

**EUROPEAN COMMITTEE OF SOCIAL RIGHTS  
COMITÉ EUROPÉEN DES DROITS SOCIAUX**

12 April 2023

**Case Document No. 1**

**European Federation of National Organisations working with the Homeless  
(FEANTSA) and International Federation for Human Rights (FIDH) v. France**  
Complaint No. 224/2023

**COMPLAINT**

**Registered at the Secretariat on 3 April 2023**

EXECUTIVE SECRETARY OF THE EUROPEAN COMMITTEE OF SOCIAL RIGHTS

Department of the European Social Charter

Directorate General of Human Rights and Rule of Law

Council of Europe

F-67075 Strasbourg Cedex

E-mail address: [social.charter@coe.int](mailto:social.charter@coe.int)

COLLECTIVE COMPLAINT – FEANTSA and FIDH V. FRANCE

31 MARCH 2023

Violations of Articles 30, 31.1, 11 and E of the European Social Charter

## CONTENTS

ADMISSIBILITY .....	3
1. CONTRACTING STATE .....	3
2. CHARTER PROVISIONS .....	3
3. STATUS OF FEANTSA .....	4
4. STATUS OF THE FIDH .....	4
I. THE FACTS .....	5
II. DOMESTIC LAW .....	9
OTHER RELEVANT PROVISIONS .....	10
APPLICATION IN THE COURTS .....	11
III. VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER .....	15
1. VIOLATION OF ARTICLE 30 .....	16
2. VIOLATION OF ARTICLE 31.1 .....	21
3. VIOLATION OF ARTICLE 11 .....	23
4. VIOLATION OF ARTICLE E READ IN CONJUNCTION WITH ARTICLES 30 AND 31.1 25	
IV. CONCLUSION .....	28

## **ADMISSIBILITY**

### **1. CONTRACTING STATE**

France ratified the revised European Social Charter on 7 May 1999. The same day, by ratifying the Additional Protocol to the Charter, it accepted the collective complaints procedure.

### **2. CHARTER PROVISIONS**

#### **Part I**

The Parties accept as the aim of their policy, to be pursued by all appropriate means both national and international in character, the attainment of conditions in which the following rights and principles may be effectively realised:

1. Everyone shall have the opportunity to earn his living in an occupation freely entered upon.
11. Everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.
30. Everyone has the right to protection against poverty and social exclusion.
31. Everyone has the right to housing.

#### **Part II**

##### **Article 11 – The right to protection of health**

With a view to ensuring the effective exercise of the right to protection of health, the Parties undertake, either directly or in cooperation with public or private organisations, to take appropriate measures designed inter alia:

1. to remove as far as possible the causes of ill-health;

##### **Article 30 – The right to protection against poverty and social exclusion**

Everyone has the right to protection against poverty and social exclusion.

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the Parties undertake:

- a) to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families, to, in particular, employment, housing, training, education, culture and social and medical assistance;
- b) to review these measures with a view to their adaptation if necessary.

##### **Article 31 – The right to housing**

With a view to ensuring the effective exercise of the right to housing, the Parties undertake to take measures designed:

1. to promote access to housing of an adequate standard.

#### **Part IV**

## **Article E – Non-discrimination**

The enjoyment of the rights set forth in this Charter shall be secured without discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national extraction or social origin, health, association with a national minority, birth or other status.

### **3. STATUS OF FEANTSA**

In accordance with Articles 1 b) and 3 of the Protocol, the European Federation of National Organisations Working with the Homeless (FEANTSA) is an international non-governmental organisation with participatory status with the Council of Europe. It is on the list of international non-governmental organisations entitled to submit collective complaints to the European Committee of Social Rights.

The Committee has already found that FEANTSA has particular competence to file complaints concerning the situation of the homeless (see, in particular, FEANTSA v. the Czech Republic, Complaint No. 191/2020, decision on admissibility of 9 December 2020, para. 7; FEANTSA v. the Netherlands, Complaint No. 86/2012, decision on admissibility of 1 July 2013, para. 11; FEANTSA v. Slovenia, Complaint No. 53/2008, decision on admissibility of 2 December 2008, para. 6; FEANTSA v. France, Complaint No. 39/2006, decision on admissibility of 19 March 2007, para. 6).

The complaint is signed on behalf of FEANTSA by its President, Kjell Larsson, who is entitled to represent the complainant organisation before any authority or court under Article 18 of its statute.

Consequently, the condition provided for in Rule 23 of the Rules is fulfilled.

### **4. STATUS OF THE FIDH**

The International Federation of Human Rights Leagues (FIDH) is an international organisation that defends human rights and is included on the list of organisations entitled to submit collective complaints to the European Committee of Social Rights. Its headquarters is at 17 Passage de la Main d'Or, 75011 Paris, France.

Under Article 3 of the Additional Protocol of 1995 Providing for the System of Collective Complaints, the international non-governmental organisations referred to in Article 1(b) “may submit complaints in accordance with the procedure described by the aforesaid provisions only in respect of those matters regarding which they have been recognised as having particular competence”.

Under its statutes, the FIDH is an organisation for the defence and promotion of all human, civil, cultural, economic, social and political rights at international level. This means that the FIDH is entitled to take action, including legal action before authorities for the review of compliance with human rights at regional and international level, to establish violations of fundamental rights. In the past the FIDH has been found to be entitled to lodge collective complaints before the Committee concerning the following articles of the revised Charter: Article 13, on the right to social and medical assistance (FIDH v. France, No. 14/2003); Articles

16, on the right of the family to social, legal and economic protection, and 30, on the right to protection against poverty and social exclusion (FIDH v. Belgium, Nos. 62/2010 and 75/2011); Article E (non-discrimination), in conjunction with Articles 16 and 30 (FIDH v. Belgium, No. 62/2010); Articles 11 (right to protection of health), 16, 17 (right of children and young persons to social, legal and economic protection) and 30 (FIDH v. Ireland, No. 110/2014).

Consequently, the condition provided for in Rule 23 of the Rules is fulfilled.

## I. THE FACTS

In 2019, the Court of Audit put the number of homeless people in France at 300 000, of whom 40 000 were on the street; the figure had increased by 10% since 2012.<sup>1</sup> Among these, there is a disproportionate number of people who were placed in care by the child welfare services or the Directorate for the Protection of Young People in the Judicial System (PJJ) during their childhood.<sup>2</sup> There is also a disproportionate number of persons who have been in prison<sup>3</sup> or a psychiatric institution.<sup>4</sup>

In its Concluding observations on France's 4<sup>th</sup> periodic report, the United Nations Committee on Economic, Social and Cultural Rights highlighted the persistently high number of homeless persons in France and expressed concern that over 40% of requests for emergency shelters had not been processed and that, in 80% of cases, accommodation was provided for one night only.<sup>5</sup>

The latest data available show that the response rate of the reception and advice service to accommodation requests is very low, amounting to 34 % in 2018, 45 % in 2019<sup>6</sup>, and 42 % in 2020<sup>7</sup> and in 2021<sup>8</sup>. Many people are forced to sleep in the street or a makeshift shelter because they cannot find a place in an accommodation facility.

Accommodation provision is deficient not just in quantitative terms but also in qualitative terms. During a *HYTPEAC* public health survey of 2011, 10% of the homeless people questioned said that they had not made use of accommodation centres in the last 12 months, mainly for reasons of hygiene (41%) and safety (39%).<sup>9</sup> Over half of the people interviewed in

---

<sup>1</sup> French Court of Audit, *L'hébergement et le logement des personnes sans domicile pendant la crise sanitaire du printemps 2020 (The housing and accommodation of homeless people during the health crisis of spring 2020)*, November 2020, cited by the Abbé Pierre Foundation in *L'état du mal-logement en France 2023 (Housing exclusion in France 2023)*, Annual report 28, p. 165. <https://www.fondation-abbe-pierre.fr/actualites/28e-rapport-sur-letat-du-mal-logement-en-france-2023>

<sup>2</sup> Fréchon, I. and Marpsat, M. (2016), *Placement dans l'enfance et précarité de la situation du logement (Placement in care during childhood and vulnerable housing situations)*, Economie et Statistique no. 488-489, cited by Abbé Pierre Foundation in *L'état du mal-logement en France 2019*, Annual report 24, p. 53.

<sup>3</sup> According to data from the Ministry of Justice, 25% of persons housed in accommodation centres already have one or more criminal convictions. See Abbé Pierre Foundation, *L'état du mal-logement en France 2019*, Annual report 24, p. 72.

<sup>4</sup> Abbé Pierre Foundation, *L'état du mal-logement en France 2019*, Annual report 24, p. 75.

<sup>5</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the fourth report of France*, 13 July 2016, E/C.12/FRA/CO/4.

<sup>6</sup> PLF 2021, *Programme No. 177: Accommodation, a path towards the housing and insertion of vulnerable persons*, cited by Abbé Pierre Foundation in *L'état du mal-logement en France 2021*, Annual Report 26, p. 202.

<sup>7</sup> Abbé Pierre Foundation, *L'état du mal-logement en France 2022*, Annual Report 27, 210.

<sup>8</sup> Abbé Pierre Foundation, *L'état du mal-logement en France 2023*, Annual Report 28, p. 175.

