ENNHRI written observations in application no. 44002/22

Struguel Ion Dian against Denmark

I. Introduction

1. This third-party intervention by the European Network of National Human Rights Institutions (ENNHRI) addresses the legal issues arising from the Danish national law, from the European Convention on Human Rights ('ECHR', 'Convention') and from international human rights standards in relation to prohibitions on begging. The intervention also provides a comparative analysis of legislation and jurisprudence across 12 member states. The intervention concludes that there is still a need for further legal guidance for (local) legislators to ensure compliance of regulations concerning public begging with the Convention. This case provides an excellent opportunity to reaffirm the position set out in *Lăcătuş v. Switzerland*[1] and to provide further clarification on key aspects.

II. Legal issues arising from the Danish national law

2. In Denmark, begging in public is criminalized in two ways. Firstly, there is a national prohibition on begging in public, cf. Section 197, Subsection 1 of the Danish Criminal Code. It is a prerequisite for punishment pursuant to the provision that a warning has first been issued by the police. If this is the case, then begging is subject to up to six months' imprisonment. If there are mitigating circumstances, the penalty may be waived by the court. There is no possibility of imposing a fine. In practice, a person receives a seven-day suspended prison sentence for a first-time offence.[2]

3. Secondly, in 2017 the Danish Parliament introduced a new Subsection to the provision, removing the requirement of a warning by the police in cases where the person begs on a pedestrian street, at stations, in or near supermarkets or in public transportation, cf. Section 197, Subsection 2 of the Danish Criminal Code. According to the preparatory works to the legislative act, these places were selected as it is particularly troublesome for other people to be exposed to begging in such areas and because these are areas where begging is most common. In such places, begging is punishable regardless of whether the behaviour of a person begging in the specific situation has caused insecurity for an individual or the public. If an act of begging falls within the Subsection this is deemed an aggravating circumstance upon deciding on the appropriate level of penalty. It is also regarded as an aggravating circumstance if a person comes to Denmark with

[1] ECtHR, 19 January 2021, Lăcătuş v. Switzerland, No. 14065/15.

[2] See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, section 2.1.1., available here https://www.retsinformation.dk/eli/ft/201612L00215.

the purpose of begging in such places[3]. Consequently, begging in these places is subject to a 14-day unsuspended prison sentence for a first-time offence[4].

4. Begging is defined as personally approaching others to ask for alms in a way which causes an inconvenience to the public.[5] A personal approach can be verbal as well as non-verbal and e.g., take the form of a cardboard sign, attempted eye contact and gestures. It follows from case law of the Danish courts that a personal approach doesn't need to address others directly and that the behaviour of a person doesn't need to be intrusive or aggressive to be seen as causing inconvenience to the public.[6] Thereby the Danish courts are not required to take into account the behaviour of the person found begging as part of the balancing exercise, which is however required on the basis of the *Lăcătuş*-judgment (§ 108 and 113).

5. Following the *Lăcătuş*-judgment, the Ministry of Justice wrote a note stating that the *Lăcătuş*-judgment would not necessitate changes to the Danish rules criminalizing begging in public. The ministry does, however, include the following caveat to this conclusion:

    - "If a case regarding the compatibility of Section 197 of the Danish Criminal Code vis-à-vis the Convention were to be brought before the Court in the future, it should be noted that there would be a risk that Denmark would lose such a case" (unofficial translation).[7]

6. In reaching its conclusion regarding the compatibility of the Danish rules on begging in public vis-à-vis the ECHR, the ministry argues that there are some differences between the prohibition on begging in the canton of Geneva and the prohibition in Denmark. Begging is absolutely prohibited in the canton of Geneva, whereas this is not the case in Denmark. In relation to Subsection 1, the ministry argues that while there is a general ban on begging, it is possible to issue a warning and the ban is therefore not absolute. As far as Subsection 2 is concerned, the ministry argues that because of its requirements in terms of location (begging on a pedestrian street etc.) the ban is not absolute. This argument is put forward by the ministry irrespective of the fact that Subsection 2 bans begging on selected locations *inter alia* because these are the very places where begging is most likely to occur. The ministry also notes that the Danish courts may reduce or waive the penalty for reasons relating to the personal circumstances of the person begging. The ministry is, however, not aware if and to what extent the courts have

