



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.

## France

---

### 1. Introduction

In France, certain legal provisions have been put in place that may affect the homeless, such as the prohibition of certain forms of begging and drunkenness in public, though the rationale behind these provisions was to preserve public order.

French law however, does permit local government to create certain measures against the homeless, by strengthening the effects of national statutes where they are justified due to certain local circumstances.

As to the definition of “homeless”: There is no definition of a homeless person under French law. INSEE’s<sup>1</sup> definition: “A person is considered as homeless if she lives in a place not designed for accommodation or if a charitable organisation provides housing to her for free or for a minimal fee.”<sup>2</sup>

Some comments on travelling (or itinerant) people: Article 2 of the Law n° 63-3 of 3 January 1969 (the “Law n° 63-3”) defines “travelling people” or “travellers” as “individuals having no domicile or any permanent home for more than six months in a Member State of the European Union”<sup>3</sup>. Thus, although travelling people don’t have any permanent home, they have access to temporary housing and are subject to a specific regime under Law n° 63-3. Therefore we have decided not to take this category of the population into account in our research.

### 2. Criminal Offences

Definition of “offence”: an offence entails any crime or violation of a legal rule which is punished by criminal law. In France, offences directed at the practices of the homeless are not fixed by the Criminal Code but rather coincide with the four components of the French administrative law concept of “public order”; safety, public health, quietness and “good order.”<sup>4</sup> Under French law, it is generally necessary to distinguish between national and local laws and regulations.

<sup>1</sup> INSEE is a French state agency in charge of statistics.

<sup>2</sup> See the following link at page 1–2 <http://www.insee.fr/fr/ppp/sommaire/imet116b.pdf> (unofficial translation).

<sup>3</sup> Emphasis added, unofficial translation.

<sup>4</sup> “Good order” introduces morality to the concept of public order. Although “good order” is now rarely used as a legal concept, it can appear in certain local regulations. For example, an anti-beggary municipal order of 14 September 1995, issued by the mayor of the city of Tarbes, prohibited any kind of behaviour inconsistent

There are no specific national laws applicable to homeless people under French law. Beggary appears to be the most relevant issue with respect to criminalising the behaviour of the homeless. However, undoubtedly the recent trend has been to refuse to criminalise homeless people. Under Articles 269 to 272 of the ex-Criminal Code (in force until 1994), wandering was a criminal offence. The ex-Criminal Code defined “wanderers” as individuals having no permanent home, means of support or permanent job. “Wanderers” were subject to a jail sentence of three to six months.

### *Offences directly affecting homeless people*

#### **Begging: past legislation**

The ex-Criminal code included the following provisions: “Any individual found to be begging in a facility designed to prevent beggary will be subject to a jail sentence of three to six months, and after his or her incarceration, will be deported to a beggars’ house.”<sup>5</sup> “Absent such facilities, beggars that are not disabled will be subject to a jail sentence of one to three months. If they are arrested outside the limits of the county where they reside, they are subject to a jail sentence of six months to two years.”<sup>6</sup> “Any beggars, even disabled, who make threats, trespass on an enclosed private property without permission, act as if suffering from a disability, or beg in a group, unless they are husband and wife, father or mother and his or her young children, or [a] blind person and his or her guide, will be punished by a jail sentence of six months to two years.”<sup>7</sup>

The stance of French legislation softened with the introduction of the new 1994 Criminal Code and Law n°92-1336 of 16 December 1992, which no longer consider beggary to be a criminal offence; wandering has also disappeared from the Criminal Code.

#### **Begging: current legislation**

Passive begging has not been a criminal offence since 1994. However, four criminal offences were created in 2003<sup>8</sup> in respect of other forms of begging:

**Exploitation of beggary**<sup>9</sup> occurs when “a person in any way organises begging by another, with a view to profit from it”. This offence is punishable by a jail sentence of up to 3 years and a fine of up to €75,000. The exploitation can be committed with aggravating circumstances when the person being organised to beg is a minor, disabled or when several people are exploited simultaneously by a single person. Such aggravating circumstances can increase the jail sentence to up to five years. The exploitation of people begging in an organised group (where several people consort to exploit a group of other people) is another aggravating

---

with public decency, including lying down publicly for too long, urinating in public and having sexual intercourse in public.

