



LATHAM & WATKINS

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.

Austria

1. Introduction

2. Criminal Offences

Due to Austria's federal structure, two types of law have to be considered in the analysis: (i) Law on the federal level as well as the respective law of the Bundesländer (i.e. Austria's federal states)¹. The latter may be supplemented by local or regional by-laws, such as administrative ordinances. For the purpose of this analysis - in the case that solely by-law is applicable - the by-laws of the Bundesland of Vienna – being Austria's capital and biggest city – will be considered.

Federal Law

The primary source of federal of law with regard to the criminalization of certain forms of behaviour in Austria is the "Strafgesetzbuch" (criminal code, hereinafter "StGB")². The StGB does not contain any section that directly criminalizes homeless people or their activities. The only problematic articles could be Sections 127 and 149. Section 127 penalizes the fraudulent obtainment of public services (especially public means of transportation). Section 149 penalizes theft, and could – in theory – be applied to stealing private garbage. However, there appears to be no evidence that these sections are applied in a discriminate manner against homeless people.

Another source of Federal law that might affect homeless people is the "Sicherheitspolizeigesetz" (security police code, hereinafter "SPG")³. The SPG empowers the police and competent security authorities to certain measures in order to maintain public security and public order (Sections 21 and 27 SPG). The entitlement of the police and security authorities is widely ensured by so-called blanket clauses, which can be applied to a wide

¹ The Federal of Austria consists of the following *Bundesländer*: Burgenland, Kärnten, Niederösterreich, Oberösterreich, Salzburg, Steiermark, Tirol, Vorarlberg, Vienna.

² Available at [http://www.jusline.at/Strafgesetzbuch_\(StGB\).html](http://www.jusline.at/Strafgesetzbuch_(StGB).html).

³ Available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10005792>

range of possible disturbances of public order and public security. These powers are limited by the proportionality principle, thereby ensuring legality.⁴

Offences directly affecting homeless people

Offences indirectly affecting the homeless

3. Administrative Offences

Laws of the Bundesländer and by-laws

With regard to the laws of the individual Bundesländer, behaviour that is typically related to homelessness may be prohibited or restricted by the security land police laws of the Bundesländer as well by other laws and by-laws.

These laws will not be examined individually, but will rather be analysed in light of certain forms of public behaviour which are typically linked to homelessness, such as begging, sleeping outside or in vehicles, sanitation, drinking and street art.

Offences directly affecting homeless people

Begging

Begging in public places is prohibited by eight out of nine Bundesländer (the only exception being Burgenland⁵). Some states expressly extend such prohibitions to door-to-door begging⁶.

In two Bundesländer, begging is entirely prohibited (Salzburg⁷, and Tirol⁸), without differentiating between the types of begging.

⁴ Section 29 SPG.

⁵ However, in *Burgenland*, in the absence of a state law, communities are entitled to enact by-laws that prohibit begging. This is the case in *Eisenstadt*, see *Bettelei-Verordnung Eisenstadt*, available at http://www.eisenstadt.gv.at/uploads/tx_cmseisenstadt/downloads/Betteleiverordnung.pdf

⁶ *Oberösterreich* (Section 1a Oberösterreichisches Polizeistrafgesetz, available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LROO&Gesetzesnummer=10000161&ShowPrintPreview=True>), *Steiermark* (Section 3a Steiermärkisches Landes-Sicherheitsgesetz, available at http://www.ris.bka.gv.at/Dokument.wxe?Abfrage=LrStmk&Dokumentnummer=LRST_4000_002&ResultFunctionToken=babeb6c2-d328-4082-ac92-00fb049d1254&Position=1&Titel=stlsg&Typ=&Index=&ImRisSeit=Undefined&ResultPageSize=50&Suchwort=), *Niederösterreich* (Section 1a Niederösterreichisches Polizeistrafgesetz, available at [http://www.jusline.at/Noe_Polizeistrafgesetz_\(Noe_PolStG\).html](http://www.jusline.at/Noe_Polizeistrafgesetz_(Noe_PolStG).html)), *Salzburg* (Section 29 Salzburger Landessicherheitsgesetz, available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrSbg&Gesetzesnummer=20000632>), *Tirol* (Section 10 Tiroler Landes-Polizeigesetz, available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrT&Gesetzesnummer=20000176>).

⁷ Section 29 Salzburger Landessicherheitsgesetz; as discussed below, the Constitutional Court held that this provision infringed the constitution.

⁸ Section 10 Tiroler Landes-Polizeigesetz.

In six Bundesländer, intrusive, aggressive and commercial/professional (“gewerbsmäßig”) begging is prohibited (Oberösterreich⁹, Steiermark¹⁰, Kärnten¹¹, Vienna¹², Niederösterreich¹³, Vorarlberg¹⁴). In the state of Niederösterreich, aggressive begging includes almost every form of begging, the only exception being sitting in a public place without creating an obstacle.