<sup>9</sup> Abbé Pierre Foundation, *L'état du mal-logement en France 2021*, Annual Report 26, p. 200.

the *Maraudes FNSS-FAS* homelessness survey of January 2021 had never used the 115 telephone helpline and 83% had not used it on the day of the survey.<sup>10</sup> People who are accompanied by an animal and/or have addictions tend not to make use of social accommodation facilities, as they are not admitted to them.<sup>11</sup>

“This mistrust of public services has become so widespread that some people have never called the 115 helpline, presuming that it does not work. ... The fact that an unknown number of people no longer make use of this service raises major questions about its suitability and the authorities’ ability to take full stock of the situation. ...

Some accommodation centres are regarded by their users as unhygienic or dangerous places which they would only contemplate using in extreme circumstances. ... The issue of material conditions is not the only subject which is raised though when we talk to people who are turning away from accommodation facilities. They often also point to the rules and operating restrictions. The regulated exit and entry times and the bans on visits from family members or friends and on bringing pets are among the reasons given for not wanting to use this kind of facility. Another factor, which was not referred to so much by the people questioned but is an issue, is the ban on alcohol in these establishments, which is a major problem for persons dependent on alcohol, who fear that if they follow the rules they will end up in withdrawal.

... Another reason for people’s reluctance to apply for a place in accommodation, and by no means a minor one, is the obligation to accept the social support which goes along with it. Wanting to find a way of not sleeping outdoors does not necessarily mean accepting that a social worker will have a say in sometimes very intimate aspects of one’s life (health or parenting for example) or one’s projects, desires or decisions. Entering a welfare facility can therefore be seen as a loss of autonomy, despite the fact that promoting autonomy is very often the watchword in this sector.

Two visions of autonomy are pitted against one another: an autonomy of decision-making, which enables people to decide their future, and a form of autonomy which brings people’s individual behaviour into line with society’s expectations. In this

---

<sup>10</sup> National Federation of Social Emergency Services (*Samu Sociaux*) (FNSS) and Solidarity Campaigners Federation (FAS), *Étude nationale maraudes et samu sociaux sur le sans-abrisme (National survey on homelessness)*, 2021. In the Ile-de-France region, only half of the people interviewed in the street had called 115 in the six months before the winter period (Regional Accommodation and Housing Directorate (DRIHL), *Les personnes accueillies dans le dispositif hivernal en Île-de-France. Résultat de l’enquête 2019 “une nuit donnée” dans les structures de renfort hivernal (Persons accommodated in winter reception facilities in Île-de-France. Result of the 2019 “one night” survey of winter back-up facilities)*, Lettre des études, December 2019). In Lyon, half of the people surveyed on the street in March 2019 no longer or had never called 115 (Regional Exclusion Fact-Finding Taskforce (MRIE), Greater Lyon, Abbé Pierre Foundation, *Qualifier les besoins, plutôt que dénombrer les personnes (Identifying needs rather than counting people)*, survey of homeless people, initial results). In Paris, during the Solidarity Night held in January 2020, 62% of the people interviewed said that they had never called 115 (*Les personnes en situation de rue à Paris la nuit du 25-26 mars 2021 (People on the street in Paris on the night of 25 to 26 March 2021)*, November 2021).

<sup>11</sup> Edouard Gardella and Amandine Arnaud looked into the profile of people who do not use accommodation facilities. Their study showed that they generally have longer and more continuous experience of living on the street, more frequent problems of understanding and/or expression in French, less access to care, no income (wages or social benefits) and are more frequently accompanied by an animal. *Le sans-abrisme comme épreuves d’habiter. Caractériser statistiquement le non-recours aux hébergements sociaux (Homelessness as trials of living – statistical findings on non-use of social accommodation)*, National Poverty and Social Exclusion Research Institute (ONPES) and Paris *Samu Social* Research Institute, February 2018.

context, we should never underestimate the significance of saying “no”, as refusal can be the last power that a person still has vis-à-vis public facilities. ...

The affirmation of the law by the state with no support for its implementation leads in the end to a weakening of the law and the relationship between practitioners and users vis-à-vis a framework which is ultimately no such thing. Poor public provision adds to the feeling of uncertainty and hence vulnerability of people in precarious circumstances. In this way, cases of non-use are a strong indicator of the dwindling reliability of public facilities and a rebuke to their prescriptive nature, which prompts people to turn their backs on them.”<sup>12</sup>

In its Concluding observations on France’s fourth periodic report,<sup>13</sup> the United Nations Committee on Economic, Social and Cultural Rights also expressed concern about the number of forced evictions in France, whether tenant evictions, evictions of persons from informal settlements or evictions of members of the Roma community or of Travellers from stopping areas.

In October 2022, the Interministerial Task Force on Accommodation and Access to Housing (DIHAL) recorded 11 816 European nationals living in 270 shanty towns in mainland France. If non-European people are added to this figure, then it is estimated that 20 836 live on 446 sites.<sup>14</sup> Over 1000 people are evicted from such sites per year, sometimes several times, and in 95% of cases no other solution is proposed, for some of them at least.

All of these failings force many people to live in public spaces, some only during the day and others both night and day.

The municipalities have a range of powers and means of intervention to provide help for the homeless but many of them choose instead to use their policing powers to issue orders which no longer prohibit just begging but also all the types of conduct which socially and economically vulnerable people may adopt in public areas. The people in question are most often those with no fixed abode, living on the streets, sometimes habitually, sometimes not, young people left to their own devices, unaccommodated exiles, European nationals subject to discrimination, people suffering from addictions, or just out of prison or psychiatric institutions with no other solution, or people who have disconnected from their families and social institutions and/or been rejected by them.

The exact number of municipalities which have adopted this type of order is unknown as a full survey is practically impossible.<sup>15</sup> Most do not post all the orders they adopt on-line, and orders are most often temporary or intermittent. If they are not mentioned in the media or homeless people do not complain about them, they do not always filter up to associations, whose presence moreover can be minimal in the smaller municipalities.

---

<sup>12</sup> Julien Lévy, *L’urgence sociale à l’épreuve du non-recours (Social emergency facilities put to the test by non-use)*, Plein droit No. 106, October 2015.

<sup>13</sup> Committee on Economic, Social and Cultural Rights, Concluding observations on the fourth report of France, 13 July 2016, E/C.12/FRA/CO/4.

<sup>14</sup> Research Institute on Evictions from Informal Living Spaces, *Detailed Analysis*, 1 November 2021 to 31 October 2022.

<sup>15</sup> France has 34 900 municipalities.



We note however that this trend is not letting up, and municipal measures of the type are common.

Municipal orders cover many types of behaviour (see table appended):

- Excessive and prolonged occupation of public spaces;
- Maintaining a sitting or lying position when this presents an obstacle to the free circulation of pedestrians;
- Begging;
- Making places and facilities dirty and causing damage of all sorts;
- Using collective amenities in a manner such as to prevent or undermine shared use;
- Groupings of people in public spaces (more than three, for example) causing a disturbance by playing music or shouting;
- Groupings of several dogs, even on leads and accompanied by their owners;
- Consumption of alcoholic drinks in public spaces other than the terraces of duly licensed cafés and restaurants;
- Practising “wild camping” or “bivouacking”;
- Storing or installing equipment or devices of any type without the authorisation of the municipal authorities;
- Searching through bins, skips or any other place in which waste is kept;
- etc.

For the types of behaviour which are most commonly singled out (excessive and prolonged occupation of public spaces, accosting passers-by, sitting or lying in the way, alcohol consumption and the presence of dogs), the wording used is the same, with some minor variations, from one municipal order to the other. The circumstances liable to constitute the disruption they are deemed to cause are practically never spelt out precisely.

The municipalities invoke a multitude of obligations they are fulfilling and rights that they are defending through these orders, safeguarding and protecting the public from the threat of supposedly serious and dangerous offences, for which they fail to provide any evidence. Examples are:

- Security, as a fundamental right and prerequisite for the exercise of freedoms;
- Hygiene, health and cleanliness;
- Tranquillity, peaceful enjoyment of possessions, legitimate peace and quiet for inhabitants;
- Safe and easy passage with no obstacle to or mere difficulty of movement;
- Prevention of disturbance and noise;
- Freedom to come and go, free circulation of inhabitants and vehicles;
- The principle of equal access for users to public facilities;
- Normal use of public thoroughfares.

When they rely on local features to justify their policing measures, these are related to “the municipality’s attractiveness to tourists”, “large numbers of tourists”, seasonal festivities and events, the number of events being held and the influx of people in addition to tourists and locals, an increase in the number of pedestrian areas and the narrowness of streets “which it is impossible to remedy because of the exceptional nature of the local architectural heritage”.

## II. DOMESTIC LAW

When adopting these administrative acts, mayors rely on the policing powers assigned to them by Articles L. 2212-1 and L. 2212-2 of the General Code on Local and Regional Authorities.

### **Article L. 2212-1 of the General Code on Local and Regional Authorities**

“The mayor shall be responsible, under the administrative supervision of the state’s representative in the *département*, for the municipal police, the rural police and the execution of acts of the state relating to them.”