[3] See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, the remarks to § 1 (link in note 2).
[4] See the preparatory works to Act no. 753 on begging that causes insecurity, 19 June 2017, section 2.1.2., (link in note 2).
[5] Commission report on the Danish Criminal Code, 1912, page 282-283, available here, http://www.krim.dk/undersider/retskilder/betaenkning-afgivet-af-kommissionen-nedsat-til-at-foretage-et-gennemsyn- straffelovgivning-1912.pdf.
[6] See e.g., Eastern High Court of Denmark, 25 April 2018, 11. Department S-2237-17.
[7] The Danish Ministry of Justice, note on the judgment of the European Court of Human Rights in the case *Lăcătuş* v. Switzerland, p. 23, available here, https://www.ft.dk/samling/20201/almdel/reu/spm/1015/svar/1785504/2399656.pdf.

utilized this possibility.[8] The ministry does acknowledge that it is not possible to issue a fine in Denmark where imprisonment is the only option, and thus penalties in Denmark are more severe compared to Switzerland.[9] The ministry also puts forward additional arguments relating to the Court's reasoning and, most notably, argues that there is a lack of clarity in the *Lăcătuş*-judgment as the judgment has vague and unclear instructions as to which modifications to an absolute and general prohibition of begging are sufficient.[10]

7. The *Lăcătuş*-judgment has also been interpreted by the Danish Supreme Court in a case regarding begging handed down after the present case from the Eastern High Court. In the judgment delivered on 2 February 2022, the Supreme Court argues that people residing (legally or illegally) in Denmark have the possibility of getting their basic needs covered by virtue of public assistance. In light of this, the Supreme Court states that it is uncertain to what extent begging is protected under Article 8. Furthermore, the Supreme Court states that the reason for punishing begging with imprisonment is presumably because it doesn't make sense to impose a fine, as the person will normally not be able to pay such a fine. In sum, the Supreme Court finds that in Denmark it is only in exceptional cases that the human dignity of a person is threatened as a result of not having sufficient means to meet one's basic needs. In these instances, the possibility of the courts to waive the penalty could be used. The Supreme Court found - without addressing the specific circumstances of the case - that there was no such exceptional reason. Thus, imprisonment was not a disproportionate interference with the right to respect for private life in the particular case. Subsequent case law has followed this position. Thus, a concrete balancing exercise of the relevant human rights considerations is no longer carried out as the courts restrict their review to assessing whether the action of the person falls under the definition of begging, and whether the requirements under Subsection 1 or 2 of Section 197 of the Danish Criminal Code are fulfilled.

8. In the period from 2012-2022, the Danish courts and the Danish Prosecution Service has consistently issued convictions[11]against persons for begging in public. The numbers vary each year from nine convictions (in 2012 and 2013) involving nine persons to 57 convictions involving 35 persons (in 2016). In 2022, there were 19 convictions involving 14 persons.[12] The numbers also show that only 6 percent of the convictions throughout the period in question involve persons with Danish nationality and that 63 percentage of the cases involve persons with Romanian nationality indicating that such persons may be at a higher risk of being impacted by

[8] The Danish Ministry of Justice, note on the judgment of the European Court of Human Rights in the case *Lăcătuş* v. Switzerland, p. 18 (link in note 7).
[9] The Danish Ministry of Justice, note on the judgment of the European Court of Human Rights in the case *Lăcătuş* v. Switzerland, p. 21 (link in note 7).
[10] The Danish Ministry of Justice, note on the judgment of the European Court of Human Rights in the case *Lăcătuş* v. Switzerland, p. 22-23 (link in note 7).
[11] This includes judgments by the courts and decisions by the Prosecution Service on dismissal of indictment.
[12] Numbers received from The Danish Prosecution Service drawn from the case processing system of the Danish Police (POLSAS).

the rules. See figure 1 and 2 in annex 1 for a more detailed overview of the number of convictions regarding begging, the number of people involved, and their nationality.

9. In 2019 the UN Committee on Economic, Social and Cultural Rights recommended that Denmark repeal legislation criminalising conduct associated with situations of poverty, such as begging.[13] In 2022, the recommendation was echoed by the former UN High Commissioner for Human Rights, Michelle Bachelet.[14]

10. ENNHRI submits that the Danish legislation concerning criminalisation of begging raises concerns over meeting the proportionality criteria and therefore may constitute a violation of international human rights standards, as presented below.

III. Legal issues arising from the ECHR and international human rights standards

11. The present case concerns the right to beg under Article 8 ECHR. ENNHRI invites the European Court of Human Rights ('the Court') to first and foremost reaffirm the position set out in the *Lăcătuş*-judgment that the right to beg can only be restricted in exceptional circumstances; that restrictions are only acceptable to the extent that these are the result of a careful balancing exercise, taking into account the concrete circumstances of the case; and that a general ban on begging in any case falls outside any acceptable margin of appreciation.

