairs) Decree 1/2000 (I. 7.) on the duties of social institutions providing personal care and the conditions of their operation. In Budapest, there are 37 street services specialised for people experiencing homelessness, which are connected by Menhely Foundation's Dispatching Service. The Dispatching Service establishes contracts with the street services. Four street services are operated by the social service institution I have researched.

In these interviews, the goal was to learn about the experiences of social workers, find out what their experiences of using homeless services are, and to understand from the social workers' side how the social sector and the police work together and how they see the application of *using a public space as a habitual dwelling* from the social sector's side.<sup>7</sup>

### ***Examination of the public area surveillance authorities***

In Hungary, municipalities may establish public area surveillances. These bodies are governed by Act LXIII of 1999 on public area surveillances. Public area surveillances are responsible for the public order and cleanliness, including controlling parking vehicles, the maintenance of public transport facilities, and the protection of municipal property. Public area surveillances employ inspectors. These inspectors have powers such as imposing fines for several offences. The Act on Offences specifies the cases in which the inspectors have powers. They have no powers to handle the offence of *using a public space as a habitual dwelling*, but they can impose fines for activities such as begging or sanitation offences.

Initially, it was not intended to conduct any research regarding the public area surveillances, but both the police and the social workers suggested that examining the public area surveillances is necessary for understanding how authorities handle homelessness. Public data from the public area surveillances of Budapest's inner districts was requested, and, where available, their reports concerning homelessness have been analysed.

## **Conclusions Based on the Research**

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### ***The reasons for the low number of proceedings***

As seen in Table 1, there are only a few proceedings regarding *using a public space as a habitual dwelling*. During fieldwork, the researcher attempted to find the reasons behind this phenomenon. There are at least six reasons why the level of low enforcement is low, summarised below.

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<sup>7</sup> The interview questions were:

1. In your experience, what are the typical reasons, situations, or forms in which homeless individuals choose to engage with the homeless care system, or conversely, opt not to use it?
2. In your practice, have any persons entered the care system due to the offence of *using a public space as a habitual dwelling*?
3. Do you have regular contact with the local police authority? If so, could you please describe the nature of this interaction. If not, do you consider such contact necessary, and for what reasons?
4. Please provide any other information you consider relevant to this subject.

### 1. *Security measures*

If a person experiencing homelessness has a health problem, the police will use security measures.<sup>8</sup> In this case, no offence will be prosecuted and the police officer in charge will call an ambulance. It is also called a security measure if a person living in a public place is taken by the police to a shelter for the homeless ('appropriate social institution'). In this case, a specific crisis car run by the police used for this purpose will transport the person experiencing homelessness to the social institution.

### 2. *The wording of the regulation*

Section 178/B. paragraph (5) of the offence elaborates on the definition of a habitual dweller. Police say that this definition is the main obstacle to the procedures. According to Section 178/B. paragraph (5) "use as a habitual dwelling shall be construed to mean all behaviours on the basis of which it can be established that the public space is used as a dwelling for long-term stay without the intention of returning to any domicile, place of residence or other accommodation and the circumstances of the use of the public space or the behaviour suggest that the activity generally carried out in the public space used as domicile, including, in particular, sleeping, bathing, eating and animal keeping, is carried out recurrently at short intervals and regularly in the public space by the perpetrator." Part of the definition states that a habitual dweller is someone who has no intention of returning to any domicile. According to the police, this cannot be established in many cases. A lot of people living on the streets have an address, and when asked, they often state that they have an intention to return to their domicile. Another part of the definition relates to the circumstances of a habitual dweller. Based on the examination of the circumstances, habitual dwelling cannot be established since there are many people experiencing homelessness with only a few belongings, which they carry with themselves. The experience from within this research, however, is that the textualist interpretation of the law is more likely to be based on structural problems of the application of the regulation explained below.

### 3. *Unsuccessful court proceedings*

As shown in Table 1, there are only a few offence proceedings, but there are even less cases where the court imposes a penalty. The interviewees at the police stated that they feel that the criminalisation of homelessness is not supported by the criminal court. This claim can be supported by the fact that until September 2024, the criminal court had imposed detention in only five cases and community service in three cases, meaning that in the first nearly six years of application of the provision, the court had imposed substantive sanctions in a total of eight cases. In

<sup>8</sup> See: Act XXXIV. of 1994 on the Police, Section 37.