### **Article L. 2212-2 of the General Code on Local and Regional Authorities**

“The purpose of the municipal police is to guarantee order, safety, security and public health. Its tasks include:

- 1° Everything relating to safe and easy passage on streets, quays, squares and public thoroughfares, including cleaning, lighting, removal of encumbrances, demolition or repair of buildings in danger of collapse, prohibition on placing anything at windows or other parts of buildings which may cause damage if it falls and on throwing anything which may harm or injure passers-by or cause harmful fumes;
- 2° Punishment of disturbances of the peace, such as fights and arguments accompanied by riots in the streets, commotion brought about in places of public assembly, mobs, noise, including neighbourhood noise, night-time gatherings preventing residents from resting and any other act liable to disturb the peace;
- 3° Preserving law and order in places and settings in which where there are large gatherings of people, such as fairs, markets, public entertainments and ceremonies, performances, games, cafés, churches and other public places;
- 4° Verification of the accuracy of the amount provided of items sold by weight or measures, and of the hygiene of food sold to the public;
- 5° Preventing, through suitable precautions, and bringing to an end, through provision of the necessary assistance, accidents, disasters and pollution of all types, such as fires, flooding, dam failure, landslides, rock falls, avalanches and other natural disasters, epidemic or contagious diseases and epizootic diseases, and immediately to take all emergency measures and, if necessary, call for assistance from a higher authority;
- 6° Taking the necessary temporary measures to deal with persons with mental disorders whose state may jeopardise public morals, individuals’ safety or the preservation of property;
- 7° Preventing or remedying any untoward events which may be caused by the unchecked roaming of harmful or aggressive animals;
- 8° Regulating the annual closure of bakeries, where closure is necessary for the legislation on paid leave to be applied, after consultation with employer and employee organisations, so as to ensure that the people are properly supplied.”

### **Article R. 2241-16 of the Transport Code<sup>16</sup>**

“Begging is prohibited in all public rail facilities and on board trains.

Breaches of the first sub-paragraph shall be subject to the fine provided for for fourth-category summary offences.”

### **Article R. 3116-8 of the Transport Code<sup>17</sup>**

“Begging is prohibited in bus stations.”

### **Article R. 610-5 of the Criminal Code**

“Infringement of the prohibitions or failure to meet the obligations laid down in police decrees or orders shall be punishable by the fine provided for for second-category summary offences.”

The fine fell into the first-class category until adoption of Decree no. 2022-185 of 15 February 2022 amending the summary offence category provided for in Article R.610-5 of the Criminal Code to introduce new summary offences.”

### **Article 131-13 of the Criminal Code**

“Offences which are punishable in law by fines not exceeding €3 000 shall constitute summary offences.

The fine imposed shall be:

1° €38 at most for first-category summary offences;

2° €150 at most for second-category summary offences;

3° €450 at most for third-category summary offences;

4° €750 at most for fourth-category summary offences;

5° €1 500 at most for fifth-category summary offences, a sum which may be increased to €3 000 in the event of a repeat offence if the regulations so provide, save in cases where the law provides that a repeat summary offence constitutes a lesser indictable offence (*délit*).”

## **OTHER RELEVANT PROVISIONS**

### **Article 227-15 of the Criminal Code**

“The act, by an ascendant or any other person exercising parental authority or having authority over a minor under the age of fifteen, of depriving that minor of food or care to the point that his or her health is compromised shall be punishable by seven years’ imprisonment and a fine of €100 000.

---

<sup>16</sup> Recent provision deriving from Decree No. 2016-541 of 3 May 2016 on safety and rules of conduct on track or rail transport and some other types of public transport.

<sup>17</sup> Former provision deriving from Decree No. 85-891 of 16 August 1985 on urban transport of persons and non-urban road transport of persons

Denial of care shall be considered to be constituted where a child under the age of six is kept on a public thoroughfare or an area given over to the collective transport of passengers, with the aim of soliciting the generosity of passers-by.”<sup>18</sup>

### **Article 312-1 of the Criminal Code**

“Extortion is forcing somebody, by violence, the threat of violence or duress to sign a document, undertake to do or give up on doing something, reveal a secret or hand over money, assets or property of some kind.

Extortion shall be punishable by seven years’ imprisonment and a fine of €100 000.”

### **Article 312-12-1 of the Criminal Code**

“Approaching somebody aggressively, in a group or using the threat of a dangerous animal, and asking them to hand over money, assets or property shall be punishable by six months’ imprisonment and a fine of €3 750.”

### **Article R. 622-2 of the Criminal Code**

“The act, by the owner of an animal which may pose a danger to persons, of allowing this animal to roam freely shall be punishable by the fine provided for for second-category summary offences.

If the owner of the animal is convicted or unknown, the court may decide to hand the animal over to an animal protection body recognised as being in the public interest or declared to the authorities, which may deal with it as it sees fit.”

### **Article R. 623-2 of the Criminal Code**

“Noise or disturbance which is harmful or takes place at night disturbing other people’s peace shall be punishable by the fine provided for for 3<sup>rd</sup>-category summary offences.

Persons found guilty of the offences provided for in this article shall also be liable to the additional penalty of confiscation of the item which was used or intended to be used to commit the offence.

Knowingly facilitating, by support or assistance, the preparation or commission of the offences provided for in this article shall be punishable by the same penalties.”

There are many provisions in the Criminal Code whose purpose is to punish behaviour which could amount to a breach of public order or affect the safety, health or peace of others. The range of legislation is therefore abundantly sufficient to put a stop to behaviour causing public disorder. Orders targeting the vulnerable (anti-begging orders) are not necessary.

## **APPLICATION IN THE COURTS**

Initially, municipalities adopted orders prohibiting conduct in itself, such as begging, prolonged occupation of public spaces, gatherings of dogs or alcohol consumption. These orders were

---

<sup>18</sup> According to the Criminal Division of the Court of Cassation, for the offence to be made out, evidence must be provided that there has been a deterioration in the health of a child accompanying a relative practising begging (Criminal Division of the Court of Cassation (Crim.) 12 October 2005, No. 05-81.191, *Bull. crim. (criminal law gazette) No. 259*).

regularly set aside by courts on the ground that they did not meet the requirements of necessity and proportionality.

Subsequently, mayors added a purely theoretical condition of breach of public order to avoid automatic censure.<sup>19</sup>

With regard to anti-begging orders, the administrative courts have adopted different interpretations. The issue is dealt with by two conflicting lines of case law.

Some courts consider that the fact that, for there to be a prohibition, there has to be a breach of public order is enough for the measure to be necessary and proportionate to the infringement of fundamental rights and freedoms. This means that the municipality can simply reiterate the existing law and does not need to give any evidence of any breach of public order before such a measure is adopted.

This is true of the decisions of the Lyon Administrative Court of Appeal (CAA), which confirmed the validity of an order adopted by the mayor of the municipality of Roanne prohibiting begging from 15 May to 15 September from 9 a.m. to 8 p.m.:<sup>20</sup>

“3. Considering that, in the contested Order of 17 July 2014, the Mayor of Roanne prohibited, ‘all solicitation of and requests for money’ in certain streets and squares of the town from 9 a.m. to 8 p.m. ‘where they were likely to hinder the free circulation of users or to breach the peace or law and order’; that in so doing, the Mayor of Roanne simply reiterated the stipulation in the provisions of the General Code on Local and Regional Authorities cited above, according to which he could prevent the exercise of certain activities in public spaces if they were likely to breach the peace or law and order, the League of Human Rights is not therefore entitled to request that this order be set aside because, as a result of its wording, it did not decree any prohibition in principle but simply made the exercise of the activities to which it referred subject to the condition that there should be no breach of public order”.

The court did not carry out any review of necessity or proportionality in this case; it simply asserted that the order did not decree any prohibition in principle. The local circumstances were not assessed.

---

<sup>19</sup> In this connection, through an order of 28 February 2020, the mayor of the Municipality of Metz prohibited “any excessive and prolonged occupation of the national property referred to in Article 2, combined with accosting of passers-by, where it is of a nature to hamper the free circulation of persons or vehicles, to pose a clear danger to the users of these thoroughfares or to undermine order, safety, peace and cleanliness”.

Similarly, Article 1 of the order issued in Nice on 3 May 2019 prohibits begging “where it disturbs the calm and safety of persons, hinders their passage or makes it difficult for them to circulate, particularly in the area around car park pay points, whether inside the car park or outside, ATMs, tram stations, crowded tourist areas in Nice city centre and on conceded publicly owned coastal land” and “where it hinders the passage of persons or makes it difficult for them to circulate in the area surrounding local shops ...”.

The orders issued in Saint-Etienne in 2015 and 2016 use very similar wording, prohibiting “any excessive and prolonged occupation of the national property referred to in Article 5, where it is liable to hamper the free circulation of persons or to undermine peace, order and public health”.

<sup>20</sup> Lyon CAA, 6 April 2017, Human Rights League (LDH) v. Municipality of Roanne, No. 16LY03766.

The same approach was taken by the Lyon Administrative Court of Appeal with regard to the order issued by the municipality of Saint Etienne,<sup>21</sup> and subsequently by the Marseille Administrative Court of Appeal.<sup>22</sup>

By contrast, other courts make a point of carrying out a proportionality test. In such cases the court ascertains whether the measure is necessary, suitable and proportionate to the aim of keeping public order.

