



In summer 2012, as part of the Poverty is Not a Crime campaign, Housing Rights Watch conducted a survey of national laws that penalise or criminalise the behaviour of people who are homeless. Legal experts prepared country reports that describe the nature of anti-social behaviour laws, as well as other regulations or ordinances that affect homeless people.

The information in these reports was gathered from as many sources as available at the time they were prepared with publically available information only; some sections are incomplete due to the inaccessibility of the required data or lack thereof.

## Czech Republic

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### 1. Introduction

Czech law does not define homelessness, nor does it directly aim to persecute homeless people. Criminal law is invoked only in the case of more serious offences. Therefore criminal law does not negatively impact the everyday lives of homeless people, with the exception of squatting, which is a criminal offence in the Czech Republic.

Most of the activities of homeless people are therefore dealt with in administrative proceedings. Panhandling and drinking alcohol in public are prohibited by local regulations in certain areas of Prague, though sleeping rough is permitted. Anti-social behaviour and other activities and offences are prohibited under Act No. 200/1990 Coll., on administrative offences, as amended (the “Administrative Offence Act”).

We are not aware of any significant recent change in legislation in this area. In connection with homeless people, there is a proposed amendment of the Administrative Offence Act that would give municipalities the right to punish offenders, including homeless people, for offences against public order by banishment of up to three months. It is unclear whether this amendment will be eventually adopted.

### 2. Criminal Offences

Czech criminal law is explicitly based on the principle of subsidiarity, meaning that it should be applied only to socially harmful cases where the application of liability pursuant to other legal regulations is insufficient. In particular, civil law and administrative law should be relied upon in the first instance.

Until 1 July 1990, homeless people were in general considered perpetrators of the criminal offence of ‘parasitism’ (*příživnictví*). Since this criminal offence has been abolished, there are no criminal offences that would directly prohibit behaviour that may be associated with homeless people. The only significant exception is the criminal offence of squatting.

### 3. Administrative Offences

Unlike criminal offences, administrative offences are prosecuted by the administrative authorities, not the courts. They address non-criminal offences. Administrative offences are regulated by a great number of laws and their scope is very wide and varied. Homeless people may be caught in particular by the Administrative Offence Act. Although this crucial piece of national legislation on administrative offences does not primarily focus on homeless people, it covers most of the anti-social behaviour in which homeless people may typically be involved.

Aside from administrative offences that are prohibited by national law such as the Administrative Offence Act, municipalities may issue ‘generally binding ordinances’ (*obecně závazné vyhlášky*) for the purpose of securing public order. A breach of a generally binding ordinance is considered an administrative offence against public order under Section 46(2) of the Administrative Offence Act.

### *Offences directly affecting homeless people*

#### Sleeping rough

Generally, sleeping rough is not forbidden, with the exception of sleeping in protected natural areas and squatting. Sleeping rough is not an administrative offence under the Administrative Offence Act, nor an administrative offence regulated by local authorities. However, it may be considered an administrative offence if the behaviour restricts the movement of others (for example sleeping on stairs or in hallways) or causes public outrage (*veřejné pohoršení*)<sup>1</sup>. Consequently, sleeping in busy public areas may be likely to be categorised as an administrative offence under Section 47 of the Administrative Offence Act.

In protected natural areas (for example in national parks or forests), sleeping for one night without building a shelter or making a fire is generally permitted. In contrast, more permanent forms of camping are usually permitted only within designated areas.

Squatting, or the occupation of an abandoned building or area, is forbidden under Section 280 of Act No. 40/2009 Coll., the Criminal Code, as amended, which sets out the elements of the criminal offence of “unauthorised infringement upon the title to a house, flat or non-residential premises”, which is punishable by imprisonment of up to two years, or a more prolonged prison term if there are aggravating factors.

#### Panhandling

In general, panhandling is not forbidden in the Czech Republic. However, panhandling in certain areas of Prague is prohibited by regulation No. 14/2000 issued by the Prague City Assembly on 27 April 2000. Regulation No. 14/2000 prohibits panhandling in the following locations:

- (a) on subway premises, including access and exit routes;
- (b) on public transport;
- (c) at and within 100m of railway stations;
- (d) at and within 100m of intercity bus stops;
- (e) at and within 100m of airports;

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<sup>1</sup> This is not defined in the Administrative Offence Act which employs the term in in Section 47 (1).(c) but the Supreme Administrative Court provides some guidance in its decision No. 2 As 69/2003, explaining that the conduct causing public outrage should (i) subjectively outrage (scandalise) at least more than two persons; (ii) those persons should be simultaneously present to the conduct; and (iii) the conduct must be contrary to the morality that is generally accepted by the public.

