

CONTEMPORARY CENTRAL & EAST EUROPEAN LAW

## **CRIMINALISATION OF BEGGARS: THE CAUSES AND CONSEQUENCES OF THE PHENOMENON**

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### **ABSTRACT**

All authorities desire to control various aspects of their subjects' lives. Those in power claim to do it in the name of protecting the peace and safety of all citizens. For one of groups perceived to be the most dangerous is the one whose members evade formal or informal social control – they do not work, do not have a family or are estranged from them, they have no permanent home. Therefore, to make sure that no one is out of the reach of governmental control, criminal law is utilised against them and whole ways of life, and the everyday behaviours of vagrants and homeless people began to be criminalised. And this process is still ongoing. The law thus punishes a person for their personal identity, and not for specific improper or harmful behaviour undertaken by them. In this paper I would like to analyse the problem of criminalisation of beggars throughout Polish history, and present how it impacted (and still impacts) upon the lives of the poorest and the most excluded parts of Polish society.

### **KEYWORDS**

beggary, criminalisation, poverty, criminology of the poor, exclusion, homelessness

### **INTRODUCTION**

The feature in common across all authorities is the desire to control various aspects of their subjects' lives. Those in power claim to do it in the name of preserving the peace and safety of all citizens. The most dangerous group of citizens is (or is perceived to be) those whose members evade control – they do not work, do not have a family or are estranged from them, they have no permanent home. In other words, they have no 'anchor' providing stability within society. In this way, they remain outside formal and informal social control – at least not the type of control that is maintained by the better, more wholesome

sections of society.<sup>1</sup> None of this is, however, about the real or imagined threat posed by the members of this outcast group; if anything, it's the imagined threat of not having control over them and the lack of knowledge (at least on the part of the authorities) about how they will behave, making control of such behaviours even more difficult.

This leads to the formation of a group which starts to be perceived as different from the rest of the society and thus dangerous. In this way society begins the process of othering of the poor, the underclass, those seen as internally homogeneous, yet disconnected from the majority. In addition, members of this group are depicted as suffering from moral deficits that make them evil to the core. This process, in turn, is called 'a conservative demonisation'.<sup>2</sup> That's why this group is seen as potentially dangerous and, in the eyes of the government, should be carefully monitored.

## CONTROLLING AND PUNISHING THE POOR: A SHORT HISTORICAL OVERVIEW

Just like many other European countries, from the end of the Middle Ages, Poland began the process of introducing legislation in order to regulate and limit the movement of free people, also known as drifters<sup>3</sup> or rogues. They were characterised by '*a vagrant lifestyle very much at odds with standards, norms and hierarchies of values which were commonly adopted and accepted by the circles of noble people. They were individuals without real estate assets, a place called home or a job to speak of.*'<sup>5</sup>

To get by and survive, the members of the group often resorted to begging. Generally speaking, begging and taking alms was for centuries not considered to be a negative phenomenon. Quite the contrary – giving to the poor was (and still is) a principle of faith and a sign of charity. The key aspect of it, though, is who is responsible for collecting donations for the poor. In the Middle Ages it was customary for the Catholic Church to take on the role of an intermediary between rich benefactors and their poor beneficiaries (special mendicant orders were established for this purpose), and the money collected as alms constituted a significant proportion of many cloisters and churches' income. Hence, charity was institutionalised – first through the Church and its institutions, and later through other charitable organisations. This institutionalisation led to increased control over the poor, who were quickly divided into two groups – those who were entitled to receive support, and those who weren't. Authorities of many cities (especially in

1 A Kossowska, *Funkcjonowanie kontroli społecznej. Analiza kryminologiczna* [Practical Aspects of Social Control. Criminological Analysis] (Agencja Scholar 1992) 35–39.

2 J Young, *The Vertigo of Late Modernity* (Sage 2007) 5–6.

3 S Grodziski, *Ludzie luźni. Studium z historii państwa i prawa polskiego* [The Vagabonds. The Study of the History of the Polish State and Law] (UJ 1961).

