



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.

Romania

1. Introduction

The capitalised normative acts referred to below shall have the meaning ascribed to them in Annex C hereto and include all amendments to date.

For the purposes of drafting this chapter, we considered Romanian criminal and administrative legal provisions at the national level and secondary regulations at the local level that criminalise certain actions in an effort to target the everyday activities of the homeless. Unfortunately, there are no cases strictly pertaining to homelessness that can serve as examples of the relevant statutes in action.

1.1 Definition of homelessness

Internationally, in 2009, the United Nations defined homelessness by referring to two categories of homeless persons: primary and secondary. The primary homeless are persons living on the streets without a shelter, whereas the secondary homeless are persons having no usual residence who move frequently, which includes those who report no usual address on their census form.¹

In the Romanian language, the homeless are referred to as “*persoane fara adapost*,” which in English is literally “persons without shelter”. The 2011 Law on Social Assistance recently introduced a legal definition for homelessness. According to the Law, the homeless “represent a social category composed of individuals or families, [who] due to singular or multiple social, medical, financial, legal or force majeure reasons live in the streets, temporar[ily] live at their friends’ or acquaintances’ places, cannot afford to rent a place, are incurring the risk of being evicted or are institutionalised or imprisoned without a domicile or place of residence and within a 2 month period are to be discharged/released.”²

1.2 Consideration of the causes and scale of homelessness in Romania

¹ United Nations, “Enumeration of Homeless People”, United Nations Economic and Social Council, 18 August 2009; Economic Commission for Europe Conference of European Statisticians, Group of Experts on Population and Housing Censuses, Twelfth Meeting, Geneva, 28–30 October 2009.

² See Law on Social Assistance, Article 6(z).

Although homelessness is widely recognised as an existing issue in Romania, there are no recent official statistics issued by government authorities on the exact scale of this social phenomenon, so any consideration of the scale is largely dependent upon estimates.

Studies by the Research Institute for Quality of Life and the National Institute of Statistics from 2004-2006 in the “National strategy to prevent and tackle homelessness – Comment Paper Romania” estimate the number of homeless persons in Romania at a maximum of 14,000 - 15,000 persons, approximately 5,000 of whom live in Bucharest.³

The aforementioned paper discusses studies that indicate that the homelessness issue in Romania dates back to before 1989, and that despite its principles and objectives, the communist administration did not ensure housing for everyone. Many people reportedly lived in factory hostels, medical institutions and other types of state owned facilities. After the privatisation of state-owned buildings and the retrocession of buildings illegally expropriated by the communist regime, most of these people were evicted and resorted to living on the streets. Other reported causes in the same paper include the increase in population, the relocation to urban areas of members of the rural population and the decrease in both the scale of social housing and the total number of newly built houses.

In a March 2010 report by Samusocial, a Bucharest NGO specialising in social assistance services for the homeless, the main causes of homelessness listed by respondents to a survey were domestic conflict, eviction, divorce, institutionalised childhood, fraud, job loss and previous detention.⁴

1.3 Effects of Homelessness

Some of the main effects of homelessness include insecurity, social exclusion, and exposure to violence, exploitation and various types of abuse. Additionally, studies suggest that due to lack of hygiene, nourishment, and general harsh living conditions, the homeless often suffer from a wide range of health problems such as cardiovascular, digestive and dental issues, skin conditions and tuberculosis.⁵

Further consequences of homelessness in Romania indicated in other reports are lack of access to basic social services provided by the state, lack of identification documents (leading to an inability to benefit from political rights), as well as alcoholism and other types of deviant behaviour such as drug abuse, street aggression, vandalism and self-destructive behaviour.⁶

2. Criminal Offences

The offences legislated against through criminal and contravention (administrative) norms are generally related to everyday activities of homeless people. The latter cover administrative offences generally punishable with administrative fines.

In practice, due to the lack of relevant case law, it is difficult to ascertain either the degree to which the legislation in force is applied or what sanctions offenders receive.

³ Peer Review and Assessment in Social Inclusion on behalf of the European Commission DG Employment, Social Affairs and Equal Opportunities, Norway 2006, www.peer-review-social-inclusion.net.

⁴ <http://www.samusocial.ro/media/statistici-cifre/>, Samusocial – Quarterly report- July 2010.

⁵ <http://www.samusocial.ro/media/statistici-cifre/>, Samusocial – “Study on the mental health indicators within the homeless population from Bucharest”.

