

20. October 2020

REPORT TO THE UNIVERSAL PERIODIC REVIEW OF DENMARK 2020/21

This is a joint stakeholder submission by The Street Lawyers (SL) and project OUTSIDE (PO) to the Universal Periodic Review (UPR) of Denmark, 38th session May 2021.

The report marks the first joint contribution to the UPR by the two NGOs who engage in or directly work to improve the social, legal and economic rights of vulnerable, homeless and socially marginalized people in the Danish society.

Gadejuristen – The Street Lawyers (est. 1999) is a Danish NGO providing outreach legal aid and harm reduction services for drug users, sex workers, homeless and other marginalized or criminalized/de facto criminalized people living or working in the streets in Denmark. We do outreach work from our cargo bike office serving a cup of hot coffee or chocolate and providing free injection utensils, condoms and other items requested by street people. Our staff and volunteers are primarily lawyers and law students able to give immediate legal advice or begin actual case work with or on behalf of the client (individual). As we have become known among street people we also get requests and initiate case work directly at our regular office or after contact via phone, email or social media. In 2019 The Street Lawyers had almost 6000 direct contacts on the street (not necessarily unique individuals) and provided legal aid in 1641 cases.

project OUTSIDE (est.1997) is a non-profit organization based in Copenhagen, Denmark working with homeless rough sleepers who struggles with mental illness and complex social problems. The organization's daily work consists of outreach social work in the streets and of knowledge gathering and dissemination. We work to improve the conditions of the individual homeless rough sleeper and to create an understanding of the exclusionary structures in society. Our name refers to the fact that we are a project-oriented organization; that we literally work OUTSIDE; that we are OUTSIDE the official social system; and that we deal with a group of people who are OUTSIDERS to society.

CONTACT

<p>The Street Lawyers Vaernedamsvej 7A, 1st floor DK – 1819 Frederiksberg Denmark www.gadejuristen.dk</p> <p>Contact: Maja Løvbjerg Hansen mlh@gadejuristen.dk +45 26235996</p>	<p>project OUTSIDE Ravnsborggade 2-4, 3. DK – 2200 Copenhagen N Denmark www.udenfor.dk</p> <p>Contact: Anne-Sofie Maini-Thorsen asm@udenfor.dk +45 92926214</p>
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ABOUT THIS REPORT

In this report we cast light upon a number of possible violations of the rights of people in homelessness or living off the streets and other socially vulnerable and marginalized groups in the Danish society as well as some of the harsh and unjust conditions that they live under. It is based on firsthand observations and experiences from our daily work. The overall thematic areas covered are:

1. RIGHT TO HOUSING
2. CRIMINALIZATION
3. RIGHT TO HEALTH

1. RIGHT TO HOUSING

In the International Covenant on Economic, Social and Cultural Rights (ICESCR), to which Denmark is a party, article 11.1 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".

According to national surveys from the Danish Center for Social Science Research (VIVE) the number of homeless people has risen since 2009 and seems to have stabilized in 2019 with about 6400 people living in homelessness.ⁱ From 2009 to 2019 the number of homeless people in Denmark rose by 29 percent.

Of special importance to the number of homeless rough sleepers has also increased as has the number of homeless people with mental illness.

- PO works with homeless people who struggle with many and complex social, physical and mental problems. They live in very unworthy conditions in the street and are socially isolated in society. Most of them are not able to live under the physical, social and structural conditions that are offered at hostels and emergency shelters. They need special housing solutions and massive social support if they are to leave homelessness.

Recommendation

PO recommends that Denmark commits to reducing homelessness by developing and implementing an ambitious, national strategy with housing first as the governing principle.

SL and PO recommend that Denmark develop and implement a national action plan to combat homelessness.

2. CRIMINALIZATION

Following up on the concerns and recommendations set forth by the Committee on the Economic, Social and Cultural Rights' Concluding observations on sixth periodic report of Denmark (article 47 & 48) we will draw attention to the following legal provisions criminalizing vulnerable people in Danish society.