4 Emphasis added WK.

5 M Kamler, *Złoczyńcy. Przestępczość w Koronie w drugiej połowie XVI i pierwszej połowie XVII wieku (w świetle ksiąg sądowych i miejskich)* [The Villains. Criminality in the Polish Crown in the Second Half of the 16th and the First Half of the 17th Century (in the Light of Archives from Courts and Magistrates)] (Neriton 2010) 30.

Germany) began to license begging, issuing special permission to beg, and keeping registers of individuals entitled to collect money this way. In other cities (e.g. in Strasburg or Lviv) brotherhood of beggars – a form of self-organisation and self-control<sup>6</sup> – were established.

The other side of the coin when defining which poor people deserve to be helped, is the emergence of an idea that anyone capable of working should do so, rather than indulge in a life of leisure at someone else's cost. The poor should not partake in any forms of enjoyment (e.g. in taverns) – instead, they were supposed to only work or pray. Those who refused to comply with the obligation to work were banished from the city, and if they failed to honour that too, they would be flogged or thrown into prison.<sup>7</sup> Persistent begging in Henry VIII's England was punished with mutilation and anyone caught begging for the third time was sentenced to death.<sup>8</sup>

Homeless and jobless individuals are then perceived as dangerous for the sole reason of behaving differently than the rest of the society expects them to. As a dangerous group, they should be punished. The available punishments included forced labour on public works, or being sent to the galleys.<sup>9</sup> A good illustration of this process is the conservative demonisation described above – branding people as evil and criminal simply because they are poor and have a non-standard lifestyle.

Similar legislation was introduced in Poland, where it was particularly important to exercise control over the peasants who worked the land (*chłopi pańszczyźniani*) and their attempts to escape from the noblemen who profited from their unpaid work. As of the 16th century, legislation obliged burghers and other noblemen to report such runaways, under penalty of law. Runaway peasants were used to do unpaid public work in cities, while healthy beggars were shackled and forced to do clean-up work (such as removing manure or mud). In the Enlightenment, more and more emphasis was placed on differentiating between laziness or idleness, and destitution. Beggars were sent to workhouses, with only few of them being granted licences and permission to beg (valid only in specific places and on specific days).<sup>10</sup> Much in the same vein, the Penal Code of Congress Kingdom of Poland from 1818, in article 499 provided for punishment of people begging in public places only if they were healthy and capable of work but simply 'resort to begging out of habit or idleness only'.<sup>11</sup> Similar regulations featured in subsequent legislation in force in

6 B Geremek, *Litość i szubienica. Dzieje nędzy i miłosierdzia* [Mercy and Gallows. The History of Misery and Compassion] (Czytelnik 1989) 47–64.

7 B Geremek, *Ludzie marginesu w średniowiecznym Paryżu: XIV–XV wiek* [People from the Social Margin in the Medieval Paris in the 14th–15th Centuries] (Wydawnictwo Poznańskiego Towarzystwa Przyjaciół Nauk 2003) 34–44; T. Nail, *The Figure of the Migrant* (Stanford University Press 2015) 66–78.

8 K Marx, *Capital: A Critique of Political Economy. Volume One* (Penguin Books 1976, 1st 1867) 896–897 - It's an example of a predecessor of the American 'three strikes and you're out' practice. See: J Pratt, *Penal Populism* (Routledge 2007).

9 B Geremek (2003).

10 S Grodziski.

11 *Kodex karzący dla Królestwa Polskiego: z dodaniem praw kryminalnych później uchwalonych, reiestru*

the territory of Poland in the 19th century, whereby begging was punishable by custody or flogging.