Begging with children is forbidden in all of these eight Bundesländer. This prohibition does not only cover children begging in the aforementioned manners, but also applies to cases where begging is performed accompanied by a child.

Vienna even prohibits door-to-door collections of donations any kind (e.g. used clothing collections) by means of the Wiener Sammlungsgesetz (Vienna Collection Law)¹⁵. Charity organisations may however file a request for authorisation with the local authorities.

Rough Sleeping

Sleeping outside or in vehicles is regulated by means of by-laws.

With the exception of campgrounds, it is prohibited to sleep in sleeping bags, tents and vehicles in (outdoor) public places.¹⁶

It is forbidden to stay in public parks outside of opening hours¹⁷ which means that homeless people cannot sleep in parks at night.

Police is allowed to disband groups when occupying private ground (§37 Security Police Law [SPG]).

Offences indirectly affecting the homeless

Public bathing and urination

⁹ Section 1a Oberösterreichisches Polizeistrafgesetz.

¹⁰ Section 3a Steiermärkisches Landes-Sicherheitsgesetz.

¹¹ Section 27 Kärntner Landes-Sicherheitsgesetz, available at <http://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=LrK&Gesetzesnummer=10000064>

¹² Section 2 Wiener Landes-Sicherheitsgesetz, available at <http://www.jusline.at/index.php?cpid=ba688068a8c8a95352ed951ddb88783e&lawid=724&paid=2>

¹³ §1a Niederösterreichisches Polizeistrafgesetz.

¹⁴ Vorarlberg does not have a law that directly aims at prohibiting begging. However, it appears to be the opinion of the local authorities in Vorarlberg that begging is generally prohibited by the Vorarlberger Sammlungsgesetz (law on collections), see Section 4 paragraph 2 Vorarlberger Sammlungsgesetz, available at http://voris.vorarlberg.at/ChronikDownload/1969/48_1969.pdf

¹⁵ Available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtvorschriften/pdf/i1000000.pdf>

¹⁶ Kampierverordnung of 03.10.1996, available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtvorschriften/html/i4550000.htm>

¹⁷ Section 3 paragraph 3 Grünanlagenverordnung, available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtvorschriften/html/i4700000.htm>

Generally bathing and washing in public waters is common use and allowed under Article 8 Wasserrechtsgesetz (Waterrights law)¹⁸. However, according to Article 8 section 2 WRG some public waters can be blocked from bathing, which is partially the case in Vienna, see below.

In Vienna bathing in public waters in parks is prohibited¹⁹. Some of the Bundesländer (e.g. Steiermark) also prohibit the “unsavory” use of public fountains²⁰, which may include bathing in public fountains.

Violation of this by-law can be sanctioned by a fine of up to €700.- in Vienna²¹ (or up to €2,000.- in the Steiermark.²²

Bathing naked appears to be a violation of decency and is prohibited by all Bundesländer’s security laws²³.

Urination in public is a violation of decency. A fortiori this will apply to public defecation.²⁴

Public Drinking

Drinking alcohol in public is not generally forbidden in Austria. Austrian Bundesländer however have the discretion to pass such laws, and some politicians seem to aspire to a prohibition of public alcohol consumption in Vienna.²⁵

Intoxicated people can be expelled from certain places if they grievously endanger themselves or other people (Section 36 SPG).

The above mentioned blanket-clause (Section 27 SPG) may be invoked to safeguard order in public places. Keeping in mind the disinhibiting effects of alcohol, intoxicated persons are very likely to be considered a disturbance of public order by the authorities.

Street Art

Admissibility of street art is regulated in local by-laws. In Vienna, this is the Straßenkunstverordnung 2012²⁶.

¹⁸ Available at [http://www.jusline.at/Wasserrechtsgesetz_\(WRG\).html](http://www.jusline.at/Wasserrechtsgesetz_(WRG).html)

¹⁹ Section 3 paragraph 2 Grünanlagenverordnung.

²⁰ Section 2 paragraph 2 number 3 Steiermärkisches Landes-Sicherheitsgesetz.

²¹ Section 108 Wiener Stadtverfassung, available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtsvorschriften/html/v0010000.htm>

²² Section 4 Steiermärkisches Landes-Sicherheitsgesetz.

²³ e.g. Section 1 paragraph 1 Wiener Landes-Sicherheitsgesetz.

²⁴ Section 1 Wiener Landes-Sicherheitsgesetz.