2.1 Homelessness camps and area bans

In 2017 the Public Order was amended by implementing a new article 3(4) stating that *"In places with public access it is prohibited to establish and stay in camps, which are capable of creating discomfort in the neighborhood."*

To enforce this regulation, the Danish police was assigned authority to issue *area bans* of 400-800 meters from the camps and later from the entire municipality to individuals staying or sleeping in the camps (article 6(3)).

After losing a number of court cases against rough sleepers, the Danish government decided to specify how the police should assess whether a camp is permanent or not, and whether it creates public disorder and potentially instills discomfort. However, despite the attempt to clarify when a situation is covered by the camp ban, it is still very difficult for the individual rough sleeper to assess whether his/her sleeping situation is covered.

The first cases of implementation that we observed affected groups of five or six people sleeping together in tunnels during rainy nights. But soon after, we also saw two people who were sleeping as a pair being fined, and after a while we knew of three cases of homeless people rough sleeping alone being fined for sleeping in a "camp".

- PO are witnessing a change in behavior of the rough sleepers in Copenhagen: many stay away from the illuminated and busy streets of the inner city and most of them sleep alone rather than in groups.
- PO are very concerned about this behavior change. If you are assaulted, fall ill or get hit by loneliness, it is not good to be alone or in hiding.
- PO also know several rough sleepers who are severely mentally ill and who are not aware of or do not understand the regulation, and who are not in any way able to adapt to the ban.
- PO fear that this group of rough sleepers suffering from severe mental illness will have negative and potentially harmful confrontations with the police.
- The legislation is discriminatory as it was explicitly intended and thus designed to tackle foreign travelers staying and sleeping in camp-like settlements (2017/1 LSF 118). In practice it is not only hitting this group but the entire group of people sleeping rough.
- PO maintain that the regulation on camps and area bans are criminalizing people for being homeless. The regulation is targeted at the survival strategies and techniques of rough sleepers to get through the night and thus it hits the rough sleepers if not directly then by the behavior it enforces. In this respect the regulation is directly harmful.
- SL is witnessing that former rough sleepers are accepting both criminal and dangerous living conditions in order to avoid being arrested for rough sleeping.
- SL is witnessing that the Danish police is focusing on migrant rough sleepers in regard to the law enforcement of this legislation.
- SL has talked to migrants that have tried to avoid sleeping for days and attempted to sleep sitting or standing in order to avoid getting tickets from the police.
- SL experience that most rough sleepers are uncertain of their legal rights regarding sleeping and therefore goes to lengths to avoid contact with law enforcement.

- SL experience that the public debate and regulation against rough sleepers has intensified the stigmatization of rough sleepers and thereby worsened their circumstances.
- SL is concerned that while there has been so much focus on public safety that we now have a regulation protecting the potential risk of someone creating discomfort, there is little focus on the safety of the homeless population and the very real threat that they face in public spaces in the form of assault, disease from weather exposure, and mental health disadvantages from isolation.

Recommendations

PO and SL recommends that Denmark repeals the legal provisions regarding camps and area bans.

PO and SL recommends that efforts are made to ensure the safety of rough sleepers.

2.2 Increased penalty for begging

According to Danish criminal law (article 197) begging is illegal and punishable by up to six months in prison if the person has received a warning from the police.

In 2017 Denmark passed a law that increases penalty for "intimidating begging". With this the previous requirement of prior warning from the police as a condition for punishment was repealed in cases where begging was committed in pedestrian streets, at train stations, at supermarkets and in public transportation. Furthermore, the penalty for begging in these places was increased to 14 days of unconditional imprisonment for first time offenders. The law was passed with a sunset clause.

In May 2020 the sunset clause was removed making the amendment permanent.