In this connection, the Bordeaux Administrative Court of Appeal set aside the order of the town of Tarbes which had prohibited persons, during the opening hours of shops and public buildings, from accosting passers-by with a view to appealing to their generosity, from engaging in any unauthorised collections and street entertainments or from adopting any conduct constituting a hindrance to the right of other people to come and go freely and breaching public order. However, according to the findings of the Court, “the evidence in the case file fails to show that the probability of disorder triggered by such activities or attitudes was sufficiently serious for their prohibition to be necessary in all the places listed”.<sup>23</sup> Nor could the mayor place a blanket prohibition on “all conduct constituting a hindrance to the right of other people to come and go freely and breaching public order without indicating what circumstances would be liable to constitute such conduct”.

Therefore, the Bordeaux CAA requires evidence of a breach of public order reaching a substantial degree of seriousness before the requirement of necessity is met. It found in a case in 2004 “that there is no evidence in the case file that the risks of a breach of law and order, safety, security and public health were capable of justifying such measures having regard, firstly, to the duration over the year and the geographical extent within the city of these measures, whereas it was only in one pedestrian street and the surrounding area that it was established that there had been groups of individuals covered by the order, and, secondly, to the general nature of their terms with regard to the consumption of alcoholic drinks and the gathering of dogs”.<sup>24</sup>

More recently, the Nantes Administrative Court of Appeal also adopted the same position on two occasions.<sup>25</sup>

However, these decisions often come too late. For instance, on 5 April 2022 the Nice Administrative Court censured the Order of 3 May 2019 “*regulating begging in tourist areas and highly crowded parts of the City of Nice and on conceded publicly-owned coastal land*”. It noted that the reports and other evidence supposedly justifying this measure actually only described the presence of homeless persons, some engaged in begging and some not, but they could not be accused of the slightest breach of public order.<sup>26</sup> However, before this, the urgent appeal lodged a year earlier – requesting the suspension of the order pending the judgment on the merits – had been dismissed. The order had therefore been applied right up to its expiry, from 1 March 2019 to 30 September 2019 for 17 hours a day, and had been followed by others.

---

<sup>21</sup> Lyon CAA, 4 July 2019, LDH v. Saint Etienne, Nos. 17LY03227 and 17LY03230.

<sup>22</sup> Marseille CAA, 3 December 2018, LDH v. Municipality of Narbonne, No. 16MA04626.

<sup>23</sup> Bordeaux CAA, 26 April 1999, Municipality of Tarbes, No. 97BX01773.

<sup>24</sup> Bordeaux CAA, 27 April 2004, Municipality of Bordeaux, No. 03BX00760.

<sup>25</sup> Nantes CAA, 31 May 2016, LDH, No. 14NT01724; Nantes CAA, 7 June 2017, LDH, No. 15NT03551.

<sup>26</sup> Nice Administrative Court, 5 April 2022, No. 1903151 LDH and Abbé Pierre Foundation.

These disparities in case law are problematic because they result in unequal treatment of citizens. They allow a great deal of arbitrariness to enter into the application of the law. However, in most cases, no appeal is lodged and ultimately it is the police who must interpret and apply the orders.

The Conseil d'Etat recently set aside the decisions of the Lyon Administrative Court of Appeal, in which it confirmed the lawfulness of the orders in Saint Etienne on 15 October 2015 and 23 May 2016. The Conseil d'Etat's finding was based on the general and absolute nature of the bans introduced, having regard to the imprecision of the prohibition and to the area and the time over which they would be applied:

“The provisions of Article 1 of the contested order prohibit, as liable in itself of constituting a breach of public order, merely allowing more than two dogs to linger, even temporarily, in public spaces and, more generally, a group of more than three people from producing noises of conversation and music that are ‘audible by passers-by’, while failing to specify the duration or intensity. The measures enacted in this way by the impugned order for a period of three months, with no limit on the hours or days of the week for which they apply, over a vast area corresponding to the entire city centre, must be seen, notwithstanding the fact that the municipal authorities of Saint Etienne talk of an increase in crime and anti-social behaviour in the city centre, as constituting, because of the general and absolute nature of the prohibitions they impose, an infringement of personal freedom, particularly the freedom to come and go – an infringement which is disproportionate to the aim pursued of keeping public order”.<sup>27</sup>

Through these two judgments, the Conseil d'Etat emphasises that it is prohibited to issue an order which has no limit on the hours or days of the week for which it applies and covers a vast geographical area. It also reminds the municipalities that they must identify the conduct that they wish to prohibit precisely. It provides a ruling therefore on what constitutes a disproportionate infringement of the freedom to come and go in the light of the aim pursued of keeping public order.

Some municipalities are likely, however, to issue orders which comply with the Conseil d'Etat's criteria but will still be bogus prohibitions with harmful effects, for which the spatial and temporal limits will have been chosen solely to avoid the condemnation of the administrative court.

Nor will the Conseil d'Etat's judgments dissuade municipalities from issuing orders which fail completely to comply with the criteria of legality, as the risk of any appeal is often low. For instance, on 10 September 2021, the Mayor of Béthune issued an order prohibiting “begging, by persons either sitting or lying down, in a state of intoxication and/or displaying aggression, every day of the week between 6 a.m. and 11 p.m. in the public spaces listed below and within 50 metres of these spaces: ... in the town centre and in the area contained between the following thoroughfares: Boulevard Kitchener, Boulevard Victor Hugo, Rue Marcellin Berthelot, Boulevard Jean Moulin, Boulevard du Maréchal Leclerc, Place Foch, rue Fernand Bar ... in the area of the station between the following thoroughfares ...”. On 23 September 2021, the Mayor

---

<sup>27</sup> Conseil d'Etat (CE), *Ligue française pour la défense des droits de l'homme et du citoyen* (French League for the Protection of the Rights of Man and of the Citizen), 16 July 2021, No. 434254; CE, *Ligue française pour la défense des droits de l'homme et du citoyen*, 16 July 2021, No. 434256.

of Montélimar also prohibited the prolonged occupation of public spaces, requests for money, alcohol consumption and gatherings of dogs every day of the week from 7 a.m. to 9 p.m. in a number of streets.

While the Human Rights League and the Abbé Pierre Foundation contest the orders they are able to identify (though they do not always have the resources to do so), the state had never questioned an order of this type until recently, the only known example of this having occurred in Metz. The situation is unusual – in addition to being unprecedented – in that on two occasions since 2020, the orders of this city have been set aside by Strasbourg Administrative Court and despite this, the Mayor of Metz persisted in adopting 4 orders at the beginning of 2022, whose entry into force was progressive and each of which applied to a limited geographical area. Taken together, these four orders covered a total period of five months (from 1 May to 30 September) along with that of the Christmas markets, and a large area. The initiative of the Prefect of Moselle was a one-off, local measure and was not pursuant to any specific national instruction on this subject.

### **III. VIOLATIONS OF THE EUROPEAN SOCIAL CHARTER**

The Committee regularly points out that the rights recognised in the Social Charter must take a practical and effective, rather than purely theoretical, form (*International Commission of Jurists v. Portugal*, Complaint No. 1/1998, decision on the merits of 9 September 1999, §32). This means that, for the situation to be in conformity with the treaty, States Parties must:

- a) adopt the necessary legal, financial and operational means of ensuring steady progress towards achieving the goals laid down by the Charter;
- b) maintain meaningful statistics on needs, resources and results;
- c) undertake regular reviews of the impact of the strategies adopted;
- d) establish a timetable and not defer indefinitely the deadline for achieving the objectives of each stage;
- e) pay close attention to the impact of the policies adopted on each of the categories of persons concerned, particularly the most vulnerable (*International Movement ATD Fourth World v. France*, Complaint No. 33/2006, decision on the merits of 5 December 2007, § 61).

The Committee has repeatedly stated that it interprets the rights and freedoms set out in the Charter in the light of current conditions (*Marangopoulos Foundation for Human Rights v. Greece*, Complaint No. 30/2005, decision on the merits of 6 December 2006, §194) and in the light of relevant international instruments (European Federation of National Organisations working with the Homeless (FEANTSA), Complaint No. 39/2006, decision on the merits of 5 December 2007, §64) and of new emerging issues and situations, and that the Charter is a living instrument.



## 1. VIOLATION OF ARTICLE 30

Living in poverty or social exclusion undermines human dignity.<sup>28</sup>

With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, Article 30<sup>29</sup> requires States Parties to adopt an overall and co-ordinated approach, which should consist of an analytical framework and a set of priorities and corresponding measures to prevent and remove obstacles to access to social rights, in particular employment, housing, training, education, culture and social and medical assistance.<sup>30</sup>

States must demonstrate that combating social exclusion is an embedded aspect of all the relevant strands of public policy.<sup>31</sup>

From the preamble of the orders in question and from public statements and the reports produced during disputes, it is clear that they target homeless people.

In a very large majority of cases, no arrangements have been made to guide and assist the homeless people brought in for questioning. In four of the orders identified, provision is made for referral to a municipal welfare centre (CCAS) or the 115 helpline. However, there is good reason to question how effective this is given how saturated accommodation services are in many towns. Moreover, making a referral of this type during a police control may be seen as coercion and seems therefore to be inappropriate.