- (f) at and within 100m of kindergartens, primary schools and primary schools of art;
- (g) at and within 100m of foreign embassies; and
- (h) in the public areas listed in the Annex to the regulation, which includes 40 streets and squares in the city centre of Prague.

#### *Offences indirectly affecting the homeless*

##### Anti-social behaviour

Section 47 of the Administrative Offence Act prohibits administrative offences against public order, which are:

- (a) causing disturbance at night;
- (b) causing public outrage;
- (c) polluting public spaces or public utility facilities;
- (d) damaging or unlawfully occupying public spaces, publicly accessible facilities or community facilities; or
- (e) disposing of garbage or waste outside of designated sites.

##### Drinking alcohol in public

In general, drinking alcohol in public is not forbidden in the Czech Republic. However, drinking in public in certain areas of Prague is prohibited by regulation No. 12/2008 issued by the Prague City Assembly on 19 June 2008. Regulation No. 12/2008 prohibits consumption of alcoholic beverages in the following locations:

- (a) at and within 100m of subway stations;
- (b) at and within 100m of schools and educational institutions;
- (c) at and within 100m of medical facilities;
- (d) in playgrounds; and
- (e) in the public areas listed in the Annex to the regulation, which includes 459 sites across Prague such as specific streets, squares, parks, gardens, and shopping centres.

##### Personal identification documents

A common issue faced by the homeless is the need to produce personal identification documents when prompted to do so by the police. Although the police cannot require personal identification arbitrarily, national police<sup>2</sup> and local police<sup>3</sup> may require identification, from, *inter alia*, people under suspicion of committing a criminal or administrative offence, or from people required to provide an explanation in connection with a criminal or administrative offence. A person asked to show identification by a police officer must comply with the request.

#### *Miscellaneous ordinances and decrees*

Other administrative offences relevant to homeless people are administrative offences to do with alcoholism and other substance abuse pursuant to Section 30 of the Administrative

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<sup>2</sup> Section 63 of Act No. 273/2008 Coll., on the Police of the Czech Republic, as amended.

<sup>3</sup> Section 12 of Act No. 553/1991 Coll., on local police, as amended.

Offence Act, especially the administrative offence of smoking in places where it is forbidden to do so by law. These include enclosed public areas or areas connected to public transport.<sup>4</sup>

*Repression of offences*

*Sanctions*

Under the Administrative Offence Act, offences can be sanctioned by warning, fine, prohibition of the activity in question and forfeiture of property. The maximum fine is generally CZK 1,000, unless stipulated otherwise for a particular type of administrative offence. For instance, an administrative offence against the public order under Section 46(2) of the Administrative Offence Act may be penalised by a fine of up to CZK 30,000.

4. *Appeals procedure*

5. **National Case Law**

6. **International Case Law**

7. **Additional Information**

We are not aware of any significant changes in legislation that would make certain types of everyday activities of homeless people no longer subject to administrative proceedings. Quite the contrary, there are certain indirect initiatives to further strengthen legislation against homeless people. For instance, a recent proposal of a group of members of the House of Deputies to change the Administrative Offence Act received significant attention; this proposal would allow municipalities to punish offences against public order by banning offenders from entering that municipality for up to three months. This is a law intended to primarily affect those involved in pick-pocketing or soliciting prostitution in public, but it could also apply to homeless people.

The Czech government opposed this proposal, arguing that only the courts are allowed to decide on banishment, and only in criminal proceedings. Despite the disapproval of the Czech government, ombudsman Pavel Varvařovský and several non-profit organisations, the House of Deputies passed the bill. However, the bill was subsequently rejected by the Senate, and after the House of Representatives overrode the Senate with a vote in favour of the bill by the necessary majority of all members of the House of Deputies, the President vetoed the bill on 19 June 2012. The House of Deputies may now overrule the President's veto by again voting for the bill with a majority of all members of the House of Deputies.

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<sup>4</sup> See Section 8 of Act No. 379/2005 Coll., on protective measures against the damage caused by tobacco products, alcohol and other addictive substances, as amended.