- PO worries that imprisonment of people that are in such desperate situations that they need to beg for money, will lead to a deterioration of their mental health and wellbeing.
- PO fear that the criminalization of begging will further exclude people who are already very isolated in society.
- PO are concerned with how exclusion and punishment increasingly are replacing help and care to the homeless and destitute groups in the Danish society.
- SL are concerned that most of the beggars are not able to appear in court and that most verdicts on this provision is made without the present of the person charged and sentenced.
- SL are concerned that most of the beggars are not in contact with their court appointed lawyer before the court case and therefore worries about due process in these cases.

Recommendation

PO and SL recommend that Denmark revisits the legal provisions regarding begging and at the very least repeals the latest law which increases penalty for intimidating begging.

3. RIGHT TO HEALTH

With reference to the International Covenant on Economic, Social and Cultural Rights (ICESCR) article 12.1 stating the right of everyone to enjoy the highest possible standard of physical and mental health, this report highlights a number of specific violations. However, we emphasize that people experiencing homelessness or other vulnerable and marginalised groups in Denmark in general do not enjoy the same access to health care as the majority population.

3.1 Acces to health service to homeless people

According to the Danish Health Act access to primary health services are dependent on the registered address of the patient. This is to some extend a problem for people without a registered address. Some services are depended on the latest registered address and some rough sleepers therefor experience obstacles and delays in receiving health services that they are otherwise entitled to.

Recommendation

PO and SL recommends that all de facto obstacles for homeless people are cleared in regards to their rights to health services.

3.2 Short term hospital admissions in psychiatric institutions

In Denmark a large group of the homeless population as well as other very marginalized groups living in and by the street are struggling with mental illnesses. This means that some of them occasionally either admit themselves or are forcibly admitted at a psychiatric institution because they are in great pain or they pose a danger to others or to themselves. For many, the causes of their mental illnesses go far back and require long-term therapy and/or psychiatric treatment. Yet due to lack of capacity (and perhaps prioritization) in the mental health units concerned these people are often discharged after a few days and leave the facility without a housing solution. Yet, living and sleeping in the street is a highly stressful situation, and the condition of the people suffering from mental illness will in many cases worsen upon returning to the street.

Examples/concrete cases:

- PO often witness mentally vulnerable people in homelessness, also people suffering from severe mental illness, going through numerous but short-term hospital admissions in psychiatric institutions.
- In several cases they are discharged without a housing solution and return to the stressful life and often self-medication in the streets.
- PO has observed that in many cases it is not until a particular patient has been in and out of the same facility several times that a more long-term plan for hospitalization and treatment are coordinated by the health personnel.

Recommendation

PO recommends that Denmark ensure long-term and quality admissions in psychiatric institutions for people in homelessness and offer a suitable housing solution upon hospital discharge.

3.3 Recovery after sickness

People experiencing homelessness have very poor options for recovery after hospitalization, outpatient treatment and long-lasting illness. Without a safe and warm place to stay and sleep at night, a broken leg, wounds or high fever is not only uncomfortable and difficult to care for. The lack of proper recovery also poses a risk to the general physical health of the individual.

Examples/concrete cases

- PO knows or has become aware of many homeless people that are discharged from hospital without a housing solution or with a poor housing solution such as a night café or emergency shelter which only offers shelter during the night.
- In Copenhagen Danish Red Cross operates a care centre dedicated to providing calm and care to people in homelessness who need to recover after they are discharged from hospital. The centre offers a limited number of beds and people can stay at the centre for up to 14 days. Depending on the situation 14 days is not always enough for a good recovery.
- Furthermore, PO fear that the referral of homeless patients to a short term stay at the care centre works as a way to avoid further coordination related to the discharge of the patient by the health personnel.

Recommendation

PO recommends that Denmark ensure long-term recovery facilities for people in homelessness.

3.4 Unregistered migrants' access to health care

According to the Danish Health Act, general health care services are conditional upon legal residence. Persons not resident in the country, including unregistered migrants, only have limited access to health care.