⁶ <http://netaware.ue.katowice.pl/wp-content/uploads/2012/05/Social-exclusion-of-homeless-people-in-Romania.pdf>.

Under criminal law, as mentioned above, the only relevant offence is begging, which is generally determined by police officers and subsequently prosecuted by public office prosecutors. The prosecutor may apply a criminal fine, decide not to prosecute or refer the case to the court.

Offences directly affecting homeless people

Begging: current legislation

Under Romanian law, begging is the only offence directly related to everyday activities of homeless people that is prosecuted by the Criminal Code.

The Criminal Code criminalises a person who is fit to work resorting to public mercy and requesting material help. The offence is penalised by a prison term varying from one month to three years.

Begging: upcoming legislation

The New Criminal Code is expected to enter into force in March 2013. The New Criminal Code incriminates begging only under certain circumstances. Specifically, it incriminates the action of forcing a minor or a physically or psychologically disabled person to beg or the act of receiving the material benefit resulting from such begging (to be punishable by term of imprisonment varying from six months to three years).

A person committing the act of begging is only to be penalised if he or she makes use of the presence of a minor in order to resort to public mercy (the sanction is an imprisonment term varying from three months to two years or a fine).

Vagrancy: upcoming legislation

The provisions criminalising vagrancy were repealed from the Criminal Code in 2006. Previously, these provisions penalised persons fit to work without steady housing or a means of livelihood and who did not habitually exercise a trade or a profession or did not perform any other form of labour to imprisonment for a term of one month to three years.

Offences indirectly affecting the homeless

3. Administrative Offences

3.1. The Contraventions Act

This Act provides that contraventions are determined and recorded through a procedural document (contravention minutes) by mayors, police officers and other persons so empowered under applicable laws. Usually, the authority who determines the contravention applies the sanction on the spot.

The contraventions which may be relevant in the context of everyday activities of homeless people are contained within various types of legislative acts such as laws, bye-laws and government ordinances. The regulated activities include certain types of begging, drinking, vandalism and disturbance of public order.

There are also administrative offences created under the Public Order Law that apply to the activities of the homeless. These offences are ascertained by the mayor, the mayor's

empowered representatives, police officers or agents, military officers, warrant officers, constabulary sub-officers and border police. The contravention minutes may be challenged within 15 days of the date of their communication before a competent courthouse. The courthouse judge's decision regarding the contravention minutes is final and may not be contested further.

3.2. **The Public Order Law**

The Public Order Law provides for administrative penalties for certain acts such as publicly committing obscene acts or gestures, uttering insults and making offending or vulgar expressions. The Law also penalises making violent threats against other persons or their property that are likely to disturb public peace and order, trigger the indignation of citizens or cause injury to the dignity and honour of citizens or public institutions. The sanction is a fine between RON 200 and RON 1,000.

3.3. *Offences directly affecting homeless people*

3.2.1. **Begging**

Under the Public Order Law, begging is penalised for (i) a person fit to work repeatedly resorting to public mercy and (ii) causing a person to commit acts of this nature; the sanction is a fine between RON 100 and RON 500.

3.3. *Offences indirectly affecting the homeless*

Additionally, unauthorised writing or drawing on walls, fences or objects of common use in public spaces that impairs the use of such objects is prohibited. Similarly, the unauthorised ungluing or destruction of commercials, advertisements or posters which are legally displayed in places specially designed for such a purpose is penalised by a fine of between RON 100 and RON 500.

3.3.1. **Drinking**

The consumption of alcohol is prohibited in public places, including public roads, parks, stadiums and sports fields, cultural institutions, show rooms, economic institutions or units, all means of transportation, state-owned or private railway stations and airports, motor stations or other places provided by the law. The sanction provided is a fine of between RON 100 and RON 500;

3.3.2. **Disturbances**

Instigating or materially participating in disturbances in public places or buildings is penalised by a fine of between RON 200 and RON 1000;

Disturbing the peace of inhabitants by making noises with any device or object, by shouts or by general clamour is penalised by a fine of between RON 200 and RON 1000;

3.3.3. **Bye-laws**

We will now consider relevant local regulations which prohibit or otherwise incriminate certain activities which are associated with the everyday activities of the homeless.