**Municipalities' motives often seem closely tied up with purely economic considerations.** Orders are defended in such cases by a desire to improve the town's appeal as a tourist destination (see, for example, the Order of 3 May in Nice, the first line of the preamble of which reads as follows: "*Considering that the City of Nice attracts many tourists as a result of its renown and its economy, with 3.6 million visitors per year, and that these tourists are added to the residents and are concentrated in certain parts of the town where thousands of people gather every day, attracting a large number of persons seeking to collect money from passers-by through begging*"). In 2022, Nice also referred to "*the mildness of its climate*" and 5 million visitors per year. Municipalities also frequently refer to complaints from shopkeepers (see, for example, the *Isle Adam* judgment of 20 November 2008).

**Anti-begging orders are mainly the product of a policy based on stereotypes about people living on the street.** The motives for these policing measures lie mainly in the image built up around homeless people, according to which they are violent, rough, dirty, inebriated<sup>32</sup> and criminal by nature.

These stereotypes can be seen quite clearly in the terms used in reports by police officers in Périgueux produced by the municipality in the course of proceedings initiated by the Human

---

<sup>28</sup> Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France.

<sup>29</sup> Statement of interpretation of Article 30, Conclusions 2013.

<sup>30</sup> Statement of interpretation of Article 30, Conclusions 2003, see e.g. Conclusions France.

<sup>31</sup> Statement of interpretation of Article 30, Conclusions 2010.

<sup>32</sup> According to François Beck, Stéphane Legleye and Stanislas Spilka, "alcohol is not as much a part of the lives of homeless people as the collective imagination would have it". See François Beck, Stéphane Legleye and Stanislas Spilka, *L'alcoolisation des personnes sans domicile : remise en cause d'un stéréotype (Alcohol use of the homeless – challenging a stereotype)*, Economie et statistique No. 391-392, 2006.

Rights League and the Abbé Pierre Foundation. For example, daybook entry no. 2018002801 states: “We have to confront undesirables. If we go out and confront them, they go away”. These documents presented in evidence also talk of “dropouts” when speaking about people deprived of housing (see, in particular, nos. 2018003086, 2018003206 and 2018003301).

This was also the finding of the UN Special Rapporteur on extreme poverty and human rights:

“Penalization measures respond to discriminatory stereotypes that assume that persons living in poverty are lazy, irresponsible, indifferent to their children’s health and education, dishonest, undeserving and even criminal. Persons living in poverty are often portrayed as authors of their own misfortune, who can remedy their situation by simply ‘trying harder’. These prejudices and stereotypes are often reinforced by biased and sensationalist media reports that particularly target those living in poverty who are victims of multiple forms of discrimination, such as single mothers, ethnic minorities, indigenous people and migrants. Such attitudes are so deeply entrenched that they inform public policies and prevent policymakers from addressing the systemic factors that prevent persons living in poverty from overcoming their situation”<sup>33</sup>

**Anti-begging orders not only convey negative stereotypes but reinforce them and contribute to the social exclusion of the homeless**

With regard to begging for example, although it is “a tangible social phenomenon in major cities, there is no real framework in the public arena to think about the questions it raises. We do not have any objective information on the persons concerned or on the practices themselves. There is no up-to-date, non-stigmatising word to designate the diversity of beggars and their practices, which currently form an indecipherable mass. Instead, the public’s relations with situations of begging occur in a context marked by ambivalence and confusion, stemming from ignorance about the legislation, the diversity and volatility of local regulations, the manipulation of the notion of aggressive begging to fuel the stigmatisation of population groups, and the systematic association of begging with public order offences or even with criminal networks. As a result, the public view of begging is shaped mainly by prejudice, rumour and emotion.”<sup>34</sup>

All of this prejudice also legitimises public policy choices which should not have any place in a democratic society and are fundamentally at odds with the comprehensive, co-ordinated approach advocated by the Committee to ensure the effective exercise of the right to protection against poverty and social exclusion.

The Special Rapporteur also has something to say about this: “Poverty is not an autonomous choice, but rather a multifaceted situation from which it may be difficult, if not impossible, to escape without assistance. Persons living in poverty are not to blame for their situation; accordingly, States must not punish or penalize them for it. Rather, States must adopt wide-reaching measures and policies designed to eliminate the conditions that cause, exacerbate or perpetuate poverty, and ensure the realization of all economic, social, cultural, civil and political

---

<sup>33</sup> Report submitted to the General Assembly of the United Nations by the Special Rapporteur on extreme poverty and human rights, report A/66/265, 4 August 2011.

<sup>34</sup> Study and Research Centre on Philanthropy (CerPhi), *Les mendicités à Paris et leurs publics (Begging in Paris and its target audience)*, survey report, May 2011.

rights of those living in poverty. Penalization policies reflect a serious misunderstanding of the realities of the lives of the poorest and most vulnerable and ignorance of the pervasive discrimination and mutually reinforcing disadvantages that they suffer.”<sup>35</sup>

**As a result, the orders at issue in this complaint move people in vulnerable situations away from many parts of town for long parts of the day.** They lead to a geographical exclusion of homeless people, and this geographical exclusion is also a social exclusion.

“Often the underlying motivation of these measures is to reduce the visibility of poverty in the city and attract investments, development and (non-poor) citizens to the city centres. These aims are not legitimate under human rights law, and they do not justify the severe sanctions that are often imposed through these regulations”.<sup>36</sup>

What we see is a clear abuse of the mayor’s policing powers in order to dissuade people in situations of hardship from frequenting a part of their towns and to remove certain particularly vulnerable categories of people from crowded streets and shopping areas. Driven away as they are “from certain public spaces as they are already from the community, their circumstances cause one to wonder whether they are ultimately driven away from their rights”.<sup>37</sup>

Olivier De Schutter, UN Special Rapporteur on extreme poverty and human rights, Balakrishnan Rajagopal, UN Special Rapporteur on the right to adequate housing, and Birgit Van Hout, Regional Representative for Europe to the Office of the UN High Commissioner for Human Rights, recently issued a warning about the fact that in the European Union, *“homeless persons, instead of being treated as rights-holders who should be given guaranteed access to legal remedies, are still frequently treated like criminals”*.<sup>38</sup>

Yet, while the reason given for the contested orders is the existence of public order breaches, when the courts ask the mayors to provide evidence, they are not capable of doing so. **The orders are not intended to deal with a public order offence that has been observed but instead with a “feeling of insecurity”** (e.g. the orders issued in Gignac on 16 October 2018 and in Nîmes on 9 March 2021) caused by gatherings of homeless people or “dropouts” in public areas, a “continuing and unremitting presence”, which “unsettles” the residents (Alençon, 15 March 2021) or “bothers” passers-by (Beauvais, 3 November 2011). Some orders explicitly state the aim of restoring “the normal use of public spaces” (Gignac, 16 October 2018). It goes without saying that mere feelings and value judgments can in no way serve as the legal basis for issuing a municipal order.

---

<sup>35</sup> Report submitted to the General Assembly of the United Nations by the Special Rapporteur on extreme poverty and human rights, report A/66/265, 4 August 2011.

<sup>36</sup> Report submitted to the General Assembly of the United Nations by the Special Rapporteur on extreme poverty and human rights, report A/66/265, 4 August 2011.

<sup>37</sup> Isabelle Michallet, *Le contentieux administratif des arrêtés municipaux d’interdiction de la mendicité (Administrative disputes on the municipal orders prohibiting begging)*, AJDA law review, 20 April 2001.

<sup>38</sup> Olivier De Schutter, Balakrishnan Rajagopal, Birgit Van Hout, *Les États membres de l’UE doivent cesser de traiter les sans-abri comme des criminels (The EU member states must stop treating homeless people like criminals)*, Belgian newspaper La Libre, 19 June 2021.

<https://www.lalibre.be/debats/opinions/2021/06/19/les-etats-membres-de-lue-doivent-cesser-de-traiter-les-sans-abri-comme-des-criminels-42NNCS5VN5CULGR2BXSFAZW4FE/>

Homeless people do not moreover have any interest in disturbing public order. However, “the use and the frequentation of public spaces by homeless people and beggars break unwritten collective rules. Their imprint on the space is seen, rightly or not, as being stronger. The human contacts which they trigger, or seem to trigger, are perturbing ...”.<sup>39</sup> This feeling is fuelled and exacerbated by the development of a form of street furniture which blocks and limits access to the town’s hidden corners and purposefully prevents people from resting or sleeping on it.<sup>40</sup>

To beg, it is necessary to “be seen, but above all not to ‘frighten’, not to surprise or disturb, not to trigger an immediate avoidance reflex through flight or rejection”.<sup>41</sup>

Yet, police reports are drawn up and these people are systematically moved on (see documents Nos. 74, 75 and 76).

Lastly, **the approach of hiding and excluding homeless persons embodied by these orders has the effect of preventing people in need and in great distress from accessing town centres to invite passers-by and residents to help them.** By removing homeless people from busy areas, these orders no longer allow passers-by to apply the principle of fraternity, which includes the freedom to help others for humanitarian purposes, “which sometimes only comes about spontaneously when we actually see people in need” (Besançon Administrative Court, 28 August 2018, No. 18014545).

Several municipalities criticise homeless people in their orders for stationing themselves in the immediate vicinity of ATMs and in crowded shopping streets which “attract a large number of people seeking to collect donations from passers-by through begging” (Nice, 3 May 2019).

Yet, “to receive donations, one has above all to be seen and identified as a ‘beggar’. Begging therefore is concentrated in very busy places and at very busy times, with large crowds. Away from these areas, there is no or very little begging. This concentration adds to the perception that the phenomenon is growing, an impression which is probably true, bearing in mind that poverty has increased, although it has never been measured. ...

