When Life Is a Sin, or the Criminalisation of Homelessness in Hungary

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Abstract. In a legislative process that has been ongoing since 2010, Hungarian legislation has reached the point where the homeless lifestyle has become a criminal act in all public areas. The work seeks answers to two questions. One is how the criminalisation of homelessness can be adapted to the principles and values of the constitutional rule of law and Europeanism. The other question focuses on where the boundaries of constitutional policing lie, i.e. whether the police can be authorised to intervene to solve a social problem even in the absence of an emergency. The legislative process leading to criminalisation is presented, especially from the perspective of the police. Based on the investigation of the social function of the police, the answer is formulated that the seventh amendment of the Fundamental Law did not dispel all constitutional concerns; moreover, keeping in force the constitutional provisions that formed the basis of the previous Constitutional Court decision resulted in internal constitutional tension. The limitations of constitutional policing become apparent, which makes it unsuitable for dealing with social life situations.

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Introduction and literature review

Homelessness is a trauma that cannot be limited solely to housing problems. Nor can it be claimed that the term homeless is suitable for precisely defining a marginal group. There is not even a consensus on who is considered homeless. We do not intend to delve into this question. Instead, we accept the position of the

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1 The Fundamental Law of Hungary (25 April 2011), (hereinafter: Fundamental Law), The Fundamental Law is the foundation of the Hungarian legal system.
2 The Constitutional Court is a judicial organisation limiting the legislative power of Hungary.
literature, according to which homelessness manifests poverty and social exclusion.\(^5\) We also accept that homelessness is primarily an urban form of existence.\(^6\)

The question is how the sanctioning of one of the cases of this way of life, street homelessness, can be reconciled with other fundamental rights and the values contained in the Fundamental Law.\(^7\) For the sake of a complete approach, we cannot forget that, with the fourth and seventh amendments to the Fundamental Law, creating conditions for decent housing became a state commitment. This is a new and forward-looking element in the Hungarian constitution because it enriched the right to social security with a new element.\(^8\) The state’s constitutional responsibility was further tightened with the formulation of the positive obligation to protect institutions.\(^9\) On the other hand, when preparing this study, one cannot forget about the amendments to the social law in Bill T/1620 before the parliament.\(^{10}\) §3 of the draft law establishes a sequence that also designates the standard of responsibility for taking care of an individual’s social security. According to this, the individual is primarily responsible for his or her social security. If the individual cannot create this security through no fault of their own, then the close relative must provide proportionate and tolerable help. If the individual’s social security cannot be ensured in this way, the local government of the residence has an obligation of care. The fourth place in the order is occupied by charitable organisations that receive state support. Finally, if the individual’s social security cannot be created despite all this, the state should ensure it does so. So, the Fundamental Law strengthens the state’s role in social security, while with lower-level legislation, the state tries to put its responsibility and role in the background as much as possible. If you are a lawyer, try to be the one who navigates the legislator’s intention.

Material and method

Human dignity is inviolable by the law, and criminal law rules primarily protect additional rights derived from human dignity. However, a criminalised form of behaviour has caused severe social and legal disputes specifically in connection with human dignity. Therefore, it is worthwhile to examine the violation of the rules of living in public areas from this point of view. In these investigations, we are forced to do without applying sociological factors because this would lead us very far from the


\(^6\) P. Győri, A hajléktalan világ peremén (On the margins of a homeless world), [in:] Breitner P. et al. (Ed.), …, op. cit.

\(^7\) Fundamental Law Article XXII.

\(^8\) Act III of 1993 on Social Administration and Social Benefits.


\(^{10}\) https://www.parlament.hu/irom42/01620/01620.pdf, [accessed: 23/10/2022].
Initially set goals. We also omit the law enforcement and forensic aspects, even though the law enforcement procedures and the burden of proof on the violation authority raise interesting questions. Primarily, we limit ourselves to examining the criminality of human dignity and the homeless form of existence from a constitutional point of view. Secondly, following the approach selected when choosing the topic and try to present the Christian ethical considerations on the problem of homelessness.

**Results and the evaluation**

It is worth briefly putting the problem in a historical context because, in this way, the idea behind the regulation and its ‘development curve’ are clearly outlined. In April 2011, the Capital Assembly decree was adopted, which was the first to record the violation of the ‘use of public space for lifestyle housing’. In the same year, capital VIII created a similar decree. Also, this year, the Act on Misdemeanours in force at the time was amended, and the misdemeanour ‘repeated violation of the ban on living in public areas’ was added to the delicts.\(^{11}\) This misdemeanour is committed by a person who repeatedly violates the rules on the use of public land for lifestyle housing and the storage of movables used on public land over six months, as defined in the municipality’s decree.