In 1927 a Presidential Decree on combatting begging and vagrancy entered into force, whose Art. 25 introduced a punishment of up to 5 years' imprisonment for people who begged despite having enough means to survive. In the penal code of 1932, the wording had been changed and from then on 'bold and deceitful' begging was prosecuted (Art. 32 § 2).<sup>12</sup> One form of combatting begging as a phenomenon was placing beggars in workhouses (on both a voluntary and obligatory basis) and poorhouses. Such initiatives were forms of control and quite often forced isolation.

The Second Republic of Poland struggled with a shortage of workhouses. In 1927, when the previously mentioned law came into force, there were only two, and new ones had hardly emerged before the Great Depression began at the turn of the 1920s and 1930s. In Warsaw and neighbouring areas, such houses first appeared only in 1933 and were called 'poor prisons' (*dziadowskie więzienia*). With their strict regime and mandatory detention of inmates, they had a lot in common with actual prisons. Anti-begging initiatives launched in Warsaw in the years 1933-1939 covered 5,817 persons who'd been sentenced by court to a stay in workhouses if they were capable of working (around 22% of cases) and poorhouses and hospitals if they were ill (around 30% of defendants). One-in-three of these people appeared in court multiple times (the record holders made 7 appearances). Generally it must be observed that anti-begging activities did not significantly contribute to reducing the scale of begging in Warsaw. What did change, however, was the character of it. As a result of police activity, beggars steered clear of city centre, and instead of begging on the streets they went from house to house, or formed circus troupes and singing ensembles to collect money.<sup>13</sup>

## PUNISHABILITY OF BEGGING IN CONTEMPORARY POLISH LAW

Art. 58 of the 1971 Petty Offences Code<sup>14</sup>, still in force today, combines the traditions of 19th century codes with the communist idea of forcing people to work.<sup>15</sup> Penalties are

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*porządkowego i alfabetycznego, przypisków wskazujących artykuły związane z sobą mające* [Criminal Code of the Polish Crown], (Natanson 1830, 1st 1818) 111.

- 12 D Janicka, 'O zwalczaniu żebractwa i włóczęgostwa w II Rzeczypospolitej (1918–1939). Studium historycznoprawne' [On the Fight Against Beggary and Vagrancy within the Second Republic of Poland (1918–1939): A Legal and Historical Study] (2019) *Archiwum Kryminologii* 41, 1, 465–495 <<http://www.doi.org/10.7420/AK2019K>>.
- 13 M Rodak, *Z dziejów stołecznych zmagañ z żebractwem 1933–1939. Dom etapowy przy ul. Przebieg* [The History of the Struggles with Beggary 1933–1939 in the Polish Capital City. The Transitional House on Przebieg Street] (2010) *Studia Mazowieckie* 5(1/2), 47–61.
- 14 Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 4 kwietnia 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy - Kodeksy wykroczeń [Announcement of the Speaker of the Sejm of the Republic of Poland of 4 April 2019 regarding the publication of a uniform text of the Act - Petty offences code] (2019) *JoL* 821 with further amendments.
- 15 In the 1980s in communist Poland there was legislation introducing the obligation of work. Interestingly,

applied to any person who begs despite having resources to get by or who is fit to work (Art. 58 § 1 of the Petty Offence Code). Begging is not limited to collecting money only, it is also accepting non-monetary donations, e.g. clothes or food. Begging is defined as a systematic activity based on appealing to people for support, rendering it, as it were, a source of income. It is also important to prove that the offender has means to support themselves (e.g. they receive a pension or other forms of social assistance, they have other income or live in a care facility which provides for their upkeep) or is capable of working.<sup>16</sup> The latter case raises an issue of the relationship between ability and willingness to work, and the impossibility of finding it, e.g. due to high unemployment. It is believed that lack of job opportunities is independent of efforts put into finding work and should not be used as a reason to punish a beggar.<sup>17</sup> It would seem that such circumstances are shared not only by people unable to find work because of high unemployment but also individuals who are victims of rampant discrimination on the labour market (affecting, for instance, Roma community) or those who cannot take up employment because they have no right to do so legally (such as is the case of undocumented migrants).