²⁵ See <http://derstandard.at/1334796879791/Wien-soll-Graz-folgen-Stenzel-wuenscht-sich-Alkoholverbot-in-der-Oeffentlichkeit.://derstandard.at/1334796879791/Wien-soll-Graz-folgen-Stenzel-wuenscht-sich-Alkoholverbot-in-der-Oeffentlichkeit>.

*Miscellaneous ordinances and decrees**Repression linked to offences***Repression of Begging**

Administrative fines for an infringement of these provisions vary between the Bundesländer strating from €360.- in Tirol and raching up to €1,000.- in Niederösterreich or even €2,000.- in Steiermark. In the case that the fine cannot be paid, most of the laws provide for the alternative possibility of imprisonment (Arrest) between one (Vienna) and four weeks (Salzburg).

Repression of Rough Sleeping

Violation of such by-laws may lead to a penalty of up to €700.-²⁷

Repression of public bathing and urination

Penalties are up to €700.- or 1 week of imprisonment if the fine cannot be paid.

4. Appeals procedure**5. National Case Law**

The Constitutional Court of Austria (Verfassungsgerichtshof, “VfGH”) has recently ruled on the constitutionality of the respective laws on the prohibition of begging in Oberösterreich²⁸, Salzburg²⁹ and Kärnten³⁰. First of all, the VfGH held that the Bundesländer are competent to enact laws on the prohibition of begging. With regard to the merits of the cases, the court held that a general prohibition that does not distinguish between different types of begging and also encompasses “silent” begging – in contrast to aggressive and commercial/professional begging – violates the human rights and is unconstitutional. However, according to the court, the Bundesländer are free to prohibit certain types of begging, such as aggressive begging, begging with children and commercial/professional (“gewerbsmäßiges”) begging. In these decisions, the court ruled that begging does not fall under Article 8 of the European Convention on Human Rights (ECHR), because begging cannot be regarded as an expression of the individual’s lifestyle. However, according to the court, “silent” begging is guaranteed by Article 10 ECHR as a form of expression. Moreover, according to the VfGH, a prohibition of all forms of begging violates the

²⁶ Available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtvorschriften/html/i5800700.htm>

²⁷ Section 108 Wiener Stadtverfassung, available at <http://www.wien.gv.at/recht/landesrecht-wien/rechtvorschriften/html/v0010000.htm>

²⁸ Decision of 30 June 2012, case G 132/11-23, available at http://www.vfgh.gv.at/cms/vfgh-site/attachments/2/2/9/CH0003/CMS1341991026998/bettelverbot_oberoesterreich_g132-11.pdf

²⁹ Decision of 30 June 2012, case G 155/10-9, available at http://www.vfgh.gv.at/cms/vfgh-site/attachments/2/2/9/CH0003/CMS1341991026998/bettelverbot_salzburg_g155-10.pdf

³⁰ Decision of 30 June 2012, case G 118/11-17, http://www.vfgh.gv.at/cms/vfgh-site/attachments/2/2/9/CH0003/CMS1341991026998/bettelverbot_karnten_g118-11.pdf

principle of equality as laid down in Article 7 of the Austrian Constitution, as such a law bans certain people from public cases without due justification. Applying these standards, the court held that the absolute prohibition of begging in Salzburg was unconstitutional and therefore void, whereas the respective laws in Oberösterreich and Kärnten did not violate the constitution and were therefore upheld.³¹ Further decisions regarding the laws on begging in Vienna and Steiermark are pending and are expected in the fall of 2012.

6. International Case Law

7. Additional Information

Definitions

The following definitions are used by the federal working group for help of the homeless (Austria)³²:

“Roofless” Persons living in the streets or public spaces, without a form of shelter that could be described as living quarters (people living rough) and people with no usual place of residence who make use of overnight shelter and low threshold shelter (people in emergency accommodation)

“Houseless” People living in homeless shelters where the period of stay is intended to be of a temporary short-term nature, people in women’s shelters, people in accommodations for immigrants, people due to be released from institutions, people receiving longer-term support (due to homelessness)

“Insecure” People living in insecure accommodation, people living under the threat of eviction or violence

“Inadequate” People living in temporary/ non-conventional structures, people living in unfit housing, people living in extreme overcrowding

Figures on homelessness in Austria

Year	Number	Source	Link
Homeless (apparently according to FEANTSA’s definition of homelessness.)			
2006	20.940	Wohnungslosigkeit in Österreich - Grundausswertung der quantitativen Angaben, aus der Fragebogenerhebung „Wohnungslosenhilfe und gesundheitsbezogene	http://www.helix-austria.com/uploads/media/Kurzbericht_zu_Wohnungslosigkeit_in_sterreich_06-12.pdf ;

³¹ Press release of 11 July 2012, available at [http://www.vfgh.gv.at/cms/vfgh-site/attachments/2/2/9/CH0003/CMS1341991026998/bettelverbote - ladenschluss - obsorge_presseinfo.pdf](http://www.vfgh.gv.at/cms/vfgh-site/attachments/2/2/9/CH0003/CMS1341991026998/bettelverbote_-_ladenschluss_-_obsorge_presseinfo.pdf)

³² The definitions are given on the webpage <http://www.bawo.at/de/content/wohnungslosigkeit/definitionen.html> and are also referred to in analysis of the situation of the homeless.

