



FEANTSA



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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.

Ireland

1. Introduction

According to the 2011 Human Development Index Ranking,¹ compiled by the United Nations Development Program, human development (i.e. the standard of living and/or quality of life) in Ireland is one of the highest in the world. In the fields of overall health, education and living standards, Ireland is ranked 7th worldwide and 3rd in Europe.² There is, however a section of the Irish population that does not enjoy such high living standards, namely the homeless community, which includes some of the poorest and most vulnerable members of society.

Official figures gathered by local housing authorities found that of 98,318 households in need of social housing support, 2348 applicants were homeless in 2011.³ When compared with figures for 2005 (2399)⁴ and 2002 (2468⁵/3773⁶) the number of homeless have decreased somewhat, but homelessness nevertheless remains a serious issue in Ireland.

Homelessness is a complex phenomenon which creates various social, economic and legal issues. As regards the legal issues in particular, there is throughout Europe a growing legislative trend towards the criminalisation of homelessness, e.g. by imposing penalties on certain types of behaviour most likely to be engaged in by homeless people by virtue of their circumstances. Aside from the direct criminalisation of homelessness itself, discrimination against homeless people is also imposed indirectly, e.g. by banning activities such as sitting or sleeping in public spaces.

The primary legislation dealing with homelessness in Ireland comprises the Health Act 1953, the Housing Act 1988, the Child Care Act 1991 and most recently the Housing (Miscellaneous

¹ The Human Development Index Ranking measures a country's standard of living against a set of defined criteria. It then ranks that country's standard of living against other countries worldwide.

² Human development statistical annexes, http://hdr.undp.org/en/media/HDR_2011_EN_Tables.pdf p. 117

³ Housing Needs Assessment 2011, <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/FileDownload,27864,en.pdf> , p. 1

⁴ Annual Housing Statistics Bulletin 2005, <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/FileDownload,2115,en.pdf> , p. 88

⁵ 2005 Housing Needs Assessment – Extract from 2005 Annual Housing Statistics Bulletin, <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/FileDownload,27869,en.pdf> , p. 3

⁶ Annual Housing Statistics Bulletin 2002 - Incorporating December Quarter 2002, <http://www.environ.ie/en/Publications/StatisticsandRegularPublications/HousingStatistics/FileDownload,2126,en.pdf> , p. 69

Provisions) Act 2009. The Housing Act 1988 provided the first legal definition of homelessness in Ireland. According to section 2 of the Housing Act 1988 a person is considered to be homeless where:

- "a) there is no accommodation available which, in the opinion of the authority, he, together with any other person who normally resides with him or who might reasonably be expected to reside with him, can reasonably occupy or remain in occupation of, or
- b) he is living in a hospital, county home, night shelter or other such institution, and is so living because he has no accommodation of the kind referred to in paragraph (a), or
- c) he is, in the opinion of the authority, unable to provide accommodation from his own resources."

The Housing Act 1988 was introduced following intensive lobbying by a coalition of voluntary organizations.

It addresses different legislative measures to assess housing needs and provide the necessary accommodation for homeless people. The Housing Act requires local authorities to periodically assess existing housing requirements in order to calculate the number of households with low resources in need of housing, as well as the need for caravans for travellers. It also obliges local authorities to conduct regular assessments of homelessness in their areas as part of the tri-annual Assessment of Housing Needs.

The Housing Act 1988 allows local authorities to provide housing for homeless people and also enables local authorities to provide a homeless person with money to source accommodation.

2. Criminal Offences

Although the Criminal Justice (Public Order) Act 1994 does not criminalise homelessness directly as such, homeless people, by virtue of their situation, may be likely to commit one or more of the following offences.

Decriminalization

Chapter six of the Housing (Miscellaneous Provisions) Act 2009 provides for the establishment of the Homelessness Consultative Forum and a Statutory Management Group. The Homelessness Consultative Forum consists of a number of representatives from statutory and voluntary providers of services to people who are homeless. The role of the Forum is to provide information, views, advice or reports to the Statutory Management Group, in relation to the operation and implementation of the homelessness action plan in the various regions. The Statutory Management Group makes recommendations to relevant statutory bodies on homeless services including funding. It ensures that the activities of funded services responding to homelessness are in keeping with relevant policy frames and best practice in terms of accountability and management.