her study, Molnár (2024) analyses the 2018-2019 court decisions on *using a public space as a habitual dwelling* from the perspective of judicial strategies. She finds that in cases of *using a public space as a habitual dwelling*, the 'compromising court' strategy has become the most widely used, meaning that the court does not confront the legislator, but does not neglect fundamental rights. Consequently, decisions are taken in a formalistic way, but within a dogmatic framework without applying sanctions (Molnár, 2024). She points out that this is presumably one of the consequences of the Constitutional Court's decision of 19/2019. (VI.18.), according to which "According to Article 28 of the Fundamental Law, in the course of the application of law, courts shall interpret the text of laws primarily in accordance with their purpose and with the Fundamental Law. In the interpretation of the Fundamental Law and of the laws one should assume that they serve a moral and economic purpose, which is in line with common sense and the public good. Interpretation in accordance with Article 28 of the Fundamental Law is a constitutional obligation for the proceeding courts. In the case under review, the challenged text of the norm provides the law-applying organs with a possibility of flexible assessment to determine the conducts qualified as "habitual". It should be furthermore emphasized that washing oneself on public ground, in itself, does not form part of properly using the public ground in line with its purpose. However, the elaboration of this framework of interpretation is the duty of the adjudicating courts." (Constitutional Court's decision 19/2019. (VI.18.), [80]). In other words, the Constitutional Court did not annul the offence, but drew the attention of the courts to the fact that the text of the provision allows for a flexible interpretation and that the courts must apply the law in accordance with the Fundamental Law.

#### 4. Administrative burden

The police interviewees stated that if the police carry out the proceeding step-by-step, the entire proceeding lasts for 6-8 hours, which is a significant administrative burden.

#### 5. The procedure is not effective

A social problem cannot be solved by policing. The interviewees also referred to the fact that, even though the application of *using a public space as a habitual dwelling* is an extraordinary workload for the police, it is also spectacularly inefficient. For the police, it is visible that even if an offence proceeding is 'successful' in a sense that it is sanctioned by the court, the person who 'commits' *using a public space as a habitual dwelling* is soon to be on the streets again.



## 6. *It is easier to initiate proceedings for other activities*

In many cases, activities related to homelessness are much easier to sanction than *using a public space as a habitual dwelling*. Activities such as begging or sanitary offences are often linked to homelessness.<sup>9</sup> It should be stressed that a significant proportion of people experiencing homelessness do not commit any of these offences, and in many cases, the offenders are not homeless. However, it is worth drawing attention to the fact that when another offence is committed, it is easier to take an action because of that than *using a public space as a habitual dwelling*.

Table 3 shows the sanctions imposed for begging, in which the offender is “a person who engages in begging in a public space or public place imploring passers-by or persons in the public place to hand over money” (Act on Offences, 2012). As shown, the offence is typically punished with an on-the-spot fine or a (regular) fine, depending on whether the procedure reaches the court stage. The proportion of fines paid by offenders was also examined, showing that less than 1% of the on-the-spot fines were paid in this period. The proportion of (regular) fines paid is more favourable, but still below 10% in each year. This is important because unpaid fines are converted into detention, or upon request, community service.

**Table 3: Begging in a public space or public place imploring passers-by or persons in the public place to hand over money – sanctions imposed between 2019-2024. IX.**

Begging in a public space or public place imploring passers-by or persons in the public place to hand over money [Offences Act Section 185 Paragraph (2) first part]	2019	2020	2021	2022	2023	2024. I.-IX.	2019-2024. IX.
<b>On-the-spot fines</b>							
Number of on-the-spot fines	1 974	2 809	3 144	2 351	2 898	2 631	15 807
<b>Payment rate</b>	<b>0,91%</b>	<b>0,45%</b>	<b>0,41%</b>	<b>0,51%</b>	<b>0,36%</b>	<b>1,37%</b>	<b>0,67%</b>
<b>Fines</b>							
Number of fines	629	730	970	969	1 064	744	5 106
<b>Payment rate</b>	<b>6,02%</b>	<b>9,25%</b>	<b>8,67%</b>	<b>7,05%</b>	<b>5,36%</b>	<b>1,25%</b>	<b>6,27%</b>
<b>Community services</b>							
Number of community service sanctions	2	0	0	2	3	2	9
Cumulated amount of community service (hours)	144	0	0	154	432	120	850
<b>Detention</b>							
Number of detentions	1	11	13	6	5	2	38
Cumulated amount of detentions (day)	3	80	121	34	93	10	341

<sup>9</sup> These kind of legal regulations are often considered as laws criminalising homelessness in its broader sense. See for example: (UN Human Rights Council Special Rapporteur on Extreme Poverty and Human Rights, 2024).