		Dienstleistungen für wohnungslose Menschen“, Angela und Heinz Schoibl, Salzburg, Oktober 2006, page 4 (helix)	
Homeless (including all ETHOS categories of homelessness)			
2006	36.980 (number of homeless cases over the year)	Wohnungslosigkeit und Wohnungslosenhilfe in Österreich - Wohnungslosenerhebung 2006-2007-2008, Bundesarbeitsgemeinschaft Wohnungslosenhilfe BAWO im Auftrag des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz, Projektteam: Heinz Schoibl, Angela Schoibl, Sepp Ginner, Jenni Witek, Franz Sedlak Wien, im Juni 2009, page 5	http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Publicationen/Grundlagen/BAWO-Studie_zur_Wohnungslosigkeit_2009.pdf ;
2007	10.605 (cut-off date)	Wohnungslosigkeit und Wohnungslosenhilfe in Österreich - Wohnungslosenerhebung 2006-2007-2008, Bundesarbeitsgemeinschaft Wohnungslosenhilfe BAWO im Auftrag des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz, Projektteam: Heinz Schoibl, Angela Schoibl, Sepp Ginner, Jenni Witek, Franz Sedlak Wien, im Juni 2009, page 5	http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Publicationen/Grundlagen/BAWO-Studie_zur_Wohnungslosigkeit_2009.pdf
Roofless			
NO DATE?	1.113 (sleeping rough) 1.149 (sleeping in emergency accommodation)	Wohnungslosigkeit und Wohnungslosenhilfe in Österreich - Wohnungslosenerhebung 2006-2007-2008, Bundesarbeitsgemeinschaft Wohnungslosenhilfe BAWO im Auftrag des Bundesministeriums für Arbeit, Soziales und Konsumentenschutz, Projektteam: Heinz Schoibl, Angela Schoibl, Sepp Ginner, Jenni Witek, Franz Sedlak Wien, im Juni 2009, page 72 NOTE: Number of rough sleepers does not include rough sleepers in the Federal States of Steiermark and Vienna.	http://www.bawo.at/fileadmin/user_upload/public/Dokumente/Publicationen/Grundlagen/BAWO-Studie_zur_Wohnungslosigkeit_2009.pdf

Annex 1: Laws of the Bundesländer regarding begging

Bundesland (Federal State)	Forms of begging prohibited	begging with children prohibited	Fines	Imprisonment if the fine cannot be paid
Burgenland	not regulated by state law (however, local ordinances by individual communities, e.g. Eisenstadt) Eisenstadt: intrusive aggressive	not regulated by state law Eisenstadt: prohibited	Eisenstadt: up to € 1,100	Eisenstadt: up to six weeks
Kärnten (Section 27 Landessicherheitsgesetz) ³³	intrusive, aggressive commercial/professional organised	prohibited	up to € 700	up to two weeks
Niederösterreich (Section 1a Polizei-Straftgesetz)	door to door intrusive aggressive (defined as every behavior that exceeds mere sitting without creating an obstacle) commercial/professional organised	prohibited	up to € 1000	up to two weeks
Oberösterreich (Section 1a Polizeistrafgesetz) ³⁴	door to door intrusive aggressive organised incitement to begging	prohibited	up to € 720 (up to € 14,500.- for incitement to and organizing begging)	up to one week (up to six weeks for incitement to and organizing begging)
Salzburg (Section 29 Landessicherheitsgesetz) ³⁵	all forms	not explicitly mentioned	up to € 500	up to one week

³³ This section was upheld by the Constitutional Court.

³⁴ This section was upheld by the Constitutional Court.

³⁵ This section was declared unconstitutional by the Constitutional Court.

Steiermark (Section 3a Landes-Sicherheitsgesetz)	all forms (Section 3a paragraph 2 provides for an exemption from this prohibition by communities)	prohibited	up to € 2000	
Tirol (Section 10 Landes-Polizeigesetz)	door to door all forms	not explicitly mentioned	up to € 360	up to two weeks
Vorarlberg (Vorarlberger Sammlungsgesetz)	all forms	not explicitly mentioned		
Wien (Section 2 Landes-Sicherheitsgesetz)	intrusive, aggressive coomercial/professional organised	prohibited	up to € 700	up to one week