

Mandate of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, pursuant to Human Rights Council resolution 34/9.

In this connection, I would like to bring to the attention of your Excellency's Government information I have received concerning **the proposed amendment to the Fundamental Law of Hungary which would render illegal living in a public space and result in the criminalization of homeless people and people without housing.**¹

Proposed Amendment

It is my understanding that Art. 6 of the proposed amendment seeks to modify Article XXII Section 3 of the Fundamental Law to read, 'Habitual residence in a public space is forbidden', providing an even broader discretion for the criminalization of homelessness and its enforcement than current legislation provides for.

According to the information received:

While the Fundamental Law of Hungary says in its Articles XXII (2) and (3) that "Hungary shall strive to ensure decent housing conditions and access to public services for everyone" and that "the State and local governments shall also contribute to creating decent housing conditions by striving to ensure accommodation for all persons without a dwelling", there are approximately 50,000 people in Hungary living in a situation of homelessness - either sleeping rough or using emergency shelter services. A recent survey involving over 10,000 homeless people revealed that one-third were sleeping rough, while two-thirds were passing through emergency services.² It is my understanding that there are insufficient emergency shelter spaces to accommodate the homeless population in Hungary and such spaces do not conform with their long-term housing needs. Despite this fact, in recent history, the Government has treated those without homes as criminals.

¹ Magyarország Alaptörvényének hetedik módosítása címmel benyújtott, T/332, available at http://www.parlament.hu/documents/129291/1630310/T332_1/e545dfa6-12e9-47ce-d6f3-101f48438f05

² <https://www.feantsa.org/download/hungary-20177452549766529470928.pdf>

In 2010, the Hungarian Parliament passed a law empowering municipalities to ban the ‘inadequate use’ of public spaces.

In the spring of 2012, Act 2 of 2012 on Petty Offences was adopted. Article 186 declared that those who used public spaces for habitual residence, storage, or anything ‘different than its original destination’, would be committing an offence and subject to a fine of up to 150,000 Hungarian Forint (approx. 500 Euros), which could be transformed into incarceration in the case of non-payment.³ Because homeless people live in poverty and usually lack financial means to pay such fines, this stands as a real threat.

In November 2012, these articles of the Petty Offences Act were deemed unconstitutional in the Decision of the Constitutional Court [38/2012 (XI. 14.)]. The decision emphasized that residing in a public space does not inherently infringe the rights of others, cause damage or endanger the habitual use of space or public order and therefore should not be considered a petty offence.⁴ Moreover, the Court determined that for a petty offence violation the offender must demonstrate intention or negligence. Homelessness was deemed a social condition that lacks attributable subjective fault.

Despite the court’s ruling, Parliament proceeded to pass the Fourth Amendment to the Fundamental Law in April 2013, incorporating Art. XXII (3) which again authorized local governments to penalize the use of public spaces for ‘habitual residences’.⁵

Finally, on 14 June 2018, the Committee of Legislation of the Hungarian Parliament put forward the proposed amendment to the Fundamental Law of Hungary which would make staying in a public space generally illegal.

While I do not wish to prejudge the accuracy of these allegations, it appears that the proposed amendment to the Fundamental Law of Hungary would further stigmatize homeless people as criminals and raises concerns of cruel, inhuman or degrading treatment against homeless people and persons without housing. Among the homeless population are many young adults who have been discharged from child care institutions, Roma people, refugees and migrants. The proposed amendment is also prima facie discriminatory and wrongheadedly blames the victims and people whose right to adequate housing has been infringed.

If the amendment is passed, people who are homeless will be stigmatized as criminals merely for undertaking self-help solutions necessary for their own survival. In other words, according to the proposed law, they will be punished for simply attempting

³ https://www.feantsa.org/download/rb_and_tu_review7456010047088321940.pdf

⁴ <http://public.mkab.hu/dev/dontesek.nsf/0/1C19F4D0CFDE32FBC1257ADA00524FF1?OpenDocument>

⁵ Article XXII (3) of the Fundamental Law of Hungary reads current als following: “In order to protect public order, public security, public health and cultural values, an Act or a local government decree may, with respect to a specific part of public space, provide that staying in public space as a habitual dwelling shall be illegal.”

to maintain their own lives. They will suffer severe consequences, including being trapped in the justice system and isolated from any possibility of exiting their situation of homelessness. Committing an offence may result – in particular if repeated or the fine is not paid – in incarceration or a criminal conviction and may have long-term implications, preventing future employment and the ability to rent accommodation.

The Government's approach to homelessness lacks an understanding of its obligations under international human rights law. The amendment serves to penalize an extremely vulnerable group for the Governments' own failures to meet its international human rights obligations with respect to the right to adequate housing.

I wish to draw the attention of your Excellency's Government to its obligations under article 11.1 of the International Covenant on Economic, Social and Cultural Rights ratified by Hungary on 17 January 1974 which states that "[t]he States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right [...]". The right to adequate housing has been defined as the right to live in peace, security and dignity. It is also the obligation of States Parties to guarantee that such rights will be exercised "without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth *or other status* [emphasis added]", pursuant to article 2.2 of the Covenant.