3.3.3.1. **The 2879 Bucharest Local Council Decision**

The 2879 Bucharest Local Council Decision prohibits acts perpetrated in parks such as moving the benches or rubbish bins, sleeping on benches, throwing waste on the ground, bathing in lakes and fountains, fishing without authorisation and urinating or defecating in places not specially designed for such purpose. Fines for any of these breaches can vary from RON 350 to RON 500.

3.3.3.2. **The 66 Vaslui Local Council Decision**

The 66 Vaslui Local Council Decision expressly prohibits actions like foraging or appropriating any kind of waste from rubbish and recycling bins, impairing the use of public fountains and lighting fires on public property. The Decision also bans depositing or abandoning caravans, stands, kiosks, metal constructions, improvised constructions, devices of any kind, defective equipment or impaired or disassembled car bodies on public property. The Decision also prohibits, in more general terms, the occupation of living spaces without a lease or other applicable contract, which implicitly includes a prohibition on squatting.

Furthermore, the Decision establishes a general obligation on legal entities, without differentiating between private and public entities, to keep the streets, alleys, entrances into buildings and pavements clean. Dumping rubbish of any kind, including objects, paper, packaging, disposable cups, newspapers, empty cigarette packages, cigarette butts, bottles, edible or non-edible waste is prohibited, along with spitting in public places and sleeping on benches, in parks or in public gardens.

3.3.3.3. **The 191 Cluj Local Council Decision**

The 191 Cluj Local Council Decision establishes a series of administrative offences, including staining the façade of buildings and statues and making graffiti inscriptions, (fine from RON 1,000 to RON 2,000), starting a fire (RON 600 to RON 1,000) or contributing to the deterioration of grass (RON 500 to RON 1,000).

3.4. *Miscellaneous ordinances and decrees*

Other administrative offences under the Law on Picnic Activities that affect the activities of the homeless are determined by the representatives of the National Environment Guard, the local public administration authorities, police, local police and constabulary officers, sub-officers and other agents. The fine is reduced by half when paid on the spot or within 48 hours from the issuance of the contravention minutes or from the time of their communication, as the case may be.

3.4.1. **The Railway Transportation Act**

The Railway Transportation Act prohibits begging in trains and railway stations, with the penalty of a fine.

3.4.2. **Urban Aesthetics Act**

The Urban Aesthetics Act prohibits writing or applying unauthorised inscriptions on walls, private or state-owned building facades, historic and architectural buildings or

any other type of building by using paints, sprays or any other similar materials which make the walls dirty or impair or destroy the respective property; this administrative offence is penalised with a fine varying from RON 500 to RON 2500.

3.4.3. **The Picnic Activities Law**

The law prohibits picnic activities outside specially designated areas. Some examples of penalised activities include the improper discarding of waste, setting of fires (other than in specially designated places), urinating or defecating (other than in specially designated places) and washing picnic objects (like cutlery) in waters within the general proximity of picnic designated areas (with fines varying from RON 100 to RON 3000).

3.5. *Repression of offences*

3.5.1. *Sanctions*

Except for begging, which may be a criminal offence and punished by an imprisonment term from one month to three years, the rest of the offences outlined are of an administrative nature and are generally penalised by an administrative fine. The fines vary from RON 100⁷ (for breaches of public order legislation) to RON 3000⁸ (for breaches of picnic legislation).

4. **Appeals procedure**

The individual may challenge the contravention minutes before a competent court within 15 days. The complaint against the contravention minutes temporarily suspends the enforcement of the fine until a court judgment is granted.

Under the law, complaints against the contravention minutes have procedural priority. Additionally, the court should not set terms between hearings in excess of 30 days. The sentence of the courthouse may be appealed, with a further stay of enforcement during the appeals process.

5. **National Case Law**

6. **International Case Law**

7. **Additional Information**

7.2. **Law on Social Assistance**

The Law on Social Assistance promotes the prevention and control of poverty and the risk of social exclusion, and requires the state, through its public policies, to ensure that vulnerable persons have access to fundamental rights such as the right to shelter, social and medical assistance, education and a place of work.

The law further provides that the homeless are among the targeted beneficiaries of the categories of social services aimed exclusively at the prevention and control of poverty and social

⁷ Approximately €22.

⁸ Approximately €667.

exclusion risk. The social services benefiting homeless persons include temporary lodging, mobile street intervention teams or social ambulance-type services, night shelters and counselling and reinsertion services based on the individual's particular needs.