Anyone who begs in an insistent or fraudulent manner (Art. 58 § 2 of the Petty Offence Code) risks an even higher punishment. In this case the penalties are applied even if the person in question has no means of livelihood or is unable to work.<sup>18</sup> Wojciech Jankowski explains the rationale behind these grounds:

*Insistence is when the offender forces themselves on another person and won't stop asking for donations, making it impossible for them to walk by freely. The offender may also exhibit aggressive behaviour, persistence or even harass the donor, as well as act dismissively or threateningly towards a person who refuses to donate, even to the point of insulting them. The other characteristic trait, which is the fraudulent behaviour, aims to mislead the person that the offender*

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this only concerned men aged 18–45. Penalties were applied to any person who, being able to work, did not take up any employment within a period of 3 months and failed to register as a job seeker in a relevant office. Registered job seekers were delegated to work – it could be a selected enterprise, public work or an obligation to study. Avoiding registration or failure to do the assigned work could be penalised with up to 2 years' imprisonment. See Z Ostrihanska, I Rzeplińska, *Pasożytnictwo społeczne – stereotypy i fakty* [Social Parasitism – Stereotypes and Facts] (UW 1988) 72–77. Persons who were subject to this legislation were named by the authorities as 'social parasites', a term that perfectly exemplifies the goal of the legislation – control over a group of people who wanted to escape formal social control, back then executed by a totalitarian regime. See W Klaus, 'The Relationship Between Poverty, Social Exclusion and Criminality' in K Buczkowski, B Czarnecka-Działuk, W Klaus, A Kossowska, I Rzeplińska, A Kossowska, I Rzeplińska, *Criminality and Criminal Justice in Contemporary Poland: Sociopolitical Perspectives* (Ashgate 2015) 54.

16 W Jankowski, T Grzegorzczak (eds), *Kodeks wykroczeń. Komentarz* [Code of Petty Offences. A Commentary] (Wolters Kluwer 2013).

17 M Mozgawa (ed), *Kodeks wykroczeń. Komentarz* [Code of Petty Offences. A Commentary] (Wolters Kluwer 2009).

18 Ibid.

*wants to receive money from. It may take the forms of acting to get sympathy, pretending to have an incurable condition or to have a family member who does, feigning disability, difficult family circumstances, pretending to be ill or disabled, etc.*<sup>19</sup>

The regulations seem to be in line with similar ones that were introduced in Austrian cities. Although they don't categorically ban begging, they expect the persons earning money by begging to conduct themselves appropriately. To illustrate these rules Eberhard Raithelhuber uses the term 'still and silent beggar'. First of all, the person asking for support needs to be of age. Second, they need to sit still in dedicated places (some parts of the city are out of bounds and it's forbidden to beg there) in a manner that does not compromise pedestrian or vehicle traffic. Finally, a person who is begging must not actively encourage people to support them, which means no asking, no chatting, no eye contact even. They are to sit quietly, with eyes downcast.<sup>20</sup> In other words, they should quietly and demurely wait for the handout that a rich person might graciously allow them to have, but under no circumstances should a passer-by feel put out or guilty for not supporting a person in need.

When it comes to Polish regulations, the catalogue of punishments drawn up with regard to begging is extensive. Starting from a reprimand, a fine (there seems to be little consideration for how a person who begs, i.e. is penniless, is supposed to pay the fine), through to restriction of liberty or even detention (anywhere between 5 and 30 days).

## **THE PURPOSE OF CRIMINALISATION OF BEGGARY – GEOGRAPHY OF EXCLUSION**

The aim of a provision banning begging is clear – it is to get rid of a 'problem' – not to solve it, but to rid of it, so that unwelcome and poor individuals do not spoil the impeccable aesthetic of city centres. There's no room for poverty in places like that, i.e. no room for the poor. Julia Wardhaugh coined the term 'geographies of exclusion' to appropriately name the phenomenon.<sup>21</sup> Here, criminal law is used as a tool of exclusion, to convey the fact of non-belonging to society.