Those who practise begging ... are aware that their presence and, even more so, their requests ‘bother’ people, that they create uneasiness or sometimes even anxiety, which they try to limit, either by avoiding asking explicitly for money or, conversely, by talking, establishing a contact, reassuring about the authenticity of their need, apologising for the disturbance and thanking people most profusely for what they are given while showing understanding for those who do not give.”<sup>42</sup>

---

<sup>39</sup> Sophie Rouay-Lambert, *SDF et citoyens dans l’espace public (Homeless people and town-dwellers in public spaces)*, Les annales de la recherche urbaine No. 90, 2001. “An individual who clearly has no home and is dirty, smelly and taking some sort of drug does not take up any more physical space than any other ... In the eyes of passers-by and locals this unexpected encounter provokes many reactions but the memory that each will retain of it reflects the discomfort that it caused: ‘they take up all the space!’. It is not just the people in themselves who are perturbing but the perception that visitors and inhabitants have of their presence”.

<sup>40</sup> <https://soyonshumains.fr/>

<sup>41</sup> Study and Research Centre on Philanthropy (CerPhi), *Les mendicités à Paris et leurs publics (Begging in Paris and its target audience)*, survey report, May 2011.

<sup>42</sup> *Ibid.*

Begging is concentrated in the most frequented areas, where people pass by or gather, either constantly (shopping streets or busy areas around railway and metro stations, etc.) or more occasionally (churches, tourist sites, etc.). The goal is to show oneself, “to break through the barrier of indifference”. The location chosen “depends above all on the need to be visible, to exist noticeably in a public space. To be seen by a sufficiently large number of people is the prerequisite for giving to begin”.<sup>43</sup> Times and durations follow the rhythm of passers-by and their work and recreational pursuits (and the frequency at which people give can vary according to place, day and time).

There are several possible forms that begging may take because it depends on the means or needs of the persons practising it or the effect it has on them:

- Sitting “every day, for long hours (so clearly locked in survival mode, relying strongly on begging as one’s main source of income) ... in a position of physical inferiority to passers-by ...; for instance, persons whose appearance may frighten or put off passers-by tend to remain sitting down to beg, playing down any ‘danger’ they might pose”, or otherwise there are those who do not wish to expose themselves to repeated implicit or explicit rejection by asking for money directly, which they experience as an additional humiliation;
- Standing up “demonstrates able-bodiedness, the capacity for physical resistance”;
- “Begging through approaching” consists in establishing (or maintaining) contact with society. Such contact, however essential it may seem to those who practise this form of begging, may expose them to accusations of a public order offence if their actions are interpreted in a certain way. “Actually, so-called aggressive begging is prohibited... the police consider begging to be aggressive if you ask people for money ... as soon as you ask for something, even if you are very polite and you smile, this is seen as aggressive begging ... and it can be only if you go up to people. the only thing they let you do is put up a sign and stick out a hand.”<sup>44</sup>

The municipal orders at issue therefore prohibit and punish conduct of a type, and in places and at times, which constitute the intrinsic requirements for practising begging, no form of which is truly acceptable in their eyes, and thus outlaw it in practice, without even targeting it directly.

In this manner, as the European Court of Human Rights has also found, the authorities prevent beggars from approaching other people to obtain a form of help which is one of the possible means of meeting their basic needs (ECHR, Section III, *Lacatus v. Switzerland*, 19 January 2021, §56).

**They prevent persons who have no other choice from making use of the ultimate means at their disposal to survive and, in this manner, infringe the first right and principle of the revised European Social Charter, which recognises that “everyone shall have the opportunity to earn his living in an occupation freely entered upon”,** whether this is their sole source of income or an essential addition to their resources, which would otherwise be

---

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

completely inadequate (to feed themselves and their family or not to lose their home, because begging is not just something that the homeless do).

Certain statements will help to understand the real portent of this argument:<sup>45</sup>

“The first time – this was a year ago – I had been on the street for a few months already ...before that I went to soup kitchens like the Restos du Cœur – places like that – but after that I got a handle on things. I look at it as preserving my integrity ... you start begging when you don’t have the choice anymore. There’s a point where you don’t have any choice but to do it. Everything seems very complicated to you because everything depends on money. If you don’t have money then you’re a loser, even if you’re the most intelligent, good-looking bloke, you’re just a sad case! And at some point, I said to myself, I’m going to try this out”.

“Begging, well before it was chipping away at my self-respect, but now I look on it as my work ... yes, begging is my job ... there are people who are builders, others who are bakers ... me, I’m a beggar...”.

“Sometimes I go a day without begging to have a rest, but it’s important not to lose your touch. Afterwards you have to get back into it and it’s not easy ...”.

“As a rule, I set myself a goal of €30 and any more than that is a bonus. But sometimes I don’t make it which is why I put some to one side. ... I have to make at least 40 today, actually 45. Because tomorrow, I’m finishing early – I have my parcel [from the food bank] to go and collect. I paid my rent yesterday and I have to put some money on my account. I’m going to have to work all week to pay back my rent.”

“I beg every day ... in general it’s from 9 a.m. to 2 p.m. – and then I start again in the evening – but in the evening things are a bit random. If there are really a lot of people, I may stay up till one in the morning. If there are a lot of people, it can work. I see this as a job. I do a load of hours and the conditions are sometimes hard, but I do what has to be done. When I’m ill I can’t get a sick note and I don’t earn anything. For me this is a full-time job. ...”.

“I dream of a society where nobody would criticise beggars anymore. There’s no aggression in begging. People give or they don’t give, I don’t see what’s so wrong. It’s better to beg than to steal stuff from stalls as you pass by. If you’re hungry and you have enough to buy yourself two bananas, you’ll pay for them”.

Begging is a “survival activity, which is closer to work than crime”.

## 2. VIOLATION OF ARTICLE 31.1

States Parties must guarantee everyone the right to adequate housing.<sup>46</sup> They must promote access to housing in particular for various groups of vulnerable persons, such as low-income persons, unemployed persons, single parent households, young persons and persons with

---

<sup>45</sup> *Ibid.*

<sup>46</sup> Conclusions 2003, France.

disabilities, including those with mental health problems.<sup>47</sup> Positive measures must be taken to protect vulnerable people, giving special consideration to the needs and the lifestyles of Roma and Travellers both in the relevant regulatory framework and in reaching decisions in particular cases (*Centre on Housing Rights and Evictions (COHRE) v. Italy*, Complaint No. 58/2009, decision on the merits of 25 June 2010, §§ 39 and 40).

In a thematic report of 2005 (E/CN.4/2005/48, 3 March 2005), the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living expressed his concern about “the impact of laws that directly or indirectly criminalize homelessness and serve to further marginalize the homeless” particularly those that condemn the act of begging.

Guidelines on the implementation of the right to adequate housing<sup>48</sup> recommend that states should “prohibit and address discrimination on the ground of homelessness or other housing status and repeal all laws and measures that criminalize or penalize homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces. The forced eviction of homeless persons from public spaces and the destruction of their personal belongings must be prohibited. Homeless persons should be equally protected from interference with privacy and the home, wherever they are living”.

They also recommend that they should “provide, within their justice system, alternative procedures for dealing with minor offences of homeless people to help them break the cycle of criminalization, incarceration and homelessness and secure the right to housing. Police should be trained to interact with homeless persons in a manner that respects and promotes their dignity and rights”.

As has been stated, the orders convey the image that homeless people are alcoholics, dirty, noisy, lazy and irresponsible. Underlying this is the idea that homeless people are the “authors of their own misfortune”<sup>49</sup> and do not really wish to escape poverty.

**These prejudices concerning homeless people, conveyed through the anti-begging orders, fuel and sustain the idea of an “inability to live in homes” among homeless people, and the notion that they are difficult to house.** Because of this they undermine the fight against homelessness and do not favour access to housing; in fact, they impede access. Currently, the Housing First policy<sup>50</sup> is attempting – with difficulty – to reverse the trend but it finds itself held back by these prejudices.

As the New Agency for Active Solidarity notes in a report talking about the obstacles to the Housing First policy, “prejudices about the independence of persons and their ‘inability to live’ in a home endure and serve as criteria in the process of sorting priority groups”.<sup>51</sup>

---

<sup>47</sup> Conclusions 2003, Italy.

<sup>48</sup> Guidelines for the Implementation of the Right to Adequate Housing - Report of the Special Rapporteur on adequate housing, A/HRC/43/43, 26 December 2019.

<sup>49</sup> Report submitted to the General Assembly of the United Nations by the Special Rapporteur on extreme poverty and human rights, report A/66/265, 4 August 2011.

<sup>50</sup> The five-year Housing First plan to combat homelessness (2018-2022) proposes a structural reform of access to housing for persons of no fixed abode.

<sup>51</sup> Agence nouvelle des solidarités actives, *Le logement d'abord, et après, Bilan et propositions pour la généralisation du logement d'abord en France (Housing first, then what?, Review and proposals for the general*



3.8 % of the social housing granted in France goes to families already in accommodation and only 2.3% to the homeless. According to figures published by the French social housing association, being homeless is one of the inadequate housing situations in which there is least chance of obtaining social housing (a success rate of 17% per year, which is as little as tenant households and far less than persons in temporary accommodation – 28%).