The Misdemeanour Act reworded the situation slightly, and it now bore the name ‘Violation of the ban on residential living in public areas’.\(^{12}\) This violation is committed by a person who uses the inner space of the public area in a way other than its intended purpose, for lifestyle housing, or who stores movables used for themselves in public space.\(^{13}\) The Constitutional Court annulled the facts in the subsequent norm control procedure. According to the findings of the constitutional body, the ‘trivial criminal law’ nature of the violations became the determining factor, *i.e.* a significant part of the facts criminalises human behaviour. This also happened with public space for lifestyle housing, in other words, with street homelessness.

One of the constitutional criteria for declaring it punishable is that the criminalisation of the behaviour cannot be arbitrary; there must be some constitutional reason for it. The other important criterion is that the norm that foresees the sanction meets the requirements of norm clarity. The Constitutional Court found that the declaration of living in public areas as a criminal offence does not meet any of the conditions. It is impossible to establish the reason, or the interest to be protected, which served as a reason for classifying a life situation covered by social care as dangerous behaviour for the legislative society.

The street homeless lifestyle does not harm or threaten any social interests that can only be protected using sanctions. This should be distinguished from the case when the behaviour of people living on the street violates public order, so it is justified to enforce the state’s claim to criminal jurisdiction. These behaviours were also delicts before this, so the protection of society was ensured. The mere criminalisation of living in public spaces does not protect humanity from real danger.

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\(^{11}\) Act II of 2012 on Misdemeanour, Misdemeanour proceedings and the Misdemeanour registration system (hereinafter: Misdemeanour Act).

\(^{12}\) Misdemeanour Act, § 186.

\(^{13}\) 38/2012 (XI.14) Constitutional Court (hereinafter: AB) decision.
According to the position of the Constitutional Court at that time, neither the removal of the homeless from public areas nor the encouragement to use social services can be considered a legitimate, constitutional reason that would justify the declaration of living in public places a violation. The fact itself ordered a kind of lifestyle to be punished rather than a well-defined criminal behaviour. At that time, the Constitutional Court saw that it was incompatible with the protection of human dignity to classify as dangerous to society and to punish those who, having lost their housing, are forced to live on public land, provided that they do not violate the rights of others, cause damage, or commit other illegal acts. This corresponded to the principle of the prohibition of injury and damage established earlier for the practice of constitutional criminal law. They found it offensive to the individual’s freedom of action based on their human dignity if the state forces someone to use social services using sanctions. It was established that homelessness is a social problem, for which applying the penalty for violation of rules is an unsuitable tool.

The fourth amendment of the Fundamental Law resulted in changes at several points. On the one hand, the new regulation raised the conditions for housing provision among the state goals. On the other hand, it granted the municipalities the right to sanction lifestyle-like residences in public areas determined by them. After the amendment of the Fundamental Law, the Parliament recreated the controversial situation again, which now bore the name ‘Violation of the rules of living in public spaces’. According to this, the person who commits an offence resides in a public area designated as a world heritage area according to the World Heritage Act or in a general area defined in a decree of the local government and does not leave the designated area despite the request of the police or a person specified in the Offenses Act. Local governments freely defined the places where it was forbidden to live in public areas by their territorial conditions.

Some created local government decrees were submitted to the Curia for legality control. Several decisions of the Curia emphasised that the misdemeanour law deals with specific parts of the public area, which must be marked in a way that everyone can understand. Accordingly, it was not an acceptable solution if a municipality classified street homelessness as prohibited in its entire territory. According to the Curia, the answer that violated the principle of the clarity of the norm was that the municipality designated the restricted areas in an insufficiently precise manner or even with geographical numbers that were hardly recognisable by the potential recipients of the model. An additional limitation is that the area

14 38/2012 (XI. 14) AB decision.
15 Fourth Amendment to the Constitution Article 8.
16 The Curia is the highest court forum in Hungary, whose primary task is to ensure the highest level of judgement and uniform application of judicial law.
17 Act CLXXXIX of 2011 § 136 (2) of the Hungarian Local Government, effective until January 1, 2020, the government office may initiate a review of the conformity of the local government decree with the law at the Curia within fifteen days from the receipt of the information from the local government. The curia examined the compliance of the local government decree with the legislation; until then, it was necessary to turn to the constitutional court in case of constitutional concerns.
must be designated for a legitimate purpose. The goal indicated by the regulation is the protection of public order, public safety, public health and cultural values — as protected legal matters. These decisions stated that the authorising provisions of the Misdemeanour Act must be interpreted strictly. Accordingly, living in public areas can only be prohibited and sanctioned where the legal values to be protected explicitly and factually require enforcement.