I call your attention to my report on homelessness and the right to adequate housing ([A/HRC/31/54](#)). In that report I note that homelessness lies at the extreme end of the spectrum of violations of the right to adequate housing. As such, States should treat homelessness with the highest level of urgency. Twenty-five years ago, the Committee on Economic, Social and Cultural Rights stated that a State party to the International Covenant on Economic, Social and Cultural Rights in which any significant number of individuals are deprived of basic shelter and housing is, *prima facie*, failing to discharge its obligations under the Covenant. States are required to demonstrate that every effort has been made to use all resources that are at their disposition in an effort to satisfy, as a matter of priority, those minimum obligations.

The Special Rapporteur on extreme poverty and human rights found that criminalization leaves homeless people with "no viable place to sleep, sit, eat or drink . . . [and] can thus have serious adverse physical and psychological effects on persons living in poverty, undermining their right to an adequate standard of physical and mental health and even amounting to cruel, inhuman or degrading treatment."⁶

The consequences of the criminalization of homelessness far outweigh the societal benefits they allegedly produce. These deprivations of homeless people's liberty are disproportionate, unfair, and irregular, in contravention of article 9 of the International

⁶ See the Report of the Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda Carmona (A/66/265) para. 36, available at <http://www.ohchr.org/Documents/Issues/EPoverty/A.66.265.pdf>.

Covenant on Civil and Political Rights which protects against arbitrary arrest and detention. The Human Rights Committee has recognized that article 9 provisions specifically protect against vagrancy laws targeting the poor (General Comment No. 8).

Article 12 (1) and (3) of the International Covenant on Civil and Political Rights furthermore specifies that everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence and that this right shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others. Imposing fines and criminalizing people who are homeless is a disproportionate response to any threats to public order, health or morals that may be caused by people living in public places.

Removing homeless people from public space by force without providing sufficient short and long term accommodation and subjecting them to fines or imprisonment may also constitute cruel, inhuman or degrading treatment in contravention of article 7 of the International Covenant on Civil and Political Rights.⁷

I note also that through the Agenda 2030 for Sustainable Development, as well as the New Urban Agenda, the Government of Hungary has committed itself to eliminating homelessness and combatting and eliminating the criminalization of homelessness specifically. Through target 11.1 of the Agenda 2030 for Sustainable Development, all States have committed themselves to ensure, by 2030, access for all to adequate, safe and affordable housing. This includes of course eliminating homelessness by 2030.

State obligations in relation to homelessness have been clearly articulated by international human rights bodies and include the following: (a) States have an immediate obligation to adopt and implement strategies to eliminate homelessness. These strategies must contain clear goals and timelines and must set out the responsibilities of all levels of government and of other actors for the implementation of specific, time-bound measures, in consultation with and with participation by homeless people; (b) States must combat discrimination, stigma and negative stereotyping of homeless people as a matter of urgency and homeless people must be recognized as a protected group in all relevant domestic anti-discrimination and hate-crime laws, including where relevant in national Constitutions, national and subnational human rights legislation and in city charters; and (c) any and all laws or measures that criminalize, impose fines on or restrict homeless people or behaviour associated with being homeless, such as sleeping or eating in public spaces, must be immediately repealed.⁸

I would also like to underline that international human rights law binds all levels of Government, including national and local governments. There is a joint obligation of national and local Governments to ensure that all individuals living in Hungary enjoy the right to adequate housing and are protected from other violations of their human rights.⁹

⁷ See as well the Concluding Observations of the Human Rights Committee in relation to the criminalization of homelessness in the United States of America, [CCPR/C/USA/CO/4](#), para 19.

⁸ See Report of the Special Rapporteur on the right to adequate housing, [A/HRC/31/54](#).

⁹ See Report of the Special Rapporteur on the right to adequate housing, [A/HRC/28/62](#).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, I would appreciate a rapid response on the initial steps taken by your Government to safeguard the rights of the persons of the above-mentioned community in compliance with international instruments.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all cases brought to my attention, I would therefore be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations.
2. Please explain how the constitutional amendment is compliant with your domestic and international human rights obligations regarding the right to housing and to non-discrimination against people living in poverty, homelessness, persons with disabilities, children, women fleeing domestic violence, the Roma population, youth, LGBTI community, migrants, and any other groups who may find themselves homeless?
3. In light of this proposed constitutional amendment and in light of the fact that people need a place to live, what measures are you proposing to ensure homeless people have access to emergency shelters in which they are willing to live and long-term housing options with necessary social, psychological and other support to ensure their social integration?
4. Please clarify what legal and administrative recourse options are available and accessible to those living in homelessness so that they may be able to claim their right to housing?
5. Please indicate how the Hungarian Government is planning to eliminate homelessness by 2030 in order to meet its commitment under the Agenda 2030 for Sustainable Development to provide, by 2030, access for all to adequate, safe and affordable housing.

I would appreciate receiving a response as soon as possible. Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

While awaiting a reply, I urge that all necessary interim measures be taken to safeguard the rights of the approximately 50,000 people living in homelessness in Hungary.

In light of the serious implications of these allegations and the risk of on-going and irreversible damage to the people who are homeless in Hungary, I will express these concerns publicly in the near future. The present letter will also be posted on the webpage of my mandate. The press release will indicate that I have been in contact with your Excellency's Government's to clarify the issues in question.

Please accept, Excellency, the assurances of my highest consideration.

Leilani Farha

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context