12. As is shown above, the interpretation of the *Lăcătuş-judgment* by the Danish Ministry of Justice relies on the judgment's purported lack of clarity as an argument to distinguish and uphold the Danish criminalization of begging. This is so, even though the Danish criminalization on begging constitutes a stricter regime than the one at issue in the *Lăcătuş-judgment*. The Danish Supreme Court only considers Article 8 ECHR to be relevant in exceptional cases. Therefore, neither the legislation nor its application has undergone noticeable change after the passing of the *Lăcătuş-judgment*.

13. In the *Lăcătuş*-judgment, the Court made a comparative analysis of 38 member states (§ 19-26) concluding that there was a certain tendency to limit a ban on begging and a willingness on the part of States to confine themselves to effectively protecting public order through administrative measures and that a general prohibition laid down in criminal law appeared to be the exception (§ 105). Based on that analysis the Danish rules stand out as they combine a national ban on begging of any kind, which is imposed by criminal law and penalized with

[13] UN Committee for Social, Economic and Cultural Rights, Concluding observations on sixth periodic report of Denmark, 12 November 2019, E/C.12/DNK/CO/6, para. 48, available here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FDNK%2FCO%2F6&Lang=en.

[14] UN High Commissioner for Human Rights, letter to the Minister of Foreign Affairs Jeppe Kofod on follow-up to Denmark's UPR assessment, 21 February 2022, Annex, available here, https://www.ohchr.org/sites/default/files/2022-03/Denmark_2.pdf.

deprivation of liberty, and which is being actively enforced by the Danish authorities.

14. Furthermore, ENNHRI submits that this is a welcome opportunity for the Court to provide further clarity on namely the following four areas. Firstly, the scope of the right to beg. Secondly, when states may legitimately impose restrictions on begging. Thirdly, whether States can resort to criminal law to restrict life-sustaining activities. Fourthly, whether persons living in poverty should be protected by social assistance measures rather than be criminalized.

The scope of the right to beg under Article 8

15. The present case raises the question regarding the scope of the right to beg under Article 8 ECHR. In the present case, the Eastern High Court of Denmark denied the applicant the right to beg because it did not consider him to be in such a vulnerable situation that he had no other means of surviving than begging. Thereby, the Eastern High Court of Denmark distinguished the present case from the *Lăcătuş*-case. Based on the *Lăcătuş*-judgment, ENNHRI submits that the existence of the right to beg cannot be made dependent on the domestic authorities' assessment of the situation of vulnerability for the person begging. Doing so would go against both the text and the spirit of the *Lăcătuş*-judgment, which is based precisely on such respect for personal autonomy. It would also risk depriving the right to beg of its practical and effective character and would imply the risk of arbitrary denial of such right.

16. In the *Lăcătuş*-judgment, the Court recognized that the right to beg enjoys protection under the Convention. In the judgment, the right to beg is derived from the right to establish and develop relationships with other human beings and the outside world, which forms part of the right to respect for private life under Article 8 ECHR (§ 55). According to the Court's case law, the protection granted to 'private' life under Article 8 also extends to the zone of interaction between a person and others, even in a public context[15] – sometimes referred to by the Court as the 'social private life'.[16] This has for instance resulted in the extension of the scope of protection of Article 8 to professional activities. According to the Court, 'professional life is often intricately linked to private life',[17] and it would have been inconsistent for it to hold differently with regards to a life-sustaining activity like begging. Additionally, in the *Lăcătuş*-judgment, the Court also grounded the right to beg under Article 8 on the concept of human dignity.

17. This construction of the right to beg is also coherent with the broader conception of Article 8 as an autonomy right. The principle of personal autonomy has been labelled by the Court, in relation to Article 8, as 'an important principle underlying the interpretation of its guarantees'.[18] The principle of personal autonomy protects 'the ability [of the individual] to conduct one's life in a manner of one's own choosing'.[19] In this regard, the Court has held that 'the guarantee

[15] ECtHR (Grand Chamber) 12 June 2014, Fernández Martínez v. Spain, No. 56030/07, para 110.
[16] ECtHR, 28 May 2009, Bigaeva v. Greece, No. 26713/05, para 22.
[17] ECtHR (Grand Chamber) 12 June 2014, Fernández Martínez v. Spain, No. 56030/07, para 110.
[18] ECtHR, 29 April 2002, Pretty v. United Kingdom, No. 2346/02, para. 61
[19] ECtHR, 29 April 2002, Pretty v. United Kingdom, No. 2346/02, para. 62.

afforded by Article 8 of the Convention is primarily intended to ensure the development, without outside interference, of the personality of each individual in his relations with other human beings.'[20] This implies that individual choices regarding how to conduct one's life – including the choice whether or not to resort to begging – fall within the scope of Article 8. Considering the right to beg in light of the principle of personal autonomy thus precludes any assessment by the authorities of the legitimacy of such choices, for instance in light of the perceived vulnerability of the person concerned.

