

Banning begging in injunctions and PSPOs

The European Court of Human Rights has issued a judgment which may cast doubt on the legality of Public Spaces Protection Orders and injunctions which seek to ban begging.

In its judgment in *Lăcătuș v. Switzerland* (19 January 2021) the European Court of Human Rights has found that a Swiss ban on begging violated human rights.

The facts

The Geneva Criminal Law Act creates a blanket ban on begging in public places. Ms Lăcătuș, the Applicant, was a Romanian national who was illiterate and came from a poor family, she had no work and was not in receipt of state benefits. She was found guilty of begging in Geneva and was ordered to pay a fine, non-payment of which would result in a custodial sentence.

The history: in 2011 the Applicant was issued with a fine of 100 CHF under s.11A of the Act and the sum of 16.75 CHF was confiscated from her following a body search by the police. Over the next two years she received a further eight fines and was twice taken into police custody. The Applicant's appeal against the fines was dismissed and she was ordered to pay 500 CHF to be replaced by a five-day custodial sentence in the event that she did not pay. Further appeals were dismissed and the applicant was detained in prison for five days for non-payment.

The judgment

The European Court of Human Rights held that the Applicant's Article 8 rights had been breached. The Court found that begging was a means of survival for the applicant and that she had *"the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging"*.

It went on to hold that the sanction of imprisonment was severe and that it needed to be justified by sound reasons as being in the public interest, and that these were absent in this case. The Court did not accept the domestic court's decision that the ban was necessary because lesser measures would not achieve a comparable result. In the Court's view *"the penalty imposed has infringed the applicant's human dignity and impaired the very essence of the rights protected by Article 8, and the state has*

thus overstepped its margin of appreciation in the present case".

The implications for PSPOs and injunctions

Section 59 of the Anti-social Behaviour, Crime and Policing Act 2014 gives power to a local authority to make a PSPO if satisfied on reasonable grounds that two conditions are met. The first condition is that *"activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or it is likely that activities will be carried on in a public place within that area and that they will have such an effect"*. The second condition is that the effect, or likely effect, of the activities (a) is, or is likely to be, of a persistent or continuing nature, (b) is, or is likely to be, such as to make the activities unreasonable, and (c) justifies the restrictions imposed by the notice.

The prohibitions or requirements in a PSPO apply to everyone within the restricted area which it covers. Failure to comply with a PSPO can result in a Fixed Penalty Notice being issued or in a fine upon summary conviction in the Magistrates' Court.

Many local authorities have introduced PSPOs for begging in public spaces and many of these could be described as "blanket bans" of the type considered in *Lăcătuș*.

The main difference is that the penalty imposed by breach of a PSPO is a fine as opposed to imprisonment but the *Lăcătuș* judgment casts doubt on whether a PSPO which includes a ban on begging can be justified. The arguments relating to the Article 10 right to Freedom of Expression was not decided by the court but one can also see an argument that begging is a form of "expression" and that any interference with this right would also need to be proportionate and justified.

Injunctions in respect of named individuals made under s.1 of the 2014 Act can also include prohibitions on begging and breach can result in a fine, imprisonment or both. Injunctions are not "blanket" bans like the Swiss legislation but one can see that defendants may seek to rely on *Lăcătuș* to support an argument that the making of an injunction would breach their Article 8 or 10 rights.



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