Local authorities are in charge of setting up, organising and managing social services for homeless people. Local authorities have the obligation to set up adequate social services for street children, lonely or childless elderly people and disabled people living in the streets.

7.3. Social Reintegration of Street Children Act

The Social Reintegration of Street Children Act provides a plan outlining a series of general objectives such as intervention to manage and improve the situation of street children, reduce of the number of children on the street, develop personnel specialising in the evaluation, protection, recovery and reintegration of street children, develop street social services teams, train local police forces, inform parents of the provisions of the child protection legislation and their liability when using their children for begging and identify risk areas and submit files to competent courts to bring about the loss of parental rights for those parents whose children live on the streets.

7.4. National Interest Programmes Act

This Act contains a National Interest Programme for the management of the social exclusion of homeless persons through the creation of emergency social centres.

The Programme aims to aid the social integration of homeless persons through the creation of emergency social centres and the development of long-term support. Among other objectives, the Programme also aims to increase the responsibility of local authorities in respect of homelessness and to raise awareness. Methodology wise, in accordance with the Programme, norms must be put in place in order to enable the evaluation and monitoring of the scale of homelessness based on a data base of homeless people as well as monitoring the success rate by relying on the ratio of solved cases.

It may be noted that the National Interest Programmes Act was enacted in 2006 for an initial duration of three years, having been extended repeatedly since then. As of 3 August 2012, the Programme will be terminated on 30 November 2012. In accordance with the explanatory memorandum to the latest amendment, the Programme has been extended due to delays in construction and delays in the awarding procedure for the public procurement contracts for the construction of the relevant centres.

7.5. Local Police Law

Pursuant to the Local Police Law, local police have the authority to identify beggars and homeless persons and place them in the care of the social assistance public service so that they can be helped.

Annex C
Legislation

(a) “66 Vaslui Local Council Decision”	(b) means Decision no. 66 issued by the Vaslui Local Council on 29 April 2009 on the approval of norms and responsibilities incumbent upon public institutions, economic agents and other legal persons and citizen from the Vaslui municipality for the setting an environment of order and cleanness (..)
(c) “2879 Bucharest General Council Decision”	(d) means Decision no. 2879/2009 issued by the Bucharest General Council on 1 June 2009 on the approval of Norms for the protection of green spaces within the territory of Bucharest municipality.
(e) “191 Cluj Local Council Decision”	(f) means Decision No. 191/2009 for the proper management of Cluj-Napoca municipality issued by the Cluj-Napoca Local Council.
(g) “Contraventions Act”	(h) means Government Ordinance no. 2/2001 on the legal regime of contraventions, published in the Official Gazette no. 410 of 25 July 2001, as subsequently amended and completed.
(i) “Criminal Code”	(j) means the Romanian Criminal Code, published in the Official Gazette No. 65 of 16 April 1997, as further amended and completed.
“Law on Picnic Activities”	(k) means Law no. 54/2012 on the deployment of picnic activities, published in the Official Gazette no. 201 of 27 March 2012.
(l) “Law on Public Order”	means Law no. 61/1991 on sanctioning acts in breach of social cohabitation, public order and peace norms, republished in Official Gazette no. 77 of 31 January 2011.
“Law on Social Assistance”	means Law no. 292/2011 on social assistance, published in the Official Gazette no. 905 of 20 December 2011.
“Local Police Law”	means Law no. 155/2010 on the local police, published in the Official Gazette 488 of 15 July 2010, as subsequently amended and completed.
“National Interest Programmes Act”	means Government Decision no. 197/2006 on the approval of national interest programmes in the field of protection of rights of handicapped persons, and also in the domain of social assistance to elderly, homeless and family violence victims and of financing these programmes, published in Official Gazette no. 195 of 1 March 2003, as subsequently amended and completed.
“New Criminal Code”	means the Romanian Criminal Code, published in Official Gazette No. 510 of 24 July 2009.

“Railway Transportation Act”	means Government Ordinance no. 7/2005 on the approval of Regulation regarding transportation on Romanian railways, republished in the Official Gazette no. 838 of 11 October 2006.
“Social Reintegration of Street Children Act”	means Order no. 100/2006 on the approval of the Framework Action Plan for the social reintegration of street children, as published in Official Gazette no. 297 of 3 April 2006.
“Urban Aesthetics Act”	means Law. no. 554/2003 regarding measures for assuring the aesthetic aspect of the capital city and of other localities, published in Official Gazette no. 915 of 20 December 2003.