18. In short, it would go against both the text and the spirit of the *Lăcătuş*-judgment to construct the right to beg recognized therein in a restrictive manner, by allowing State authorities discretion to disregard the autonomy of the individual to make choices on whether to beg. The present case thus offers an important opportunity to the Court to clarify the embeddedness of the human right to beg within an autonomy- based conception of the right to respect for private life. This is all the more important, since an interpretation of the right to beg which allows State authorities such discretion would risk depriving the right to beg of its practical and effective character.

The right to beg must have a practical and effective character

19. The margin of appreciation enjoyed by states does not extend so far as to include the determination whether a person enjoys protection under the Convention or not. This is the case because it would provide States leeway to circumvent the Convention guarantees if it were left to their discretion to decide whether a person enjoys a Convention right or not.[21] This would go against the object and the purpose of the ECHR,[22] which requires its provisions to be interpreted and applied to make its safeguards practical and effective, rather than theoretical and illusory.[23]

20. In the present context, these principles require that it should not be left to the discretion of States to determine whether a person is sufficiently vulnerable to be entitled to protection under the right to beg guaranteed by Article 8. Such a discretion would risk leading to the arbitrary denial of such a right by State authorities. It would allow State authorities undue discretion in determining whether a person enjoys protection under the right to beg or whether this person can rather be targeted by repressive measures. Empowering law enforcement personnel to distinguish between those worthy of protection and those who are not, would expose persons living in poverty to the risks related to encounters with the law. In this regard, it must be recalled that the UN Special Rapporteur on extreme poverty and human rights has warned against wide discretionary powers in this context, since these increase the vulnerability of persons living in

[20] ECtHR 24 February 1998, Botta v. Italy, No. 21439/93, para. 32.
[21] E.g., ECtHR (Plenary), 8 June 1976, Engel v. the Netherlands, No. 5100/71 etc., para. 81.
[22] Ibid.
[23] E.g., ECtHR (Plenary), 7 July 1989, Soering v. the United Kingdom, No. 14038/88, para. 87

poverty to harassment and violence.[24]

21. While the vulnerability principle is typically invoked to justify stronger protection to certain persons in light of the nature of the threat to their human rights, there is need to be particularly wary when the State argues that a person is not sufficiently vulnerable to warrant Convention protection.[25] Pitting purportedly 'vulnerable' against purportedly 'non-vulnerable' people to deny protection to the latter would thus be inconsistent with the principle of effectiveness, which imposes a broad interpretation of Convention rights and a narrow interpretation of their restrictions.[26] It would deprive the right to beg of its practical and effective character if applicants were to bear the burden of proving that they are sufficiently vulnerable to be entitled to protection under the right to beg.

Situations in which restrictions on begging can be legitimately imposed

22. The present case raises questions regarding the situations in which restrictions on begging can be legitimately imposed. The Court has clarified in the *Lăcătuş*-judgment that restrictions can for instance be imposed against aggressive or intrusive forms of begging, with a view to protecting the rights of others. ENNHRI submits that there are no other circumstances in which restrictions on begging meet the criteria of legitimacy under the Convention. Countries typically already have legal instruments to address any aggressive and intrusive behaviour in general. Such instruments do not particularly single out and thereby stigmatize people who beg and thus the question arises whether begging prohibitions meet the necessity criteria at all, or whether they can nonetheless be lawful in certain circumstances.

23. The Court in *Lăcătuş* has held that States only enjoy a narrow margin of appreciation in imposing begging restrictions (§ 105), which implies that the right to beg can only be restricted in exceptional circumstances. However, the Court has explicitly left open the question which other aims can legitimately be invoked to justify restrictions on the right to beg (§ 98) except for the protection of the rights of other persons against aggressive and/or intrusive forms of begging. The *Lăcătuş*-judgment does not explain sufficiently the acceptability of certain restrictions. This may result in excessive leeway to domestic authorities to distinguish the restrictions they imposed from the one at issue in the *Lăcătuş*- case.