These prejudices are often the source of campaigns by residents objecting to the opening of accommodation centres.<sup>52</sup>

Furthermore, **by forcing homeless people to live in areas scattered throughout a municipality in places where few people pass by, these orders hide the extent of the problem.** The concealment of homelessness is a concern because it makes it impossible to identify vulnerable persons correctly and take action to make their right to housing effective.

Lastly, **when several orders follow one another, no assessment is ever made** of their success and their impact on breaches of public order and the people targeted.

### 3. VIOLATION OF ARTICLE 11

All violations of human dignity have an impact on people's physical, mental and social well-being.

Article 11§1 of the Charter establishes, *inter alia*, the right to the highest possible standard of health and the right of access to health care.

In its decision on the merits of 15 May 2018 relating to the Complaint *Transgender Europe and ILGA Europe v. the Czech Republic*, the Committee stated as follows:

“Under Article 11, health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity, in accordance with the definition of health in the Constitution of the World Health Organisation (WHO), which has been accepted by all Parties to the Charter.”<sup>53</sup>

The Committee has already emphasised the importance of dignity in connection with the right to the protection of health under Article 11, stating as follows: “Human dignity is the fundamental value and indeed the core of positive European human rights law – whether under the European Social Charter or under the European Convention on Human Rights” (*International Federation of Human Rights Leagues (FIDH) v. France*, Complaint No. 14/2003, decision on the merits of 8 September 2004, para. 31).

---

*application of Housing First in France*), March 2017, accessible (in French) on: [Ansa AT Logementdabord Rapport 2017 VF.pdf \(solidarites-actives.com\)](#) (link consulted on 24/12/2021).

<sup>52</sup> <https://www.dailymotion.com/video/x87akl2>; [https://www.francetvinfo.fr/france/paris-des-habitants-du-16e-arrondissement-perturbent-un-debat-sur-la-construction-d-un-centre-d-hebergement\\_1360139.html](https://www.francetvinfo.fr/france/paris-des-habitants-du-16e-arrondissement-perturbent-un-debat-sur-la-construction-d-un-centre-d-hebergement_1360139.html); <https://www.change.org/p/non-au-centre-d-h%C3%A9bergement-de-250-personnes-sur-le-site-de-l-observatoire-de-st-maur>

<sup>53</sup> *Transgender Europe and ILGA Europe v. the Czech Republic*, Complaint No. 117/2014, decision on the merits of 15 May 2018, §71



In the case of *Lacatus v. Switzerland*, the European Court of Human Rights equated the prohibition of begging with an infringement of human dignity. In the Court's view, the notion of human dignity underlies the spirit of the Convention and can also be referred to under Article 8. The Court considers that human dignity is severely compromised if the person concerned does not have sufficient means of subsistence (ECHR, Section III, *Lacatus v. Switzerland*, 19 January 2021, §56). Begging is a means of securing income and alleviating poverty. In the Court's opinion, by imposing a blanket prohibition on begging and imposing a fine on the applicant, the Swiss authorities had prevented her from approaching other people in order to obtain a form of help which, in her situation, was one of the possible means of meeting her basic needs (ECHR, Section III, *Lacatus v. Switzerland*, 19 January 2021, §56). Consequently, the Court found that the punishment of the applicant, an extremely vulnerable person, in a situation in which she had in all likelihood lacked any other means of subsistence and had thus had no choice other than to beg in order to survive, had infringed her human dignity and impaired the very essence of the rights protected by Article 8 (ECHR, Section III, *Lacatus v. Switzerland*, 19 January 2021, §115).

**In France, it is because they do not have sufficient means of subsistence that many individuals are forced to live on the street, which entails sitting, lying, cooking, begging in public spaces, etc. By fining them and requiring them to move on, the state prevents them from satisfying or providing for their basic needs. Therefore, it infringes their human dignity.**

Furthermore, **by removing them from busy areas of town and preventing them from assembling, the orders expose people on the street to increased insecurity.** According to a 2012 homelessness survey, 42% of homeless people had been victims of theft in the preceding two years and 33% of assault.<sup>54</sup>

In the same way, measures taken by certain municipalities to **prevent gatherings of several people have an undoubted adverse impact on the state of social well-being** of homeless people, which has already been undermined by the situation of extreme vulnerability in which they find themselves.

“While external ties are mostly broken, homeless people try to build bonds of solidarity with other homeless people. The feeling of rejection on the street and the way people look at them can be so powerful that ‘being shy and marginalised, many try to reconstruct a feeling of togetherness, of ‘us’, with other people on the margins’ (Guibert-Lassalle, 2006). This sociability between the homeless illustrates a ‘need for a sense of community’ which can be useful. Living in pairs or groups enables them to protect one another at night and increase access to food, for example.”<sup>55</sup>

**Lastly, there are a disproportionate number of people with mental disorders among the homeless.** According to the French National Health Authority, “mental disorders contribute to increased vulnerability and vulnerable circumstances are the source of major mental suffering

---

<sup>54</sup> Abbé Pierre Foundation, *L'état du mal-logement en France*, 26<sup>th</sup> annual report annuel, 2021, p. 194.

<sup>55</sup> Benjamin Pradel, *[Sur]vivre dehors, Besoins, dispositifs et enjeux existants et à venir à propos des personnes sans-abri (Living and surviving outdoors – Needs, systems and current and future challenges for the homeless)*, 2020.

and a worsening of disorders”.<sup>56</sup> The homeless do not have access to appropriate psychiatric supervision. According to a study conducted for the programme “*Un chez soi d’abord*” (“A home first”), of 700 homeless people suffering from schizophrenia or bipolar disorders, 90% do not receive appropriate treatment.<sup>57</sup>

Removing people with mental disorders from busy areas and town centres may also move them away from health services and conceal them from associations trying to help them and refer them to healthcare facilities. This makes access to psychiatric treatment more difficult, making homeless people’s mental disorders worse – a problem compounded just as much by repeated orders to move on from the police.

#### 4. VIOLATION OF ARTICLE E READ IN CONJUNCTION WITH ARTICLES 30 AND 31.1

Discrimination based on economic circumstances has already been found by the ECSR. Article E does not constitute an autonomous right which could in itself provide independent grounds for a complaint. However, a violation of Article E (combined with a substantive provision of the Charter) may exist even in the absence of a breach of the relevant substantive provision. The principle of non-discrimination means treating equals equally and unequals unequally. For a difference in treatment not to constitute discrimination, it must be based on an objective and reasonable justification and be proportionate to the objective pursued.

Being deprived of their own home or suitable housing, people on the street do not have any other place to move to and carry out their day-to-day activities.

**Homeless people in vulnerable situations are not, in most cases, specifically or directly targeted by the prohibitions enacted. However, all the conduct they refer to is more likely to be adopted by them** and on reading the introductory paragraphs of these orders and the documents produced in evidence during legal disputes, it is clear that they are directed specifically at people in situations of economic and social hardship or without homes.

The preambles to these orders very frequently mention reports of begging, vagrancy and people permanently or lastingly occupying public spaces with their pets. For example, in an order issued in Nice on 3 May 2019 makes the following reference: “considering that these repeated acts of begging, sometimes involving dogs ...” and an order issued in Périgueux on 25 April 2019 talks of “disturbances, of which 88 were caused by persons engaging in the solicitation or collection of money”.

The documents produced by municipalities in the context of proceedings brought by the Human Rights League and the Abbé Pierre Foundation against anti-begging orders show that these orders only penalise persons in situations of hardship and the homeless. For example, of the 69

---

<sup>56</sup> National Health Authority, “Comment intervenir auprès des personnes en situation de grande précarité présentant des troubles psychiques” (“How to deal with people in situation of extreme social vulnerability with mental disorders”), 7 September 2021, p. 3.

<sup>57</sup> Fond G., Tinland A., Boucekine M., Girard V., Loubière S., Auquier P., Boyer L., *Prescription of potentially inappropriate psychotropic drugs in homeless people with schizophrenia and bipolar disorders. Results from the French Housing First (FHF) program*, in *Progress in Neuropsychopharmacology*, August 2018. Study cited in Abbé Pierre Foundation, *L’état du mal-logement en France*, 26<sup>th</sup> annual report, 2021, p. 194.

police reports produced by the municipality of Nice during the proceedings against the order of 12 May 2019, 42 related to people who said they were homeless (27 said to the police officers “I don’t have a stable home; I have to feed myself somehow”).

This is also what we see from the 35 police reports submitted by the municipality of Metz during its proceedings against the order of 28 February 2020: 12 reports stated, under the offender’s address, either “none” or “of no fixed abode”, 14 gave the address of a municipal welfare centre, a home run by the Abbé Pierre Foundation called the Espace Clovis or another home run by an association, and 5 gave the address of a boarding house or a social residence. Only one report gave no indication as to whether the person was in a vulnerable situation.

Another underlying thread in these reports is the many prejudices against Roma. During the legal proceedings brought by the Abbé Pierre Foundation and the Human Rights League, it was clear that most of these orders served to punish Roma groups when they were staying in the town in question. Here again, these orders accentuate the prejudice against these groups and make it even more difficult in practice to find suitable solutions for them.

**The orders are not prompted by any actual public order offence but instead by the supposed probability that such offences will be committed by a specific population group,** which is placed under surveillance because it embodies a potential danger. This “potential danger” is what justifies the prohibition and the rejection.