As is clear from the above overview, the phenomenon of criminalising the poor is nothing new. However, there are new, law-based instruments, implemented in order to achieve the goal of dividing the urban space – with the view of making some of it accessible only to a selected group – the higher echelons of society. The lower, excluded classes, without access to these spaces, have been dubbed 'margizens' by Mark Schuilenburg.<sup>22</sup>

19 W Jankowski, T Grzegorzcyk (translation by the author).

20 E Raithelhuber, 'The Stilled-Other of the Citizen: «Roma Beggars» and Regimes of (Im)mobility in an Austrian City', in T Magazzini, S Piemontese (eds), *Constructing Roma Migrants: European Narratives and Local Governance* (Springer 2019) 141, 146–147.

21 J Wardhaugh, *Sub City: Young People, Homelessness and Crime* (Ashgate 2000) 102.

22 M Schuilenburg, 'Citizenship Revisited: Denizens and Margizens' (2008) *Peace Review: A Journal of*

The term perfectly illustrates their place in society – on the margins, or preferably outside of them. Margizens and their problems are to be ‘avusual’ for the authorities and society.<sup>23</sup>

With the growth of neoliberalism, attitudes have shifted – it’s no longer public authorities that are or should be responsible for supporting vulnerable communities. The order of the day is every man for himself – each person is exclusively responsible for their own fortunes as well as misfortunes. Following this logic, if you continue living in misery it must mean that you’ve made such a choice, prefer it that way or can’t be bothered to do anything about it, otherwise you’d change your circumstances. Krzysztof,<sup>24</sup> who has been experiencing homelessness for the last 7 months, has this to say about the ‘choice’ of being homeless:

*It’s not [...] a lifestyle choice, no. If it was a lifestyle choice, then nobody would want to work, don’t know, [they’d] drop everything, throw some old rags on, or what not, some tatters and just walk the streets, begging, drinking, having fun, enjoying life. In reality [...] every day of my life and others’ lives [on the street] is simply a fight for survival. (Krzysztof)*

People who are worse-off and socially excluded are perceived and depicted by neoliberal authorities and middle-class voters (as well as lower class, working and aspirational, who have bought into the rhetoric aimed against themselves) as an undeserving underclass, who just can’t be bothered to work.<sup>25</sup> The alleged unwillingness to work is a tired trope that keeps reoccurring regardless of place or mind-set – whether it’s medieval Catholicism, communist Poland or a neoliberal globalised contemporary world. It is based on simple binaries – ‘us’ and ‘them’, where ‘they’ are refused membership of society and are undeserving of support. This occurrence is known as ‘welfare nationalism’.<sup>26</sup>

Criminal provisions directed against begging have one more very important advantage. They can be applied how and when it’s convenient. It’s impossible to universally implement them, owing to tricky logistics, costs and uncertain results, as illustrated by

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Social Justice 20(3), 358–365, <<http://www.doi.org/10.1080/10402650802330238>>; M Schuilenburg, *The Securitization of Society: Crime, Risk, and Social Order* (New York University Press 2015).

23 H van Baar, P Vermeersch, ‘The Limits of Operational Representations: Ways of Seeing Roma Beyond the Recognition-Redistribution Paradigm (2017) Intersections: East European Journal of Society and Politics 3(4), 120–139, <<http://www.doi.org/10.17356/ieejsp.v3i4.412>>.

24 The quote was obtained during research conducted by the Author. The qualitative research involved 21 interviews with experts working with individuals experiencing homelessness and 37 interviews with homeless persons, of which 13 interviews were conducted with 15 Romanian Roma from Wrocław (including two dyads). All the names of the interviewees have been changed. The research was conducted within the research grant entitled ‘Victimisation of the homeless in Poland’ financed by the National Science Centre, Poland (application no. 2017/01/X/HS5/02035).