According to the findings of the Venice Commission, the subsequent seventh constitutional amendment of 2018 can also be interpreted as a response to the previous decisions of the Constitutional Court and the Curia. On the one hand, the legislator granted constitutional protection for public use of public lands. On the other hand, it raised the prohibition of living in public areas as a way of life among the constitutional provisions. Along with this, of course, the right of municipalities to designate prohibited areas disappeared.

With this amendment, the last obstacle to criminalising the homeless lifestyle has been removed. Thus, the contested facts were repeatedly re-codified, and violation law 133/B was included in the paragraph, which is entitled ‘Violation of the rules of living in public areas’. Looking at the regulation as a whole, so many differences can be pointed out compared to the previous law that the legislator no longer entrusts the decision-making power of local governments to determine where homelessness in public areas should be sanctioned but classified it generally as punishable behaviour in all public areas of the country. The content of the reformulated facts is essentially the same as the previous regulation from the point of view of the conduct of the offence.

When evaluating the constitutional provision formulating the prohibition of a homeless lifestyle, it is essential to emphasise that the prohibition of a given behaviour is not the same as its criminal sanction. The latter assumes that the violation of the issued prohibition poses such a severe disadvantage or threat to the protected social relations that illegal means are necessary and justified for protection, even if this occurs in a violation procedure. On the other hand, a ban without the threat of criminal sanctions is a suitable tool for suppressing actions that do not pose a threat that justifies the assertion of the state’s need for criminal jurisdiction. The legal prohibition of a given behaviour protects social values without restricting the fundamental rights of the violator. The constitutional ban dispelled all previous constitutional doubts. At the same time, the provisions of the Fundamental Law regarding human dignity, the primacy of criminal law and the clarity of norms, based on which the previous legal situation was classified as unconstitutional by the Constitutional Court, are still in force. The discussed violation was constitutionally caught between two fires. On the one hand, it is suitable for the protection of a constitutional prohibition; on the other hand, it is not ideal for the actual security of rights and allows an extreme level of intervention.

The Constitutional Court observed the same when, for the second time, it was brought before it for subsequent normative control of the violation of rules punishing the lifestyle-like use of public space, which was re-codified several times.

After the seventh amendment of the Fundamental Law, the subsequent norm control of the violation situation showed a rarely seen division among the

\[19\] 19/2019 (VI. 18) AB decision.
justices. The resolution, adopted with a vote of 7 in favour and 6 against, found the regulation constitutional. This removed the last obstacle to sanctioning street homelessness. The position of the decision is based on the fact that fundamental rights and constitutional responsibilities are closely related. The former is the terrain and scope for the free development of the individual’s personality. In contrast, commitment means respecting the freedom of others and observing the rules of peaceful social coexistence. This is closely related to the Fundamental Law’s image of man, according to which man is a social being. As such, his free development is limited by the community’s interests in which the individual has an obligation of social cooperation. The public protection of public lands serves the interests of society. Implementing this is a state goal declared in the Fundamental Law and, therefore, a state task. The street life of the homeless violates this interest, and more specifically, they refuse to cooperate in the performance of the state’s duties related to the protection of public areas for public purposes. According to the Constitutional Court, the misdemeanour law requires street homeless people to account for this lack of cooperation. The majority opinion cited the express constitutional prohibition as an additional reason. Based on this ban, they found the imposition of a penalty to be proportionate and necessary to enforce the ban.

In contrast to the position in the previous decision on homelessness, the Constitutional Court considered the sanction a legitimate tool for homeless people to use the state welfare system. From their point of view, which can be accepted with scepticism, the state’s institutional protection obligation for the protection of human dignity and life cannot be fulfilled in any other way than by the persons concerned using the services of the care system. With this, the previous minority opinion was accepted by the majority.20 The petitioners raised the possibility of violating the prohibition of discrimination. In its response to this suggestion, the Constitutional Court stated that the disputed facts affect all people equally; they are not explicitly directed against the homeless, and therefore they are not discriminated against.