The health service is obliged to provide acute health care to any person residing in the country but not long-term treatment.

Recovery after long-lasting illness or acute hospitalization is difficult for people in homelessness. And since hostels and shelters are subject to rules on residence permits many homeless, irregular migrants have limited possibilities for rest or a good nights' sleep and thus recovery.

- A recent qualitative report commissioned by the Danish Council for the Socially Vulnerableⁱⁱ points to serious health challenges for irregular and homeless migrants living in Denmark.
- PO recognizes many of the challenges put forth in this report. On a daily basis we are faced with homeless migrants who self-medicate; who receive inconsistent and poor health care; who are discharged to the streets after hospitalization despite for example a need for wound care; who struggle with a problematic consumption of drugs or alcohol; who are severely mentally ill and need long-term psychiatric treatment but who only have access to acute hospitalization if they are suicidal.

Recommendation

PO recommends that Denmark ensure access to free and complete health care for homeless and socially vulnerable migrants, and that this is irrespective of their residence status.

3.5 Public restrooms

In Denmark public restrooms providing people in the urban space access to a toilet and running water are still limited in numbers, several close at night and some are payment facilities.

This constitutes a major barrier for many rough sleepers with no or limited financial means, who have no other alternatives when they need to use a toilet, wash their hands or otherwise handling personal hygiene.

For rough sleepers the lack of free 24h open toilets may force them to move great distances in the middle of the night to access a toilet or to urinate and/or defecate in the public. It may also result in an involuntary neglect of personal hygiene. In every respect this is an unworthy situation. Further it poses a risk to the physical and mental health of those affected.

Recommendation

PO recommends that Denmark ensure equal access to public sanitary facilities and improves environmental hygiene (Art. 12, 2b, ICESCR) for all citizens by removing payment from public sanitary facilities and by building more free-of-charge public 24-hours facilities.

3.6 Drinking water in Copenhagen during COVID19

Access to clean drinking water is a human right (A/RES/64/292).

The municipality of Copenhagen has established a number of water post in the city. They are not very visible in the cityscape but they are well-functioning.

During spring 2020 and as a response to COVID19, the municipality of Copenhagen shut down the water posts as well as public toilets to reduce the risk of spread of infection - initially without providing any alternatives. Later public toilets reopened, and the municipality explained (upon direct inquiry from PO) about the lack of access to drinking water from the water posts that water was available in the reopened toilets and that these facilities would now be cleaned more often. The alleged reason for opening public toilets and not the water posts was a perceived greater risk of infection from the water posts than from the toilets.

In a small survey done by a number of organizations working with homeless people in Denmark, 22 % (of 145 respondents) answered, that they had not had sufficient access to clean water or other ways to clean their hands during Covid lock down in March 2020.¹

In 2017 Central European University made a field report after visiting Copenhagen and talking to a number of Roma migrants living on the streets in Copenhagen. They stated in their report that some of the migrants mentioned a lack of access to water.

It is a serious act to cut off free water supply. Especially in recent times of crisis where public facilities which can be another source of drinking water (for example the library) close down.

Reopening toilets with faucets for hand wash is not an acceptable solution. It is highly criticizable to expect Danish citizens (and in effect the homeless population) to tap drinking water from toilet facilities.

¹ <http://gadejuristen.dk/gadefolk-blev-svigtet-under-covid-19/>

At the time of writing this report (October 2020) the water posts have not been opened yet.

Recommendation

PO recommends that Denmark commits to secure free and visible access at all times to safe and clean drinking water in public spaces.

ⁱ Benjaminsen, Lars (2019): Hjemløshed i Danmark 2019: National kortlægning. VIVE 2019

ⁱⁱ Ravnboel, Camilla Ida & Simona Barbu (2020): *Sundhed blandt uregistrerede og hjemløse migranter: et kvalitativt studie*. Raadet for Socialt Udsatte, 2020.