<sup>5</sup> Article 274 of the ex-Criminal Code (unofficial translation).

<sup>6</sup> Art. 275 of the ex-Criminal Code (unofficial translation).

<sup>7</sup> Art. 276 of the ex-Criminal Code (unofficial translation).

<sup>8</sup> “Sarkozy II” Law, n°2003-2391 of March 18, 2003 for national security (unofficial translation).

<sup>9</sup> Art. 225-12-5 to 225-12-7 of the Criminal Code (unofficial translation).

circumstance and can lead to a maximum of ten years in jail and a fine of €1,500,000.

**Aggressive begging**<sup>10</sup> consists of “soliciting money, valuables or any piece of property in a public place, in a group, in an aggressive manner, or using a dangerous animal as a threat.” This conduct is punishable by a maximum six-year jail sentence and a €3,750 fine.

**Endangering minors**<sup>11</sup> consists of “keeping a child under six years old in a public place or on public transport to solicit the generosity of by-passers.” This offence constitutes a deprivation of care which is punishable by a maximum six-year jail sentence and a €100,000 fine.

**Human trafficking and exploitation**<sup>12</sup> consists of “recruiting, transporting or hosting a person with a view to use that person or to permit a third party to use that person, to cause prostitution for gain or to commit sexual offences or to exploit beggary, while keeping that person in undignified employment or housing conditions, in exchange for remuneration or any other form of enrichment.” This offence is punishable by a maximum seven-year jail sentence and a €150,000 fine.

#### *Offences indirectly affecting the homeless*

In addition to these anti-beggary offences, there are other legal provisions that may be invoked against the homeless for their behaviour or situation. It should be emphasised that the rationale behind these provisions was not to criminalise the homeless but rather to preserve public order. However, in practice, they affect the homeless due to their everyday way of life.

**Drunkenness in public:**<sup>13</sup> law enforcement authorities may incarcerate any person found drunk in public in a drying-out cell.

**Stray animals:**<sup>14</sup> letting “domestic animals and wild tamed animals stray” is prohibited.

**Hindrance to traffic:**<sup>15</sup> to “place, or attempt to place, an object on a public highway intending to hinder traffic, or to attempt by any means to hinder traffic” is punishable by a maximum two-year jail sentence and a €4,500 fine, but applies only to hindering vehicular traffic. To prevent hindrance to pedestrians on pavements a city mayor may issue a local regulation under art. L. 2212-2 of the General Code of Local Authorities.

---

<sup>10</sup> Art. 312-12-1 of the Criminal Code (unofficial translation).

<sup>11</sup> Art. 227-15 of the Criminal Code (unofficial translation).

<sup>12</sup> Art. 225-4-1 of the Criminal Code (unofficial translation).

<sup>13</sup> Art. L. 3341-1 of the Public Health Code.

<sup>14</sup> Art. L. 211-19-1 of the Rural Code (unofficial translation).

<sup>15</sup> Art. L. 412-1 of the Traffic Law Code (unofficial translation).

**Annex A****Position of French law in respect of common activities of homeless people**

*There is no French national legislation that applies to the homeless in particular. In general, on the basis of the mayor's municipal police authority, municipalities can issue orders that are limited in their territorial scope which may affect the homeless.*

<b>Does France prohibit:</b>	<b>No</b>	<b>Occasionally</b>	<b>Often</b>	<b>Almost always</b>
<b>Camping or sleeping in public spaces?</b>	Camping is allowed in special zones defined at Art. R*111-32 of the Town Planning Code.	At a local level, pursuant to Article R*111-43 of the Town Planning Code, the city mayor may issue an order to prohibit wilderness camping in the city.		Wilderness camping is prohibited, <sup>16</sup> except under exceptional circumstances.
				As to travelling people, Art. 322-4-1 of the Criminal Code, prohibits unauthorised communal dwelling with the purpose of establishing residence on a plot of land owned by a local authority or a landowner. This offence is punishable by up to 6 months of imprisonment and a fine of €3,750.
<b>Sitting or lying in public spaces?</b>	No national law on the subject.	At a local level, the mayor may issue an order to prohibit such practices, to limit hindrance to pedestrians' freedom of movement. <sup>17</sup> The penalty is of an administrative nature and is limited to a maximum €38 fine (category 1 fine, Art. R610-5 of the Criminal Code). There are also other measures which may be taken to prevent people from lying in public spaces. <sup>18</sup>		

<sup>16</sup> Article R\*111-42 of the Town Planning Code.