For our part, this justification can hardly be considered credible given the legislative processes since 2011. It is clear from the legislative processes and the conduct of the offence stated in the offence facts that the purpose of the disputed provision is not generally to sanction eating, drinking and sleeping in public areas but rather to punish and thereby curb the lifestyle of which these acts are part of over a more extended period. It is not difficult to notice that this is exclusively a characteristic of the street homeless community. Because what is the difference in the use of public spaces for public purposes between the middle-class person who takes a nap on a bench in the blazing sun after eating a hamburger in the same place and the person who does the same thing every day out of necessity? The two people’s differences can be seen in their different socio-cultural characteristics. Suppose a middle-class person eats on a bench and takes a nap afterwards. In that case, it is less disturbing than if a homeless person bearing the signs of poverty — sometimes undoubtedly in a disturbingly bad condition — does the same.

The dissenting opinions of the second homeless decision formulated various constitutional and moral criticisms. Ágnes Czine approaches the problem from the

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20 Minority report of Constitutional Judge Mária Szívós on Decision No. 38/2012 (XI. 14) AB.
perspective of constitutional criminal law. According to this, street homelessness is not considered an act that threatens human life, physical integrity, health or rights and violates a generally accepted rule of coexistence. The fact that it infringes on the public use of public spaces cannot be the basis for classifying it as a violation of the laws. And this cannot even be derived from a lack of cooperation.\(^{21}\) Her further argument is based on the provisions of the Misdemeanour Act, according to which only an activity or omission can be classified as a misdemeanour.

On the other hand, street homelessness is a state of existence that rarely results from a well-informed decision. Therefore, guilt cannot be interpreted at all in the context of becoming homeless.\(^{22}\) Imre Juhász rejected the constitutional requirement contained in the operative part of the decision, according to which the violation sanction can only be applied if the placement of the homeless person in the care system was verifiably ensured at the time of the act. From his point of view, the referenced constitutional requirement cannot be derived from the Fundamental Law, and he formulates a mandatory legal interpretation order for law enforcement authorities so that such a provision and legislative intent cannot be inferred from the examined legal norms. From his point of view, with this solution, the Constitutional Court erred on the grounds of legislation, thereby exceeding its powers.\(^{23}\) On the one hand, Balázs Schanda recognises the individual’s responsibility to the community; on the other hand, he accepts that those in the most vulnerable situations are often unable to cooperate. On the other hand, considering the purpose and suitability of the sanction (actually, its aimlessness and inadequacy), it essentially adheres to the principle formulated in the first homeless decision. The decision is based on the finding that ‘the application of the violation sanction must comply with the constitutional goal of the ban on living in public areas as a way of life, and the inclusion of fallen persons who cannot take care of themselves into the care system’\(^{24}\). According to his findings, the same thing, in reverse, means that the penalty for violation of rules is against the Fundamental Law if its purpose is not to care for and provide for fallen persons. However, the sanction prescribed by law is unsuitable for this purpose. As a diversion towards the homeless care system, a request to leave can be a suitable means to achieve the set goal; however, bringing them to court is not.\(^{25}\) István Stumpf starts from the fact that since the first homeless decision was made, the constitutional rules that made street homelessness unconstitutional have not changed. From his point of view, the punishment of those who do not cause any other violation of rights, who are forced to live on the streets, still violates human dignity, and sanctioning them into the care system violates the freedom of action that can be derived from human dignity. According to his position, ‘It does not follow from the Fundamental Law’s image of man, nor the values of loyalty, faith, and love, that staying on public land in the way of life alone — if it does not cause other harm — should and could be constitutionally punished.’\(^{26}\)

