The Criminalisation of Homelessness in Action - Hungarian Court Strategies to Address a Fundamental Rights Problem

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Criminalisation of homeless people in Hungary

2011: law on criminalisation

2012: Decision No. 38/2012. (XI. 14.) of the HCC

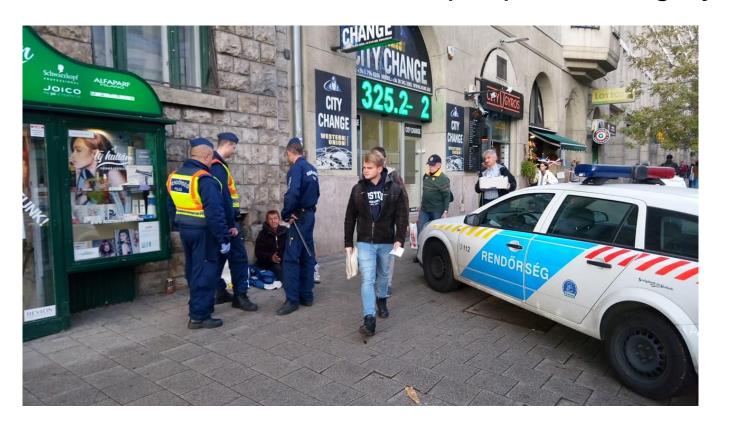2013: 4th Amendment of the Fundamental Law - municipalities' competence

2013-2018: legal disputes on the implementation

2018: 7th Amendment of the Fundamental Law - general ban on rough sleeping

Two waves of criminalisation: 2018 fall and 2019 summer

Hungarian courts under pressure

1. Well established case law
2. Courts' workload
3. Public pressure
   - Politicians
   - Legal professionals
   - Public hearings / press

Criminalisation of homeless people in Hungary

Detention up to 72 hours - no discretion

Criminalisation of homeless people in Hungary

Defendant is not allowed to enter the courtroom

Criminalisation of homeless people in Hungary

Handcuffed

Court strategies

Court strategies				
court role	*decision*	*status of the judge*	*judicial career*	*method of interpretation*
merciful court	warning	clerk	waiting for appointment	formalism
resistant court	suspension	(young) single judge	appointed	activism
court seeking compromise	acquittal	judges in chamber	appointed	formalism and activism

Which court strategy has been successful?

2019: Decision No 19/2019. (VI. 18.) of HCC

- the law is compatible with the FL, however,

'a sanction shall be imposed only if the homeless person's placement in the shelter system was guaranteed at the time of the offence.'

'the law provides flexibility to determine what conduct can be considered as [an offence] (...) it is for the courts to develop their interpretation (...)'

Conclusions

- HCC's 'message' to the courts
- Successful strategy: courts seeking compromise
- Pressure on courts dissolved
  - No case before the ECtHR
  - No backlog