<sup>17</sup> *E.g.* the city of Prades issued an order on 30 May 1996 to prohibit "lying in a prolonged manner that hinders pedestrians' freedom of movement."

<sup>18</sup> *E.g.* in Paris: the substitution of the subway benches by single chairs, thus preventing the homeless from sleeping there and the installation of fences and other anti-homeless measures in front of shops so that lying down is impossible.

<b>Beggary or ‘aggressive’ beggary?</b>	Passive beggary is no longer a crime since the 1994 reform of the Criminal Code.	As to passive beggary, the city mayor may issue an order to prohibit this practice at a local level if the measure is limited in its scope, and is legitimate and temporary. <sup>19</sup> The penalty is of an administrative nature and is limited to a maximum €38 fine (category 1 fine, Art. R610-5 of the Criminal Code).		Aggressive beggary is a crime punished by Art. 312-12-1 of the Criminal Code. It is defined as “publicly soliciting money, valuables or any piece of property, in a group or in an aggressive manner, or by using the threat of a dangerous animal”. The sanction is a jail sentence of up to six years and a €3,750 fine.
<b>Loitering or vagrancy?</b>	No national law on the subject.	At a local level, under certain circumstances the mayor may issue a mandatory order directed at the social services to take care of the homeless, due to the life-endangering risk caused by cold weather. <sup>20</sup>		

<sup>19</sup> *E.g.* in 2011, three municipal regulations were issued in Paris against passive beggary in tourist areas but they will no longer be enforced by the Paris Police Prefect.

<sup>20</sup> In 2003, the Police Prefect of Paris issued a mandatory order to take care of the homeless, due to the life-endangering risk caused by cold weather. The Paris Court of Appeals held that, on the merits, the order was legitimate (Administrative Court of Appeals of Paris, 21 December 2004, n° 03PA03824.).

## Annex B

## Position of French law in respect of common activities of homeless people

Does France prohibit or restrict:	No	Occasionally	Often	Almost always
<b>Public urination/defecation?</b>	No national law on the subject.	At local level, the local authorities may issue orders to prohibit this practice. <sup>21</sup>		
<b>Free meal distribution to homeless people?</b>	No local and national law on the subject.			
<b>Homeless encampments (or allow for ‘sweeping’ of encampments)?</b>				For the homeless in general, Art. R 644-2 of the Criminal Code prohibits hindering free movement of people on public roads through obstructing public roads by leaving materials or any object on the road so as to obstruct and reduce transit, freedom or safety. The penalty is a fine of up to €750 as well as the possible confiscation of the goods used. <sup>22</sup>
				As to travelling people, Art. 322-4-1 of the Criminal Code prohibits unauthorised communal dwelling with the purpose of establishing residence on a plot of land owned by a local authority or a

<sup>21</sup> *E.g.*, the order of 23 November 1979 regulating health in the Paris district area provides in Art. 99; “users of public spaces shall avoid dirtying the said spaces.”