\(^{21}\) Act II of 2012 on offences, offence proceedings and the offence registration system.
\(^{22}\) 19/2019 (VI. 18) AB decision Ágnes Czine’s minority report.
\(^{23}\) 19/2019 (VI. 18) AB decision Imre Juhász’s minority report.
\(^{24}\) 19/2019 (VI. 18) AB decision.
\(^{25}\) 19/2019 (VI. 18) AB decision Balázs Schanda’s minority report. Dr. Ildikó Marosi Hörcherné and Dr. Péter Szalay joined the minority report.
\(^{26}\) AB 19/2019 (VI. 18) Opinion of István Stumpf.
The purpose of criminal sanctions can be some retribution, which takes the form of a legal disadvantage, and can be the prevention of either the perpetrator or another committing another crime. These sufficiently abstract goals can be achieved through the purposes of sentencing. It is worth remembering of the execution of the prison sentence because, in terms of its legal effects, it means the deprivation of personal freedom just as much as the closure of the street that can be imposed on homeless people. The purpose of imprisonment is to enforce legal disadvantage and, as a result of reintegration, to help the convict successfully reintegrate into society after his or her release and become a law-abiding member of society. Accordingly, education is a sufficiently emphasised tool in the execution of sentences. On the other hand, the purpose of imprisonment for a violation of the law can be limited at most to the enforcement of the legal disadvantage or the deterrent effect, according to which the legal weakness represents such a disadvantage for the person subjected to the suspension that later only the threat of an abstract legal penalty is sufficient to avoid committing another violation. In short: incarceration is based on retribution and deterrence. Education as a means of prevention cannot even be discussed during this truly short-term deprivation of liberty. Various social aspects can and should be enforced during the imposition of punishment. However, these appear outside the punishment objectives. Accordingly, the legislator is essentially retaliating against the state of being, which is part of the lifestyle use of public areas, and trusts that this has sufficient deterrent power so that the individual does not show similar behaviour in the future. The social care system is usually a natural alternative to street homelessness. However, retaliation and deterrence are tools that only enable deprivation of liberty as a final measure, but they are unsuitable for diverting people into the welfare system. The same can be said about the role of the police because the police are a state tool for restoring the broken social order. The law restrictions and coercion characteristic of the police are not suitable for solving a social problem or even alleviating it. The repressive public law instruments of state power are inadequate to deal with street homelessness.

Under Article R) of the Fundamental Law, the provisions contained in this law must be interpreted according to the national creed. The preamble attributes Christianity to a nation-preserving role. Also, according to paragraph 4) of Article R), protecting Hungary’s Christian culture is a duty of all state bodies. The conclusion can be drawn from all of this that the homeless issue would have allowed the Constitutional Court to make the provisions cited above valid because the Christian religion and the Christian culture formed based on it have a very definite position regarding those living in poverty. It is not disputed that homelessness and poverty go hand in hand.

It is worth taking a brief look at the relevant church teachings. We quote some of them at length because they were worded in such a way that it is worth doing this just for the sake of the beauty of the text. According to the encyclical Evangelium Vitae: ‘The ministry of charity must be motivated and defined by a particular spirit: we must care for others as persons entrusted by God to our responsibility. As disciples of Jesus, we are called to regard all people as neighbours, giving preference to those who are poorer, lonelier, and needier. Helping the hungry, the thirsty, the homeless, the clothed, the sick, the prisoner — as well as the unborn child,
the suffering or dying old man — is an opportunity to serve Jesus, as he said: “As often as you did it for one of the least of these brothers and sisters of mine, you did it for me”. That is why we cannot ignore the ever-relevant appeal and judgement of St. John of the Golden Mouth: ‘Do you want to honour the body of Christ? Do not pass by him when he is unclothed: and do not honour him here in the temple with silk garments so that you may pass by him outside where he is cold and naked.

In the words of Pope John Paul II, ‘(…) the Church feels she must speak out with equal courage for those who cannot speak for themselves. The word of the Church is always an evangelical cry in defence of the poor of the world, for all those whose human rights are threatened, despised and oppressed.’

According to Protestant ethical principles, Jesus ‘did not proclaim a social agenda, but he did proclaim solidarity of love with the suffering and the poor’. Charity is a value explicitly derived from Christian ideals, as helping the poor and the destitute had not been considered a value at all before. Hence the expectation that you should not only love those who love you, nor give something only to those who give something to you. This leads to solidarity and the social principles characterising the European value system. The criminalisation of the homeless lifestyle contradicts the social and cultural values that represent European societies. It is also contrary to the ethical concept of Christianity and its cultural attitude towards the poor and the excluded.

**Dilemmas of policing**

We have yet to talk about the established jurisprudence of law enforcement and the facts under examination, so we will not try to highlight specific problems but rather issues that require consideration. These include the objectives to be achieved by the punishment, the need for police action, the scope of evidence and other difficulties of the procedure.