24. This lack of guidance is problematic considering the significant variation of begging restrictions, both across Europe and within countries, which is evident from the comparative study conducted by the Court in the *Lăcătuş*-judgment (§ 19-26). This variation is moreover

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[24] UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 4 August 2011, Report to the General Assembly, UN Doc. A/66/265, para. 32, available here, https://documents-dds-ny.un.org/doc/UNDOC/GEN/N11/444/49/pdf/N1144449.pdf?OpenElement

[25] C. Heri, Responsive Human Rights – Vulnerability, Ill-treatment and the ECtHR, Oxford, Hart Publishing, 2021, p. 143-145.

[26] ECtHR (inadm.), 24 November 2009, Friend and others v. the United Kingdom, No. 16072/06 etc. 27809/08, para. 41. Also see D. Rietiker, "The Principle of 'Effectiveness' in the Recent Jurisprudence of the European Court of Human Rights: Its Different Dimensions and Its Consistency with Public International Law – No Need for the Concept of Treaty Sui Generis", Nordic Journal of International Law 2010, p. 245, at p. 259.

confirmed by a survey among ENNHRI members which was conducted in May 2023 in preparation of the present contribution. The country-specific information was contributed by ENNHRI members from 12 countries.[27] Out of those twelve countries, eight countries have a national ban on certain types of begging in place (France, Denmark, Ireland, Luxembourg, Liechtenstein, Turkey, Hungary and Slovenia), and four countries have a national ban on any type of begging (Denmark, Hungary, Ireland and Luxembourg), even though it is no longer officially prosecuted in one of these countries (Luxembourg). In five countries, restrictions can (also) be imposed at local level (France, Luxembourg, Belgium, the Netherlands, and Norway), where authorities typically enjoy wide discretion on the basis of broad administrative public order powers to impose varying, sometimes far-reaching restrictions on the right to beg. In Finland, there is no ban on begging.

25. ENNHRI submits that questions remain to be answered about when the behaviour of a person begging is sufficiently intrusive and/or aggressive to constitute a lawful interference with the right to beg as well as whether begging prohibitions can be lawful in certain circumstances, as for instance when they are limited to commercial areas or to certain times of the day – i.e. limitations on the possibilities for people who beg to interact with others, hindering them in effectively sustaining their life with begging. The present case thus provides a unique opportunity for the Court to clarify the exceptional circumstances in which begging restrictions can be acceptable, which in turn could effectively encourage the repeal of unacceptable restrictions.

Restricting life-sustaining activities

26. The present case raises questions regarding the means that can be imposed on persons for engaging in life-sustaining activities. While recognizing a tendency amongst States to refrain from using criminal law in this area (§ 105), and stating that severe criminal sanctions, particularly involving deprivation of liberty, are in principle not warranted (§ 108-110), the Court in the Lăcătuş-judgment has stopped short of stating that recourse to criminal law is never acceptable in this area. In this regard, ENNHRI invites the Court to clarify that it is never acceptable to resort to criminal law to restrict life-sustaining activities.

27. It follows from the UN Guiding Principles on Extreme Poverty and Human Rights ('UN Guiding Principles'), which was meant as a compilation of existing obligations under international human rights documents in relation to poverty, that states must 'repeal or reform any laws that criminalize life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities.'[28] The Court's attention must be drawn to the fact that this principle has recently been supported by the International Commission of Jurists' 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct

[27] This includes Denmark as well as responses received from ENNHRI members from Belgium, Finland, Hungary, France, Ireland, Luxembourg, Liechtenstein, the Netherlands, Norway, Slovenia and Turkey.
[28] UN Guiding Principles, para. 66.

Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty (2023).[29] Restrictions on life-sustaining activities should thus only be acceptable in exceptional cases, and recourse to criminal law to enforce such restrictions is in any event disproportionate. Begging-related offences are among those criminal offences which contribute to the fact that 'persons living in poverty […] come into contact with the criminal justice system with a disproportionately high frequency'.[30]Criminalizing life-sustaining activities thus amounts to criminalizing persons living in poverty. Moreover, the existence of such offences legitimize the profiling and deliberate targeting of persons living in poverty by law enforcement personnel.[31] In this regard, the UN Special Rapporteur on Extreme Poverty and Human Rights has stated that begging bans 'give law enforcement officials wide discretion in their application and increase the vulnerability of persons living in poverty to harassment and violence.'[32]

28. It is recalled that the *UN Guiding Principles* can be considered as constituting a consensus, emerging from specialized international human rights instruments regarding the treatment of people who beg. The Court has recognized that such international consensus constitutes a relevant consideration when interpreting the Convention provisions.[33] The present case provides an opportunity for the Court to strengthen its position and confirm the international consensus against the use of criminal law in this area.