Table 4 shows the sanctions imposed for sanitation offences in total – not only in the homeless population. Section 196 Paragraph (1) point a) of the Offences Act prohibits “contaminating a public space, a building intended for public traffic or a public transport vehicle” (Act on Offences, 2012). In this case, it is worth looking at the data after 2021, when the wording of the legislation changed to its current form. Before 2021, the number of sanctions is much higher because littering was prohibited by the Offences Act. In 2021, the prohibition of littering was transferred to another law. As seen, the payment rate is higher in the case of sanitation offences than in the case of begging (Table 4), but still very low.

**Table 4: Sanitation offences – contaminating a public space, a building intended for public traffic or a public transport vehicle sanctions imposed between 2019-2024. IX.**

Sanitation offence – contaminating a public space, a building intended for public traffic or a public transport vehicle	2019	2020	2021	2022	2023	2024. I.-IX.	2019-2024. IX.
<b>On-the-spot fines</b>							
Number of on-the-spot fines	13 568	15 700	5 889	4 847	3 890	3 429	47 323
<b>Payment rate</b>	<b>23,97%</b>	<b>22,97%</b>	<b>63,19%</b>	<b>27,96%</b>	<b>23,13%</b>	<b>12,24%</b>	<b>28,91%</b>
<b>Fines</b>							
Number of fines	2 060	2 855	1 419	1 223	1 115	813	9 485
<b>Payment rate</b>	<b>18,66%</b>	<b>23,98%</b>	<b>26,51%</b>	<b>27,99%</b>	<b>21,75%</b>	<b>13,04%</b>	<b>21,99%</b>
<b>Community service</b>							
Number of community service sanctions	5	3	1	0	2	0	11
Cumulated amount of community service (hours)	192	312	54	0	90	0	648
<b>Detention</b>							
Number of detentions	14	37	8	5	4	0	68
Cumulated amount of detentions (day)	113	244	58	55	50	0	520

The Offences Act also prohibits nuisance. According to Section 170 of the Act, “a person who displays a conspicuously anti-social conduct that is capable of causing outrage or alarm in others commits an offence” (Act on Offences, 2012). According to the interviewees, when people experiencing homelessness engage in disruptive anti-social behaviour, they are more easily prosecuted for nuisance than for using a public space as a habitual dwelling. It should be noted that nuisance may apply more easily to those whose antisocial behaviour occurs in public spaces than to those who engage in the same behaviour in a housing unit.

It is also important to note that municipalities may lay down basic rules of community coexistence by decree, which may also prohibit behaviour closely linked to homelessness. One example is the prohibition of the consumption of alcohol in public places, which is prohibited by decree in many municipalities and districts of Budapest.

Statistical data do not, of course, show the number of prosecutions of people experiencing homelessness for the above-mentioned offences, but the interviews with both the social sector and the police confirm that the authorities consider these measures easier to apply than *using a public space as a habitual dwelling*.

### ***Reasons for the occasional increase in procedures***

As the statistics show, the number of procedures increased in 2019 and 2024. According to the police interviewees, these peaks can be linked to the approaching municipal elections.<sup>10</sup> There are more reports during this period, and this is the reason for more prosecutions. As elections approach, municipalities pay more attention to the ‘tidiness’ of public spaces. It can be assumed that during this period not only the number of reports from the public increases, but also that the district police stations increase their surveillance of public spaces.<sup>11</sup>

In summary, the rise in numbers is linked to political will. This can happen both directly and indirectly. Directly, when there is more intense surveillance in a public place, and by that, the official observations increase. The notifications of the police can also be directly influenced, leading to more cases. Political will can also affect the number of procedures indirectly, if political communication and the media has contents against homelessness, this can lead to more citizen notifications. The police interviewees stated that they have to handle a significant number of citizen notifications, especially in residential areas. There are no data on how many procedures are initiated because of official sightings nor how many are initiated as a result of citizen notifications.

### ***The actors in the procedure***

To better understand the application of *using public space as a habitual dwelling*, field research with the actors of the procedure was conducted. There are four actors in the process of criminalisation: the person experiencing homelessness, the police, the social care, and the public area surveillance. Their cooperation and coordination with each other was subsequently examined.

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<sup>10</sup> Municipal elections were held in Hungary in October 2019 and June 2024.

<sup>11</sup> The municipal elections cannot explain the October 2020 increase. This may be related to the fact that it occurred between two periods of epidemic quarantine.