The mere fact that someone lives his or her life in a public space does not infringe the rights of others, does not cause harm, and does not endanger the proper use of public space or public order. Therefore, the Constitutional Court has not found any legitimate reason to punish a fundamentally social situation to protect society. The Constitutional Court also rejected the possibility that the instrument of sanction could be a suitable means of motivating the use of social services. The embargo is imposed for a harmful, anti-social act, expresses society’s disapproval.

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27 *Evangelium Vitae.*

28 John Paul II: Insegnamenti XIV, 1:1294.


31 Under the concept of the police and its social role, see: Balla Z., *Monográdia a rendészetről*, Budapest: Rejtjel Kiadó, 2016, p. 75. According to this: ‘the public task of the police is the social guarantee of (public) safety, which it carries out with a specific executive-ordering-organising activity, having a monopoly on legitimate violence, … it has a specific institutional system and personnel.’

32 Decision No. 38/2012 (XI. 14) AB.
and is expected to deter both the offender and others from re-offending. What is the preventive objective of punishing an action? It is a social situation in which a significant proportion of ‘offenders’ find themselves through no fault of their own and cannot change through their efforts. If, on the other hand, an act does not violate or endanger public order, then, dogmatically, the police have no role to play.

The principle of the necessity of police action is based on the Constitutional Court’s test of the limitation of a fundamental right. According to this principle, a fundamental right may be restricted if it is necessary to ensure another constitutional right or to safeguard a genuine constitutional interest. In this case, a fundamental right may be limited because it is strictly required to provide a competing real proper or fundamental interest. No restriction of a fundamental right may lead to the deprivation of the essence of that fundamental right. Apart from the exception of the request for information, there is no law enforcement (police) measure that does not restrict a fundamental right. Because of the restrictive nature of standards, they can only be used when necessary to ensure another fundamental right or constitutional value. Public security is a constitutional value as a state objective enshrined in the Constitution, and therefore, the de jure restrictive nature of law enforcement (police) measures is constitutionally acceptable.33 The de facto operation of law enforcement will be constitutionally proper if its actions also meet the fundamental rights limitation test criteria, i.e., it only uses a restrictive measure to preserve or restore public safety. Only a standard that meets the above requirement is acceptable. In other words, more is needed for the police action to comply with the legal rules in form, but it is also necessary that the content of the movement also serves the same objective as set out above.

Among other things, it is precisely the observance of the principle of necessity that gives police action its social legitimacy. This presupposes that the police will only intervene in society in an emergency. State intervention in the relations of the individual is acceptable to society if it is in the social interest. We can set an even higher standard for state intervention that restricts rights and say that it can be justified by social necessity. Accordingly, the social legitimacy of law enforcement intervention is given by the fact that it is carried out to resolve a social emergency. Such a social emergency is a breach of public security because it constitutes a breach of the fundamental norms of social coexistence. The extent of the police intervention may be determined by the scale of the threat, its proximity or the time of the breach of public security that has already occurred. This requirement constitutes the principle of proportionality.

In clarifying the facts, it is also worth considering that homelessness cannot be fully identified with habitual residence in public places.34 For many homeless people, the natural alternative is to use the social assistance system. The legislator effectively sanctions street homelessness as a named form of homelessness. Translated into the language of criminal justice, this behaviour — or rather way of life — is carried out without the intention of returning to the place of residence, domicile

34 Minority report of constitutional judge Mária Szívós on 38/2012. (XI. 14.) for AB’s decision. Constitutional judge István Balsai joined the minority report.
or other accommodation, but to stay in a public space for a prolonged period, which suggests that the activities typically carried out in public space as a place of residence, in particular sleeping, cleaning, eating, dressing, keeping animals, is carried out by the offender in the general area on a regular and short-term basis.35

The legal formulation of what is essentially a sociological phenomenon has been achieved in such a way as to create numerous questions for the application of the law and, thus, an uncertain legal situation. We will address only a few questions that can be raised without claiming to be exhaustive. What does ‘longer time’ mean? The wording ‘longer time’ causes problems in many areas of law enforcement. One can think, for example, of hot spots, where ‘longer time’ is also part of the definition, but there is no precise definition of what is meant by ‘longer time’.36 Law enforcement practitioners are typically forced to act based on a momentary perception of events or evidence that an event has occurred and the inferences that can be drawn from that perception. In other words, law enforcement action is usually based on something different from complete knowledge of the facts but only on the more or less incomplete elements of the points as perceived on the ground. The perception of the period made into a component of the facts is difficult to imagine. It, therefore, forces the person in authority to conclude from individual circumstances (e.g. clothing, grooming, and the presence of the means necessary for daily life). On the other hand, the period is difficult to define precisely and can vary mainly according to the individual’s value judgement. It is, therefore, also difficult to prove.