Social assistance measures rather than criminalization

29. The present case raises questions regarding how states should engage with persons living in poverty. In this regard, the Court, in the *Wallová and Walla*-judgment, has already recognized that preference should be given to a social protection approach above a rights restrictive approach towards persons living in poverty, and that it is exactly the role of the domestic authorities to guide persons to the most appropriate type of social aid.[34] Even to the extent that State authorities may legitimately restrict certain types of begging on account of the negative impact thereof on the rights of others (see par. 21-24), a preference should always be given to tackling the root of the problem – i.e. the situation of poverty in which persons who beg find themselves – rather than the mere symptom. In this regard, it must be recalled that the Court, in the *M.S.S.* judgment, has indicated that State authorities have a special responsibility towards

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[29] International Commission of Jurists (ICJ), *The 8 March Principles for a Human Rights-Based Approach to Criminal Law Proscribing Conduct Associated with Sex, Reproduction, Drug Use, HIV, Homelessness and Poverty* (2023), available here: https://www.icj.org/icj-publishes-a-new-set-of-legal-principles-to-address-the-harmful-human-rights-impact-of-unjustified-criminalization-of-individuals-and-entire-communities/. Principle 21 states that '[n]o one may be held criminally liable: […] for engaging in life-sustaining economic activities in public places, such as begging, panhandling, trading, touting, vending, hawking or other informal commercial activities involving non-contraband items'

[30] UN Guiding Principles, para. 65

[31] UN Guiding Principles, para. 63.

[32] UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 4 August 2011, Report to the General Assembly, UN Doc. A/66/265, para. 32, (see link in note 24)

[33] ECtHR (Grand Chamber), 12 November 2008, Demir and Baykara v. Turkey, No. 34503/97, paras. 85-86.

[34] ECtHR, 26 October 2006, Wallová and Walla v. Czech Republic, No. 23848/04, § 74.

persons who find themselves in a situation of extreme poverty, in which they are unable to cater for their basic needs.[35]

30. The starting point of interventions on begging should be the realization that begging is a symptom that the state is failing to reach those in need, instead of criminalizing behaviour which rather indicates an insufficient access to social assistance. At the same time, it must be recognized that the mere availability of social protection measures in itself may never be invoked to deprive persons living in poverty from their personal autonomy to make choices regarding how to sustain their livelihood, including through begging.

31. In this regard, it follows from the *UN Guiding Principles on Extreme Poverty and Human Rights*, that state authorities must respect the human dignity of persons living in poverty, which includes the need to 'avoid stigmatization and prejudices, and [to] recognize and support the efforts that those living in poverty are making to improve their lives.'[36] Begging restrictions however stigmatize persons living in poverty, because these persons are singled out on the basis of their low socioeconomic status. Thereby, begging restrictions can contribute to the 'the perpetuation of discriminatory societal attitudes towards the poorest and most vulnerable',[37] and have a negative impact on their efforts to sustain their livelihood.

32. Furthermore, it follows from the *UN Guiding Principles* that persons living in poverty 'must be recognized and treated as free and autonomous agents'; and policies which affect them 'must be aimed at empowering [them]' and 'must be based on the recognition of those persons' right to make their own decisions'.[38] They must moreover enjoy the 'right to participate in decisions affecting their lives'.[39] Begging restrictions however negatively impact the autonomy of persons living in poverty to make choices on how to sustain their livelihood.

33. Persons living in poverty may be subjected to so-called 'Othering', whereby the 'non-poor' people draw a line between 'us' and 'them', which establishes, maintains and justifies social distance.[40] As a result, persons living in poverty often feel shamed, stigmatized and humiliated (the so-called 'poverty-shame nexus').[41] They are 'typically targets of, at best, the non-poor's pity or indifference and, at worst, their fear contempt, disgust or hostility (…) but rarely treated as equal fellow citizens'.[42] Both the benign ('the helpless victim') and malign characterization ('the lazy, work-shy, welfare dependent') of persons living in poverty have in common that the 'in-group' considers them to be 'passive objects' and fails to adequately recognize their agency

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[35] ECtHR (Grand Chamber), 21 January 2011, M.S.S. v. Belgium and Greece, No. 30696/09, § 249-264.
[36] UN Guiding Principles, para. 15.
[37] UN Special Rapporteur on extreme poverty and human rights, Magdalena Sepúlveda Carmona, 4 August 2011, Report to the General Assembly, UN Doc. A/66/265, para. 32, (see link in note 24).
[38] UN Guiding Principles, para. 36.
[39] Ibid.
[40] R. Lister, "'To count for nothing': Poverty beyond the statistics", *Journal of the British Academy* 2015, p. 139, at p. 142.
[41] Ibid., p. 144.
[42] Ibid., p. 144.