In a document published by the Department of the Environment, Community & Local Government 'The Way Home': A Strategy to Address Adult Homelessness in Ireland 2008-2013 the Irish Government has committed to eliminating long-term occupancy of emergency homeless accommodation and to end the need to sleep rough.⁷

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<http://www.environ.ie/en/Publications/DevelopmentandHousing/Housing/FileDownload,18192.en.pdf>

Furthermore, local authorities have considerable power to secure accommodation or contribute to the costs of accommodation for homeless people - indeed the Department of the Environment, Community and Local Government recoups 90% of the local authorities' expenditure in this regard.

In Dublin, in particular, the Dublin Region Homeless Executive Partnership Action Plan on Homelessness "Pathway Home" was set up in 2009. The action plan aims to, inter alia, make the transition from homelessness to independent living more efficient.

Offences directly affecting homeless people

Offences indirectly affecting the homeless

Public Intoxication

Section 4 of the Criminal Justice (Public Order) Act 1994 deals with the offence of being intoxicated in a public place. Persons convicted of the offence are liable for a maximum fine of up to EUR 500. Section 4 also allows the Gardaí (Police) to seize the intoxicating substance where they suspect that the offence is being committed. Section 23B, inserted in the Act by Section 184 of the Criminal Justice Act 2006, provides for a fixed fine instead of court proceedings. This fixed fine which is currently set at EUR 100 may be varied by the Minister for Justice and Equality.

It is also illegal for a licence holder to sell alcohol in a closed container (i.e., can or bottle) for consumption off the premises in a place 100 metres or less from the premises. If convicted, the licensee can be fined up to EUR 1500 for a first offence and up to EUR 2000 for any subsequent offence.

3. Administrative Offences

Offences directly affecting homeless people

Begging

Under Section 2 of the Criminal Justice (Public Order) Act 2011 a person who begs in an intimidating or aggressive manner is guilty of an offence. A person found guilty of such an offence is liable on summary conviction to a fine of up to EUR 500 and/or up to 1 month in prison. The Act provides that where someone is begging near certain places such as an ATM, a night safe, a vending machine or a shop entrance the Gardaí can direct them to leave the area. Failure to do as directed by a Garda is an offence and can be fined with up to EUR 500.

The Act also makes it an offence to organise or encourage begging in an intimidating or threatening manner by another person.

Children begging

According to Section 247 of the Children Act 2001 it is an offence to procure a child to beg or to allow a child to beg where that child is in the offender's custody, charge or care. The offence under Section 247 is directed at those adults who use children for begging; it is not directed at the begging itself.

Squatting

Section 11 of the 1994 Act makes it an offence for anyone to enter (i.e., trespass) a building or the vicinity of a building with the intention of committing an offence and/or interfering with property. For example, you need not have entered a building to commit an offence under this Section. Being on the property (i.e. in the back garden or the driveway of a house) will be enough to bring a person within the ambit of the offence. It will be a matter for the prosecution in any proceedings to prove that the accused person was present in the building or on the property with the intention of committing an offence or with intent to interfere with any property.

Offences indirectly affecting the homeless

Public drinking

Although there are no national laws prohibiting drinking in public, local authorities are entitled to pass bye-laws prohibiting the consumption of alcohol in public places.

The Dublin local authority did so by passing the Intoxicating Liquor Bye-laws under the Local Government Act 2001. These came into effect on 1st October 2008. The Bye-laws prohibit the consumption of intoxicating liquor on roads and in public places within the city of Dublin.

Public disturbance

This offence is concerned with what is described as “offensive conduct”. Section 5(i) of the Criminal Justice (Public Order) Act 1994 makes it an offence for anyone in a public place to engage in offensive conduct: between the hours of midnight and 7 am; or at any time, after having been requested by a member of the police to desist. Offensive conduct is unreasonable behaviour which (having regard to the circumstances), is likely to cause serious offence or serious annoyance to other people.

This offence is designed to deal with the types of disorderly behaviour which falls short of threatening behaviour but could nevertheless adversely affect the community. A typical example would be people shouting late at night in residential areas.

Threatening or abusive behaviour

Section 6 of the Criminal Justice (Public Order) Act 1994 makes it an offence for any person in a public place to use threatening, abusive or insulting words or behaviour with the intention of causing a breach of the peace. A typical example of this would be where a person, by their words or actions, would be likely to cause a fight with the person or persons they were insulting. It would also cover a situation where groups of youths would display threatening behaviour towards other people.