<sup>22</sup> *E.g.*, in 2008, the Police Tribunal of Paris ordered the confiscation of the tents of the non-profit organization Don Quichotte (which campaigns for the right to housing), pursuant to Art. R644-2 of the Criminal Code, for massive occupation of the “Canal Saint-Martin” public area during a campaign to raise public awareness.

				landowner. This offence is punishable by up to 6 months of imprisonment and a fine of €3,750.
<b>Sleeping in a vehicle?</b>	No national law on the subject.			
<b>Selectively enforce otherwise neutral laws against homeless individuals (e.g. public intoxication, littering, jaywalking)?</b>		The local authorities may use several national laws as a legal basis to implement anti-homeless measures, for example those regarding: - drunkenness in public area: “any person found drunk in a public place will be placed in a drying-out cell”; <sup>23</sup> and - stray animals: “Letting domestic animals and wild tamed animals stray is prohibited.” <sup>24</sup>		
<b>Ask homeless persons to ‘leave’ or otherwise limit their access to public spaces when no crime has been committed?</b>	No national law on the subject.	The local authorities may prohibit access by the homeless to certain areas. <sup>25</sup>		

<sup>23</sup> Art. L.3341-1 of the Code of Public Health.

<sup>24</sup> Art. L211-19-1 of the Rural Code.

<sup>25</sup> E.g., prohibition of passive beggary in the “Paris Beach” area (Art. 3.1 of the Internal Regulations for Paris Beach, Edition 2006).

### 3. Administrative Offences

Where the current Criminal Code does not contain specific provisions against homeless people, local authorities are not entitled to create specific criminal offences applicable to such people. They may only adapt existing administrative law concepts to their local situation taking into account the behaviour of homeless people.<sup>26</sup>

At the local level, regulations against homeless people may be issued in two ways: Firstly, city mayors have the authority to issue regulations based upon their municipal police authority.<sup>27</sup> Secondly, in certain circumstances in their local area, local authorities can choose to strengthen the effects of regulations issued by State authorities such as the Minister of Interior or his local representative, the Prefect.

#### *Offences indirectly affecting the homeless*

When the city mayor issues regulations under his own municipal police authority, he may implement administrative sanctions which are appropriate and proportional under the local circumstances. Such administrative sanctions will penalise behaviour prohibited by a national regulation or statute, such behaviour being punishable by a fine or a forfeiture of civic rights.

The following is an unofficial translation of extracts of Article L. 2212-2 of the General Local Authorities Code dealing with the municipal police authority:

“The municipal police authority aims at ensuring public good order, safety, and salubrity. It notably comprises:

1. Anything in respect of safety and access to streets, waterfronts and other public channels, including cleaning, lighting, refuse collection, demolishing or repairing damaged funeral monuments and buildings, prohibiting the display of objects on windows or any other parts which increases the risk of falling or injury to pedestrians or which causes toxic exhalations and punishing projections of objects that in any manner could harm public safety, access to streets or cleanliness of other public channels;

2. Preventing infringements to public tranquillity such as fights and disputes involving crowds in the streets, furore in public assemblies, crowds, noise, disputes between neighbours, night meetings that affect the sleep of neighbours and any other acts that raise concern as to public tranquillity;

3. Preserving good order in locations where mass meetings can occur such as the locations of celebrations, markets, public ceremonies, shows and games, as well as bars, churches and other public places;

(...)

5. Preventing, by appropriate means, and putting to an end, by providing the necessary help, accidents and catastrophes as well as any kind of pollution, such as fires, floods, breaches of sea walls, landslides and rock falls, avalanches, or any other natural catastrophes, contagious diseases and epizootic diseases, and providing all necessary

<sup>26</sup> E.g. A strong presence of homeless people in the historic centre of a town which would disrupt the circulation of tourists during the summer could justify adopting a municipal regulation to deal with the issue.

<sup>27</sup> Art. L. 2212-2 of the General Local Authorities Code.



emergency measures to assist and preserve life and, if necessary, to call for the State authority's intervention;

6. Implementing necessary and temporary measures in respect of people with mental disorders who could cause harm to public morality, people's safety, or the preservation of private property; and

7. Preventing or providing remedies to events that could be caused by dangerous animals.”

### 3.1.2. **Begging**

The typical arguments that municipalities advance to prohibit beggary and similar activities by local regulations are the need to maintain the attractiveness of the local area for tourists and prevent risks to public safety. In these cases, the local authorities usually deport violators of such regulations. They may also opt for more indirect ways of discouraging begging, for example by prohibiting bivouacs and crowds of people and dogs.

Administrative courts have the power to annul these local regulations if they are illegal.