– i.e. their capacity to act.[43] 'Othering' thereby affects human dignity, the respect for which should be at the centre of a human rights based approach to poverty. It is therefore necessary to ensure that persons living in poverty are protected by social measures rather than being criminalized to comply with the human rights standards as presented above.

IV. Conclusion

34. ENNHRI invites the Court to first and foremost reaffirm the position set out in the *Lăcătuş*-judgment that the right to beg can only be restricted in exceptional circumstances; that restrictions are only acceptable to the extent that these are the result of a careful balancing exercise, taking into account the concrete circumstances of the case; and that a general ban on begging in any case falls outside any acceptable margin of appreciation.

35. ENNHRI submits that further clarity is needed in four respects. Firstly, that the scope of the right to beg should be interpreted broadly and as part of the right to establish and develop relationships with other human beings and the outside world. Secondly, that it must be clarified when states may exceptionally impose legitimate restrictions on begging. Thirdly, that is never acceptable to resort to the criminal law to restrict life-sustaining activities. Lastly, that persons living in poverty must be protected by social assistance measures rather than be criminalized.

36. As is shown above, neither the Danish criminalization on begging nor its application has undergone noticeable change after the *Lăcătuş*-judgment, even though the Danish rules constitute a stricter regime than the one at issue in the *Lăcătuş-judgment*. Furthermore, from a European comparative point of view the Danish rules stand out as they combine a national ban on begging of any kind, which is imposed by criminal law and penalized with deprivation of liberty, and which is being actively enforced by the Danish authorities. The Danish Ministry of Justice relies on the judgment's purported lack of clarity as an argument to distinguish and uphold the Danish criminalization of begging and the Danish Supreme Court only considers the *Lăcătuş-judgment* to be relevant in exceptional cases. The situation in Denmark thus demonstrates the necessity of reaffirming the position set out by the Court in the *Lăcătuş-judgment* and by creating additional clarity on central aspects thereof.

[43] Ibid., p. 145.

Annex 1 to ENNHRI's written observations in application no. 44002/22 Struguel Ion Dian against Denmark

The number of convictions regarding begging in public in Denmark and the number of individual persons involved[44] in the period 2012-2022 are as follows:

- In 2012, nine convictions involving nine persons,
- in 2013, nine convictions involving nine persons,
- in 2014, 14 convictions involving 12 persons,
- in 2015, 23 convictions involving 17 persons,
- in 2016, 57 convictions involving 35 persons,
- in 2017, 56 convictions involving 48 persons,
- in 2018, 40 convictions involving 32 persons,
- in 2019, 20 convictions involving 14 persons,
- in 2020, 23 convictions involving 20 persons,
- in 2021, 11 convictions involving 7 persons, and
- in 2022, 19 convictions involving 14 persons.

In the period the total number of convictions are 281 involving 217 persons. 6 percent of the convictions involve persons with Danish nationality. 94 percentage of the convictions involve persons with other nationality than Danish. If we only look at convictions involving persons with a Romanian nationality, such persons are involved in 63 percentage of the cases. The convictions can be illustrated in the following way:

[44] A person is included in the statistics if during a specific year a person has been convicted at least one time for begging in public. The same person can appear more than once in the overall number if the person has been convicted for begging in public more times spanning over more than one year.

Figure 1: Number of convictions distributed by nationality of the convicted person