25 D Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (OUP 2001) 53–58.

26 V Barker, ‘Nordic vagabonds: The Roma and the logic of benevolent violence in the Swedish welfare state’ (2017) EJC 14(1), 120–139 <<http://www.doi.org/10.1177/1477370816640141>>.

the example of the fight against begging in the 1930s.<sup>27</sup> However, if the need arises, they can come in handy – the discretionary power can be helpful. It can also be used in a very selective way, e.g. against the Romanian Roma, who make their living begging on the streets. The absurdity of police interventions and a clear demonstration that they solve no problems whatsoever (if anything, they create even more issues) are perfectly illustrated in Lamita's (a Roma woman lived in the city of Wrocław) story:

*The police give us a 500 PLN fine and tell us we can't beg. We tell them we know we can't, but what can we do? We have no work, how are we supposed to live then? They don't care. And if they see that you have 10, 20 PLN, they will turn your pockets inside out, search everywhere. If they see money, they take it. [...] [On top of that they give you the ticket] for 500 PLN. Not 50, or 100, no – it's 500 PLN straightaway. (Lamita)*

The law is used to intimidate and drive beggars away from public places. Sometimes it's done in a very curt manner, like in the incidents recounted by Mundra, which are nothing less than harassment.

*Often, we would be taken to the police station or searched on the street, and they would take the money, all of it. [...] [At the station] they would keep us from morning till evening. (Mundra)*

The example of Polish cities suggests that begging is mainly undertaken by Roma people from Romania or other countries, with Polish Roma unlikely to engage in the activity. Poles affected by homelessness beg rarely (although exceptions happen), more often resorting to other strategies, e.g. in cities they 'help' to find a parking spot or offer to 'keep an eye' on a parked car. Collecting money on public transport may happen, though seldom. If there is a group collecting money at train stations or on the streets in city centres, their members will often be youngsters, not necessarily affected by poverty. Often, they inform openly that they need the money 'for beer' or other pleasures and have become an element of urban folklore, engaging in the activity more for fun, than anything else. Also, they are not targeted by the police or municipal wardens, who do not chase them away.

## CONCLUSIONS

In order to initiate the process of criminalising the homeless, they first need to be depicted as dangerous deviants who disrupt social order. Creating deviants<sup>28</sup> helps authorities to maintain order, because *the deviant does not threaten the order, rather the deviant [...] helps to shore up order. Othering, then, is a key process which maintains order.*<sup>29</sup>

27 M Rodak.

28 HS Becker, *Outsider: Studies in the Sociology of Deviance* (The Free Press 1966).

29 J Young 6.

The group that suffers the most in the process are the poor. As Julia Wardhaugh points out, they are both invisible and highly visible. Visible when they need to be removed, shouldering the blame for violating public order. And invisible when they are in need or require support to lift themselves out of abject poverty, a continuous predicament that they aren't able to end without assistance.<sup>30</sup> Criminal law is of no use here and cannot solve any of social problems – an observation made by Juliusz Makarewicz in one of his esteemed classics is as true as ever.<sup>31</sup>

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30 J Wardhaugh 91–93.

31 J Makarewicz, *Zbrodnia i kara* [The Crime and the Punishment] (H Altenberg Księgarnia Wydawnicza 1922) 148–149.

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## LIST OF LEGISLATIVE ACTS

Obwieszczenie Marszałka Sejmu Rzeczypospolitej Polskiej z dnia 4 kwietnia 2019 r. w sprawie ogłoszenia jednolitego tekstu ustawy - Kodeks wykroczeń [Announcement of the Speaker of the Sejm of the Republic of Poland of 4 April 2019 regarding the publication of a uniform text of the Act – Petty offences code] (2019) JoL 821 with further amendments.