



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.

Italy

1. Introduction

As the firm has offices in Rome and Milan, we have focused our inquiry on these two cities. We have completed a chart on prohibited conducts for each city, attached to this note at Annexes I and II.

In general, we have not found the Italian legal system to foster the criminalisation or penalisation of the homeless (in Italian, "*senza fissa dimora*" or "*senza tetto*"). Free circulation is set out at article 16 of the Italian Constitution as a fundamental right, subject only to limitations set out at law on grounds of public health or safety. The legal system also provides for affirmative action on the side of the public sector, which must allow the homeless to appoint a residence within their territory to allow them to access fundamental public services.

Under Italian law, each Municipality has the authority to issue orders or take measures necessary to safeguard public security and/or public health. It may be the case that different Municipalities take different positions towards the homeless or their patterns of conduct. Subject to minor differences, we have found that Milan and Rome show substantial tolerance for the homeless, both in the enactment and implementation of legal provisions. The stance taken elsewhere may be different, especially in smaller towns or areas affected by higher rates of immigration.

2. Criminal Offences

Based on article 16 of the Italian Constitution, loitering and vagrancy cannot be punished per se. It is possible for the public sector to limit or restrict access to certain public spaces (e.g. railway or underground stations, public service infrastructure, parks), where this is required for the protection of public health or safety.

Offences directly affecting homeless people

Criminal laws sanctioning panhandling (*mendicità*) begging (*accattonaggio*) have been repealed in 1999 and 2009, respectively. In Italy, begging with the involvement of juveniles is still a crime as provided under article 600-octies of the Italian Criminal Code. Moreover, begging in an aggressive way is not specifically sanctioned but may be classified as a nuisance to others (*molesto*) and therefore fall under the hypothesis of private violence in the sense of

forcing with violence someone to tolerate a certain conduct. Finally, a regulation of the Municipality of Rome, approved in 2005, strictly forbids begging with animals.

Offences indirectly affecting the homeless through discrimination

Article 726 of the Italian Criminal Code punishes acts and behaviours contrary to the public decency. There is no statutory definition of what falls within this category, and there is a certain discretion in the application of this provisions. Defecating or urinating in public is always regarded as a breach of article 726.

3. Administrative Offences

The charities and social support organisations we have consulted report of a degree of tolerance in respect of conduct of the homeless, as this is perceived as driven by necessity, although the law does not excuse punishable conduct on this basis.

**Annex I
Prohibited conduct chart for Milan**

Does your city prohibit or restrict...	No	Yes			
		Almost always	Often	Occasionally	Never
Camping or sleeping in public spaces?	X				
Sitting or lying in particular public spaces?				for reasons of public services or interest (e.g. in rail and underground stations)	
Begging or 'aggressive' begging?				"annoying" begging is prohibited	
Loitering or vagrancy?	X				
Public urination/defecation?		X			
Free meal distribution to homeless people?	X				
Homeless encampments (or allow for 'sweeping' of encampments)?				for reasons of public health/safety	
Sleeping in a vehicle?	X				
Does your city selectively enforce otherwise neutral laws against homeless individuals (e.g. public intoxication, littering, jaywalking)?	X				
Does your city ask homeless persons to 'move on' or otherwise limit their access to public spaces when no crime has been committed?	X				

Annex II

Prohibited conduct chart for Rome

Does your city prohibit or restrict...	N o	Yes			
		Almost always	Often	Occasionally	Never
Camping or sleeping in public spaces?	X				
Sitting or lying in particular public spaces?				for reasons of public security or interest (e.g. in rail and underground stations)	
Begging or 'aggressive' begging?	X				
Loitering or vagrancy?	X				
Public urination/defecation?			X		
Free meal distribution to homeless people?	X				
Homeless encampments (or allow for 'sweeping' of encampments)?				for reasons of public health/safety	
Sleeping in a vehicle?	X				
Does your city selectively enforce otherwise neutral laws against homeless individuals (e.g. public intoxication, littering, jaywalking)?	X				
Does your city ask homeless persons to 'move on' or otherwise limit their access to public spaces when no crime has been committed?	X				

Offences indirectly affecting the homeless through discrimination

In general, we have found no signs in Rome or Milan for discriminatory or selective implementation of laws and ordinances on the restriction of access to public spaces.

Miscellaneous ordinances and decrees

Sleeping and camping in public spaces is also not punished as such, although the authorities tend to intervene to sweep more conspicuous encampments, mainly on the request of residents, on grounds of protection of public health or safety.

4. National Case Law

In 2011 the Constitutional Court has repealed ordinances issued by Municipalities to criminalise begging in their territory. The Municipality of Rome was about to issue an ordinance to sanction dumpster diving, but this was cancelled on the opposition of social organisations.

5. International Case Law

6. Additional Information

Access to essential public services (e.g. instruction and healthcare) is usually conditional on residence within the territory of the relevant Municipality. National legislation allows every individual to register as resident in the Municipality in which he or she lives, to access such services.

Italian courts have taken the position that each individual has a right to appoint one's residence within the territory of a given Municipality, which cannot be denied by the local administration. Where such right is unreasonably denied, the Municipality can be forced to register the homeless after order of the judge.

The specific measures for implementation of the right of residence and registration is left to the individual Municipalities. This is usually achieved by allowing the homeless¹ to appoint the address of a charity or social support organisation as his or her abode. The Municipality of Rome has adopted the practice of allowing the homeless to appoint a fictitious address (e.g. the non-existing "via Modesta Valenti"). This seems to have led to confusion in connection with the national census of population conducted in Italy in 2011, and there are reports that the Municipality has discontinued the practice of fictitious addresses.

¹ With a distinction between "*senza fissa dimora*" i.e. those who do not have a stable place to live and appoint their residence in the Municipality with which they feel most connected, by using a fictitious address; and "*senza tetto*" i.e. those who do not have a house, but sleep and live in a certain Municipality and appoint their residence at the address where they actually spend most of their time.