Displaying offensive material

Section 7 of the Criminal Justice (Public Order) Act 1994 deals with distribution or display of offensive material. The penalty for this offence is a fine between EUR 501 and EUR 1000 and or a prison sentence of 3 months maximum. The main difficulty which arises with Section 7 is the element of subjectivity: something may be obscene to one person whereas it might be thought to be quite normal by another.

The European Court of Human Rights has dealt with the issue of sensitivity in the case of *Muller v. Switzerland* (1991) 13 E.H.R.R. That case considered a conviction in Switzerland against Mr Muller for displaying obscene paintings. The paintings depicted, in a crude manner, sexual relations between men and animals. The court held that the paintings were liable or likely to grossly offend the sense of sexual propriety of persons of ordinary sensitivity. Following this case the courts are likely to apply the “ordinary man” test when deciding if the distribution or display of material is obscene or not.

Failure to comply with a police order

Section 8 of the Criminal Justice (Public Order) Act 1994 was designed to penalise the failure to comply with a direction from a member of the Gardaí to desist from such conduct in circumstances where the Garda concerned has a reasonable apprehension for the safety of persons or property or for the maintenance of the public peace.

Wilful disturbance

Under Section 9 of the Criminal Justice (Public Order) Act 1994 anyone without legal authority or reasonable excuse that wilfully prevents or interrupts the free passage of any person or vehicle in any public place shall be guilty of an offence. The penalty for this offence is a fine of up to EUR 500.

This Section was created in order to protect the constitutional rights of the individual to free movement on public highways. While the Gardaí have no power of arrest under this Section they can invoke the powers of Section 7 of the Act and direct any person to desist from the obstruction in question. Failure to comply with that direction is an offence punishable by Section 8 of the Criminal Justice (Public Order) Act 1994.

Trespassing

It is an offence to trespass in a manner likely to cause fear in another person under Section 13 of the Act. There is no inclusion of any intent to commit a crime or to interfere with property in this Section. A Garda may direct any person he or she finds trespassing on a building, in such a manner as causes or is likely to cause fear in another, to desist from acting in such a manner and to leave the area immediately, in a peaceable and orderly manner.

Miscellaneous ordinances and decrees

Repression linked to offences

Repression of public disturbances

Section 23A, inserted in the Act by Section 184 of the Criminal Justice Act 2006, allows the police to impose a fixed fine for disorderly conduct in a public place instead of court proceedings. For the offence treated as a fixed fine offence, you must give your name and address to the Garda. Failure to do so means you may be arrested without warrant and be convicted of a summary offence for which the maximum penalty is a fine of EUR 1500. If the police choose to have this offence treated as a fixed fine offence, they may serve notice on you that you will not be charged if a

stated amount is paid within 28 days. This fixed fine, currently EUR 140, may be varied by the Minister for Justice and Equality.

Repression of threatening or abusive behaviour

Any person found guilty of this offence can be liable to a fine between EUR 501 and EUR 1000 and imprisonment for a maximum of 3 months.

Repression of begging

On summary conviction, a person is liable to a fine between EUR 4001 and EUR 5000 and/or up to 12 months in prison.

Repression of failures to comply

Any person convicted of this offence is liable on summary conviction to a fine between EUR 501 and EUR 1000 and/or to a maximum term of 6 months in prison.

Repression of squatting

Those found guilty of this offence will be liable on summary conviction to a fine between EUR 1001 and EUR 2500 and/or to a maximum term in prison of 6 months.

Repression of trespassing

If the person fails or refuses, without reasonable excuse or lawful authority, to comply with the direction of the Garda he or she is guilty of an offence and is liable to a fine between EUR 501 and EUR 1000 and/or imprisonment for a maximum of 6 months.

4. Appeals procedure

5. National Case Law

Although, the Dutch Supreme Court (Hoge Raad) decided, on 28th October 2011, that the legally forced end of squatting can only occur after an intervention of a judge,⁸ the fact remains however that squatting is a criminal offence under Dutch law and homeless people are not unlikely to be criminalised as squatters if they occupy houses.

6. International Case Law

7. Additional Information

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See: http://en.wikipedia.org/wiki/Dutch_squatting_ban.