A problematic element of the offence is the lack of intention on the part of the offender to return to any legal accommodation. Do those who spend their evenings in a hostel and their days on the street commit the offence? No lack of intention to return to the hostel can be established in their case. Does passive conduct, which does not fall within the scope of the activities outside the illustrative list in the statement of facts? Does merely ‘being there’, in other circumstances, constitute conduct covered by the idea of facts? The rules protecting public order and public safety are not fit for purpose if their regulation is unclear; they are only fit for purpose if the rules are clear within the law. A common feature of the measures taken by public authorities to protect general security and public order is that they are restrictive of a fundamental right and may be enforced by legitimate physical coercion. A comprehensive factual framework may lead to uncertainty or, on the contrary, to excessive interference by the public authorities.

The first is when the homeless person subject to the measure does not leave the place of detention despite being requested to do so by the authorities. The second is when the person in a public place and living there does not cooperate with the administration or other bodies present to receive the benefits reserved for homeless persons. According to the Ministerial Explanatory Memorandum, in these two cases, the offence is not committed.37 This is not an accurate interpretation, as the person in charge of the authority is still obliged to issue a warning in these cases, which, if they do a third time within 90 days, can no longer be waived. A warning

35 § 178/B subsection (5) of the Misdemeanour Act.
as an official measure can only be used in the case of an infringement that has been committed and detected. Therefore, abandonment of the sanctioned conduct does not mean that ‘nothing has happened’; it only means no proceedings are initiated. These facts and their official response highlight the limits of police action. In this case, the police officer who takes effort is at most literally deflecting the problem but cannot provide any socially helpful response.

Conclusions and proposals

The specific rules of the Fundamental Law prohibit homelessness, and the sociometric teachings of Christianity, which are a constitutional value, exclude the punishment of homelessness. Thus, the provisions of the Fundamental Law assessed above are not only internally legal but also characterised by a discrepancy in values. The majority opinion of the Constitutional Court has resolved this internal contradiction in favour of the normative provision, leaving constitutional values in the background.

The State has attempted to resolve a fundamental social issue through law enforcement. In doing so, it highlighted the limitations of policing. It remained a state body for the prevention and management of danger. On the other hand, constitutional disharmony was created. On the one hand, the constitutional rules based on which the Constitutional Court first found the punishment of street homelessness unconstitutional are still in force. On the other hand, it would also be difficult to argue in favour of a sanction solution from the point of view of protecting Christian values. Lastly, the Fundamental Law defines the protection of public order and public safety as the primary task of the police. This activity cannot be included in the management of social difficulties.

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1. 19/2019 (VI. 18) AB decision and minority reports.
2. 38/2012 (XI.14) AB decision and minority reports.


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Streszczenie. W procesie legislacyjnym trwającym od 2010 r. węgierskie prawo osiągnęło punkt, w którym styl życia osób bezdomnych stał się przestępstwem we wszystkich miejscach publicznych. Niniejsze opracowanie poszukuje odpowiedzi na dwa pytania. Pierwszym z nich jest ustalenie, w jaki sposób kryminalizacja bezdomności może być zgodna z konstytucyjnymi zasadami oraz wartościami rządów prawa i europejskości. Drugie pytanie koncentruje się na tym, gdzie leżą granice konstytucyjnego nadzoru policyjnego, tj. czy policja może być upoważniona do interwencji w celu rozwiązania problemu społecznego nawet w wypadku braku sytuacji nadzwyczajnej. W artykule przedstawiono proces legislacyjny prowadzący do kryminalizacji, w szczególności z perspektywy policji. Wychodząc od analizy społecznej funkcji policji, sformułowano tezę, że siódma nowelizacja ustawy zasadniczej nie rozwiała wszystkich wątpliwości konstytucyjnych; co więcej, utrzymanie w mocy przepisów konstytucyjnych, na których opierał się poprzedni wyrok Federalnego Trybunału Konstytucyjnego, doprowadziło do wewnętrznych napięć konstytucyjnych. Określono ograniczenia konstytucyjnego nadzoru policyjnego, który jest niewystarczający w rozwiązywaniu problemów społecznych.