*Offences directly affecting homeless people*

*Miscellaneous ordinances and decrees*

*Repression of offences*

*Sanctions*

The violation of police regulations is a criminal offence that results in a first-class fine<sup>28</sup> of €38.<sup>29</sup>

## 4. *Appeals procedure*

### **Administrative courts**

Administrative courts ruled that the following three local regulations or municipal orders were valid:

A municipal order that prohibited “abusive and extended occupations” of streets and places where such practices hinder people's freedom of movement.<sup>30</sup>

A local regulation that prohibited “extended and annoying” occupation of places such as platforms and stairs leading to an underground parking area that “hindered access to a public domain”.<sup>31</sup>

<sup>28</sup> Art. R. 610-5 of the Criminal Code.

<sup>29</sup> Art. L. 131-13-1° of the Criminal Code.

<sup>30</sup> Administrative Tribunal (TA) of Montpellier, 18 June 1997, *Association Vivre au présent et autres*, req. n° 96-2687.

<sup>31</sup> Administrative Tribunal (TA) of Strasbourg, 18 February 2000, *Ville de Colmar*, req. 99-2019.

A local regulation that enabled authorities to require homeless people living and sleeping on the public highway illegally to move on.<sup>32</sup> The local authorities offered emergency accommodation to such people.

The Prefect, which is the local state authority, has its own police authority governing begging in railway stations, pursuant to Decree n° 730 of 22 March 1942.

## 5. National Case Law

Administrative courts have elsewhere invalidated local regulations where they were too general:

### Tarbes

The mayor of the city of Tarbes issued a municipal order which prohibited “soliciting money from people in places, streets and markets during opening hours”, “every conduct against public decency, specifically lying down in public for too long, urinating in public, and having sexual intercourse in public”<sup>33</sup> and “every conduct that infringe[s] freedom of movement and that disrupt[s] public order”.<sup>34</sup> The Bordeaux administrative court annulled the regulation, in accordance with precedent that considered absolute and general prohibitions to be illegal.<sup>35</sup>

### Longjumeau

The mayor of the city of Longjumeau issued a local regulation in 1998 whereby “any person wandering during cold weather or being exposed to weather dangerous for her health will be offered accommodation so that she can stay in a warm place”<sup>36</sup> and “should the person refuse accommodation, and to the extent her health or safety is at stake, she will be taken to a public refuge.”<sup>37</sup> The administrative court annulled the regulation as in breach of the principle of freedom of movement, a constitutional principle which, according to the court, cannot be infringed for the sake of other constitutional principles.<sup>38</sup> The court added that “wandering homeless people during cold weather do not disrupt public order.”<sup>39</sup>

## 6. International Case Law

## 7. Additional Information

Since the new Criminal Code entered into force, not many criminal offences have been created at the national level against homeless people. Beggary is not a criminal offence, and the other laws that could affect homeless people’s activities (such as drinking alcohol in public) are not intended to specifically target the homeless.

<sup>32</sup> Appellate Court (CA) of Aix-en-Provence, 6 March 2007, *Cne Aix-en-Provence*, JCP 2007. IV. 2282.

<sup>33</sup> Administrative Appellate Court (CAA) of Bordeaux, 26 April 1999, n° 97BX01773 (unofficial translation).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Administrative tribunal of Versailles, 23 January, 1998, *Préfet de l’Essonne*, n° 971245, Lebon 623 (unofficial translation).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

At the local level, different regulations apply in different local areas as to homeless people. These regulations can strengthen the effects of national statutes where they are justified due to certain local circumstances, for the sake of public order. However, civil society can always refer these to the administrative courts which have the power to annul these regulations, should they be illegal.

Since a left-wing President and government took office in May 2012, there could be a trend toward decriminalising such activities further. One indication of this was the announcement of the new Paris Prefect on 20 June 2012 that he will not renew the anti-beggary regulations previously enforced in the Champs-Élysées, Grands Magasins, and Louvre areas.

Although French law is therefore relatively neutral toward homelessness, it does permit local government to create measures against the homeless to some extent.