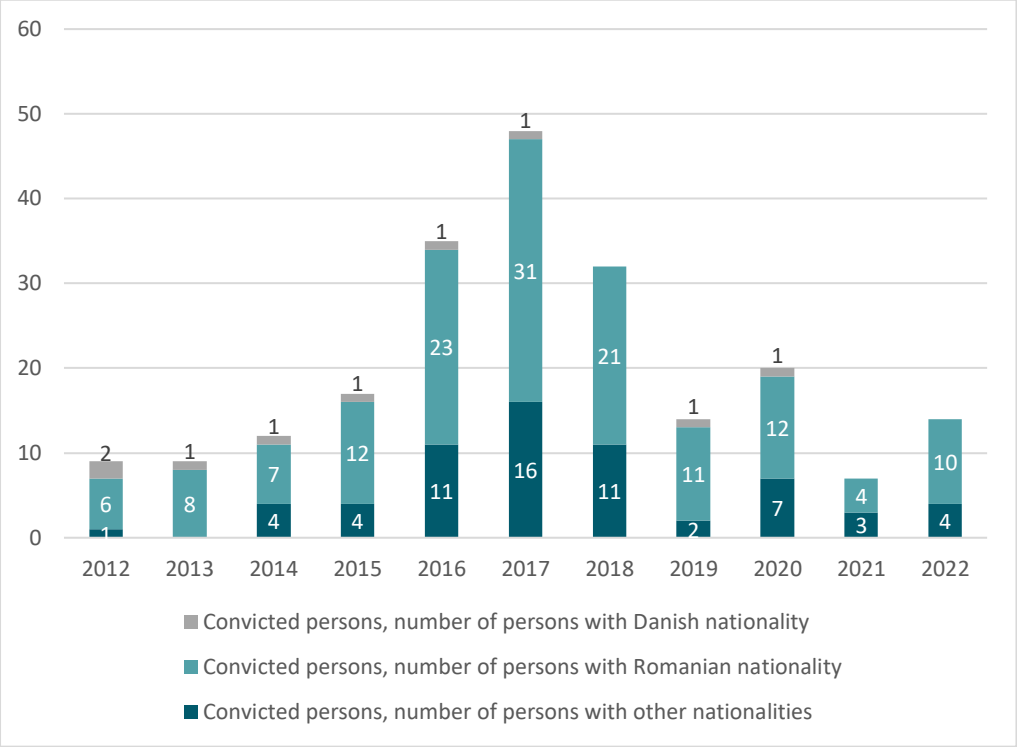
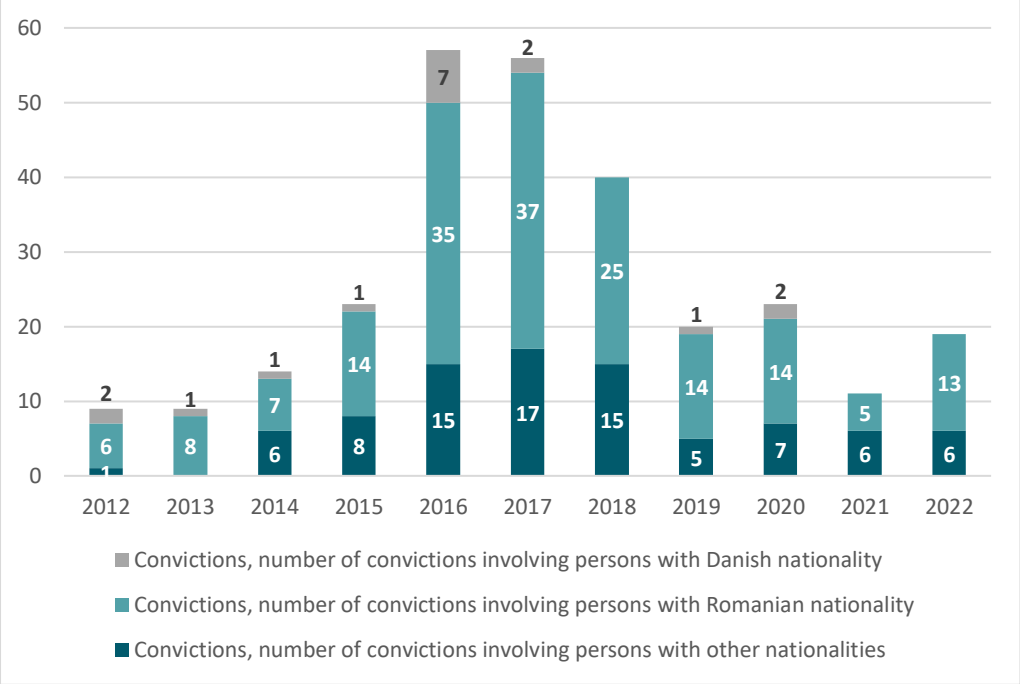


Figure 2: Number of convicted persons distributed by nationality of the convicted person



Source: The Danish Prosecution Service, numbers from the case processing system of the Danish Police (POLSAS). The numbers are subject to uncertainty as they are plotted in manually and drawn at a specific time and as late registrations may occur. Note: The Danish Criminal Code, Section 197, Subsection 1 and Subsection 2, combined. It is not possible to get data specifically for Subsection 1 and Subsection 2 as they are both registered under the same code in POLSAS.