Myriad prejudices and other variables go to make up the definition and the extent of a breach of public order, including age, sex, external signs of poverty, alcohol consumption, begging, weather conditions, gatherings, the presence of dogs, the degree of acquiescence, the ability to go unnoticed and amicable relations.<sup>58</sup> Homeless people are tolerated or moved along, “kept an eye on” or have “their behaviour constantly assessed” in a way that is “continually renegotiated”.<sup>59</sup> The existence of the orders at issue, their content and the application thereof reflect this ongoing negotiation within the scope of the broad – and inevitably subjective – discretion given to the various authorities which intervene, which is a source of legal uncertainty, arbitrariness and backsliding in the treatment of homeless people.

In the end therefore it is perfectly legal forms of conduct which are prohibited, resulting in the exclusion of people whose social and economic hardship is not only obvious but the main cause of this exclusion.

Although the offence of begging has been done away with, directly or indirectly, “the underlying parameters of the discourse on beggars remain. By insisting on threats, they perpetuate the idea of a dangerous situation and result in the introduction of specific forms of protection for minors and the preservation of a legal framework regulating the issue of begging”. Where vagrancy is concerned, “the messages are confused, and while the state, through the new Criminal Code, no longer criminalises the practice, the issue of vagrancy

---

<sup>58</sup> Bruno Domingo, “SDF” et construction d’un ordre public local : fluidités de l’identité assignée et normalisation des lieux (*The “homeless” and the framing of local public policy – fluidities of assigned identity and normalisation of spaces*), *Déviance et société*, No. 3, 2007. “Is the person begging or not? Are they (too) noticeable or do they keep out of the way? Are they known or not? Do they smell bad? Is it cold or not? Do they have a dog? Are they in a group or alone, etc?”.

<sup>59</sup> *Ibid.*

continues to be raised, as a corollary to that of begging, at the smaller scale of the town and in relation to the occupation of public spaces”.<sup>60</sup>

In Resolution 21/11 adopted at its 21<sup>st</sup> session in September 2012, the UN Human Rights Council set out its “Guiding principles on extreme poverty and human rights” and stated that “States should ... (c) Repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities ...” (paragraph 66).

In a report submitted to the UN General Assembly (A/66/265, 4 August 2011)<sup>61</sup>, the Special Rapporteur on extreme poverty and human rights duly describes the impact of criminalisation measures,<sup>62</sup> which target certain individuals because their income, appearance, speech, address or needs identify them as poor, and the discrimination on the basis of economic and social status which motivates them and/or which they engender and perpetuate (§18).

She notes that “criminal or regulatory measures (e.g. ordinances) that make vagrancy and begging unlawful are becoming increasingly common across developed and developing countries. These laws take a number of forms, from legislation that prohibits the solicitation of money in any public space to that which prohibits begging at night or in an aggressive manner. ... It is obvious that these laws and regulations have a disproportionate impact on persons who live in poverty. When they are unable to access sufficient support and assistance from the State, persons living in poverty may have no other option than to beg in order to stay alive. To punish them for their actions in circumstances where they have no other means of survival is clearly a disproportionately punitive measure” (§§30 and 31).

The Rapporteur argues that “bans on begging and vagrancy represent serious violations of the principles of equality and non-discrimination. Such measures give law enforcement officials wide discretion in their application and increase the vulnerability of persons living in poverty to harassment and violence. They serve only to contribute to the perpetuation of discriminatory societal attitudes towards the poorest and most vulnerable” (§32).

Furthermore, “stigmatisation and prejudicial attitudes generate a sense of shame, discouraging persons living in poverty from approaching public officials and seeking the support that they need. Not wishing to expose themselves to even greater social discrimination by accessing services that are stigmatized by society, persons living in poverty may refrain from claiming

---

<sup>60</sup> Valérie Bertrand, *La mendicité et l'état dangereux : l'historicité des représentations sociales dans le discours juridique (Begging and danger: the historicity of social portrayals in legal discourse)*, Connexions, 2003/2 No. 80, pp. 137-154. “The orders regulating begging no longer cause any controversy and their justification is no longer questioned. The social construct of danger that they formulate seems to be shared by the entire community and this legitimises their use but also the social portrayals they convey about beggars through their stigmatisation” in an “intermingling of the past and the present in social thinking”.

<sup>61</sup> <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/444/50/PDF/N1144450.pdf?OpenElement>

<sup>62</sup> “3. The report uses the term ‘penalization measures’ to refer generally to policies, laws and administrative regulations that punish, segregate, control and undermine the autonomy of persons living in poverty. These measures are homogenous neither in their design nor their effect; they vary significantly in their intent and impact across and within regions, States, provinces and municipalities. Some result in the outright criminalization, prosecution and incarceration of persons living in poverty, while others excessively regulate and control various aspects of their lives. Some have punitive effects such as the imposition of heavy fines, loss of child custody, disenfranchisement from social benefits and infringement on rights to privacy and autonomy. Some measures explicitly target persons living in poverty while others are neutral laws, policies and practices which, though directed at all individuals, have a disproportionate impact on those living in poverty.”

entitlements such as food vouchers or subsidies, accessing public housing or attending free health clinics. This further segregates and excludes them, strengthening the vicious cycle that perpetuates poverty through generations” (§9).

She concludes her report with recommendations, including the following which calls for all discriminatory laws to be done away with: “States shall take all necessary measures to eliminate all direct and indirect discrimination against persons living in poverty. States must refrain from adopting any law, regulation or practice denying or limiting the access of persons living in poverty to the enjoyment of all their rights, including economic, social and cultural rights. States must review national legislation in order to assess the existence of any discriminatory impact on those living in poverty and shall repeal or amend legislation that has the purpose or effect of impairing the equal enjoyment of rights by those living in poverty” (§82(a)).

In its Resolution of 21 January 2021 on access to decent and affordable housing for all, the European Parliament calls on states “to put an end to the criminalisation of homeless people and to change the discriminatory practices used to prevent homeless people from accessing social services and shelter” and to “repeal all laws and measures that criminalise or penalise people for being homeless or behaviours associated with being homeless, such as sleeping or eating in public spaces, as well as to prohibit the forced expulsion of homeless persons from public spaces”.

#### IV. CONCLUSION

The proliferation in France of orders prohibiting the conduct generally adopted by homeless people in public spaces, the absence of legal or regulatory provisions or specific, detailed and clear instructions designed to regulate the action of mayors in this area, taking account of the impact of their decisions on persons in situations of social exclusion, hardship and inadequate housing, and the imprecision of the criteria established by case law demonstrate that the national legal framework does not protect homeless people and constitutes a violation of Articles 30, 31, 11 and 1, and Article E of the revised European Social Charter in itself and read in conjunction with the former articles.

France’s legislation and judicial remedies do not make it possible to guarantee that the mayor’s general policing powers are not misused – in local regulations or in practice – to prohibit and punish begging and the conduct adopted mainly and inevitably by homeless persons or persons in situations of extreme economic and social hardship.

Although this intention cannot be attributed to all towns which have adopted such orders, they still expose these persons more than any other to punishment and exclusion and have a disproportionate impact on them.

The fact is that they convey and cultivate negative stereotypes and prejudices which undermine the effectiveness of the right to protection against poverty and social exclusion, the right to protection of health and the right to earn one’s living, and result in discriminatory treatment.

Accordingly, these orders must be prohibited, along with any police operations motivated by the mere presence of these people. If nonetheless such orders are allowed, homeless people engaging in begging should be expressly excluded from their scope of application or be the object of a shift in their application through an objective and precise definition of *possible* disorder and the point beyond which it is punishable, bearing in mind their particular situation.

However, the latter option is difficult to envisage if we consider how impossible it currently is to filter out what stems from prejudice with regard to begging and homelessness and identify the highly resonant subjective (and ideological) component in the public's and the authorities' judgment of such situations.

And this is especially true given that the general provisions of the Criminal Code are sufficient and make it possible to avoid adopting specific, inevitably stigmatising local measures, which are therefore unnecessary.

It should be pointed out that “the primary responsibility for implementing the European Social Charter naturally rests with national authorities. Having regard to their constitutional arrangements and their social welfare and industrial relations systems, these authorities may in turn delegate certain powers to local authorities or the social partners. However, such implementation strategies must be accompanied by appropriate safeguards, so as not to put at risk the actual implementation of the undertakings under the Charter”<sup>63</sup> and states are required “to take not merely legal action but also practical action to give full effect to the rights recognised in the Charter”.<sup>64</sup>

The French state should:

- Amend the relevant legislation, where needed;
- Give clear instructions to the municipalities and decentralised services prohibiting orders targeting or having a direct or indirect impact on homeless persons;
- Take measures to put an end to prejudice against the homeless and the vulnerable and to bring a halt to discrimination against them;
- End discrimination against homeless persons in access to social housing;
- Bring the situation into conformity with the revised European Social Charter.

Kjell Larsson

Alice Mogwe  
President

**FEANTSA**

**FIDH**

---

<sup>63</sup> Conclusions XVIII-1 (2006), Statement of Interpretation, in Digest of the Case Law of the European Committee of Social Rights, Appendix.

<sup>64</sup> Autism-Europe v. France, Complaint No. 13/2002, decision on the merits of 4 November 2003, § 53.