Public area surveillances are often the first to meet homelessness. As mentioned above, they have no powers to file a case of *using a public space as a habitual dwelling*, but they may impose on-the-spot fines for the offences such as *begging* and *sanitation offences*, and in certain cases, they may be authorised to impose sanctions regarding municipal decrees. Municipal decrees may prohibit certain activities to protect public order, and they can also lay down certain rules for coexistence. These rules can affect homelessness, such as the ones prohibiting consuming alcohol in public places. Public area surveillances are municipal police forces, therefore they are part of the municipal hierarchy. What was found during the fieldwork, which was later confirmed by the reports of the public area surveillance, is that the municipal police mainly use informal pressure to reduce homelessness in public areas in the district. Though, if a person experiencing homelessness does not commit any offences besides living on the streets, the public area surveillances would not have any powers. In practice they can only use patrols and postings to push people experiencing homelessness out of parts of the district. It varies greatly how municipal police departments handle homelessness. They have both connections with the police and the social institutions, and it depends on their approach who they notify.

Where examined, the social sector and the police had a good cooperation. Part of this cooperation is necessary, due to the decision of 19/2019. (VI.18.) of the Constitutional Court, which states that an offence procedure can only be initiated if it is proven that the person experiencing homelessness has a place in the social care. Therefore, whenever the police initiate an offence, they have to contact the dispatch service of the social care. The positive cooperation can also be justified by the fact that, as it was also revealed in my interviews with the police, the police find it ineffective to tackle the problem of homelessness by law enforcement means.

The social care system has an ongoing responsibility to try to shape institutions so that people living on the streets do not refuse to receive care, and the most important tool for this is lowering the entry threshold. According to the interviewees, the three most important aspects for people living on the streets are the safety of an institution, the predictability of its operation, and good communication between the person experiencing homelessness and the staff. The homeless care system is constantly trying to meet these expectations.

However, it is also important to note that shelters are only a temporary solution for people experiencing homelessness. As mentioned in the theoretical part of this paper, homelessness cannot be separated from the process of social exclusion, in which people experiencing homelessness are pushed to the periphery of society.

## Conclusions

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This paper provides a summary of the criminalisation of homelessness in Hungary. To begin with, the legislative process in Hungary and the legislative environment that currently criminalises homelessness were presented. The theoretical background to the criminalisation of homelessness: social exclusion, exclusive criminal policy, and punitive populism, was then briefly discussed and it was argued that the criminalisation of homelessness in Hungary is not only the emergence of a strict criminal policy, but also an instrument of punitive populism.

In order to better understand the facts uncovered through an analysis of the criminal records related to using public space as a habitual dwelling, field research with key stakeholders such as the police, social workers, and public surveillance staff was conducted. Lessons show that there are several reasons causing the lack of proceedings. The large number of security measures, the wording of the regulation, the unsuccessful court proceedings, the administrative burden of a 6-8 hours long procedure, the fact that other offences can be used easier, but most importantly, its visible ineffectiveness in tackling homelessness. It should also be noted that the fact that so few prosecutions are brought for *using a public space as a habitual dwelling* also shows that we are seeing the expression of punitive populism, since the aim of the creation of the legislation was clearly not to punish the homeless in large numbers, but to enable the Government to appear as if it could solve the problem of homelessness.

The research was also interested in discovering the reasons behind the rise in the number of procedures during certain periods; it was shown that these peaks are linked to political will, directly or indirectly. This research also sought to examine the actors in the process, finding that the public area surveillances have a significant role in dealing with homelessness in public spaces, and that their procedure varies greatly depending on the attitude of each public area surveillances. In the areas examined, cooperation between the police and the social sector specialised for people experiencing homelessness was particularly good. In addition, the impact of criminalisation on the effectiveness of established practice in tackling homelessness in public spaces, and the balance between control and support in the process was examined.

The objective of creating the offence of *using a public space as a habitual dwelling* was clearly one of control. However, the application of the law presents a much more complex and, in view of the findings, more humane picture. In the areas studied, the practice is characterised by close cooperation between the social sphere and the police, so that control and support are more evenly balanced. This support is, of course, limited, since it only covers access to homeless shelters and medical assistance, and more effective help could only be achieved through a

comprehensive social policy. The criminalisation of homelessness has not been able to make homelessness invisible, but it has been able to keep people experiencing homelessness living on the streets under constant threat.

The author shares the view of the Constitutional Court's decision of 38/2012. (XI. 14.): the criminalisation of homelessness is a breach of fundamental rights, since it is a violation of human dignity. Although the application of the law shows a more favourable picture than the regulation itself, there is no place in a democracy based on the rule of law and human rights for legislation violating the fundamental rights of certain marginalised groups.

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