

OHCHR Joint Submission by the (RE)Claim/MCDS (France), Justice Collective (Germany), and the Hungarian Helsinki Committee (Hungary)

for the joint report

of the Special Rapporteur on the right to adequate housing and of the Special Rapporteur on extreme poverty and human rights

on the decriminalization of homelessness and extreme poverty

15 September 2023

(RE)Claim is a French-based organization founded in 2022 that uses legal tools and research to contribute to ending systemic discrimination. (RE)Claim is conducting research, public education and advocacy on issues related to discriminatory policing and discriminatory fining practices and supporting a class action focused on discriminatory identity checks. It also focuses on issues relating to access to education, political participation and a strong civil society. Contact: Lanna Hollo, | contact.reclaim@proton.me

MCDS (Maison Communautaire pour un Développement Solidaire) is a non-governmental organization, established in 2014, which combats discrimination and promotes improved police-community relations—and in particular police-youth relations—in France. The organization works on four core issues: ethnic profiling in police stops, abusive police stops, police violence, and the improvement of police-community relations, specifically of police-youth relations. It coordinates a community hub that supports victims of abusive and discriminatory fining and policing to mobilize against these practices. It is also a party to a class action challenging discriminatory identity check practices. Contact: Omer Mas Capitolin, | omer.mc9@gmail.com

Justice Collective is a Berlin-based organization founded in 2021 that conducts public education, research, and advocacy on topics related to the criminal legal system. It is also a founding member of the Bündnis zur Abschaffung der Ersatzfreiheitsstrafe, or the Coalition to Abolish Germany's Debtor's Prisons, which fights against the jailing of people who cannot pay court fines. In 2023, Justice Collective testified before the German Bundestag on the issue, and its work has been featured prominently in the German media. Justice Collective also advocates on other issues at the intersection of racism, justice, and inequality, including the overuse of pretrial detention, racism in the criminal courts, drug policy, and more. Contact: Mitali Nagrecha, | mitali@justice-collective.org | justice-collective.org | [@Justice_Berlin](https://www.instagram.com/Justice_Berlin)

The Hungarian Helsinki Committee (HHC) is an independent human rights watchdog organization founded in 1989 in Budapest, Hungary. As a leading Hungarian human rights organization with a globally recognized reputation, the HHC works towards a world in which everyone's human rights are protected. The HHC focuses on defending the rule of law and a strong civil society in a shrinking democratic space; the right to seek asylum and access protection; the rights to be free from torture and inhuman treatment; and the right to fairness in the criminal justice system. The HHC contributes to monitoring Hungary's compliance with relevant UN, EU, Council of Europe, and OSCE human rights standards and cooperates with international human rights fora and mechanisms. Contact: Zsofia Moldova, | zsofi.moldova@helsinki.hu | www.helsinki.hu | [@hhc_helsinki](https://www.instagram.com/hhc_helsinki)

Introduction

Together, we—(RE)Claim and MCDS, Justice Collective (as part of the Coalition to Abolish Debtor’s Prisons), and the Hungarian Helsinki Committee—submit this joint account of the criminalization of poverty and homelessness in France, Germany, and Hungary. Our groups came together for this submission to show a Europe-wide problem of the mass-fining of disproportionately poor—and, importantly, racialized—groups. We thank you for the opportunity to provide input on these important issues.

While the criminalization of poverty through fines takes on different forms in each of our country contexts, we face a common and structural problem across Europe. Criminalization and fines are imposed in discriminatory ways against people who are already experiencing poverty, come from racialized groups, are experiencing homelessness –or who find themselves at the intersections of these and other identities or challenges.

In each of our states, people are targeted by criminal policy and enforcement because of their poverty, social status, skin color, presumed ethnic, national or social origins and identities, and/or the intersection of these factors. This criminalization involves direct discrimination via offenses that explicitly criminalize behaviors linked to poverty and homelessness or indirect discrimination via more general offenses (such as public order offenses) that are disproportionately applied against these groups because of who they are or are presumed to be, where they live and work, activities they turn to because of poverty, and for additional reasons.

In each of our countries, we see the problem worsening in some meaningful ways, facilitated by the Europe-wide trend towards ever-faster and simplified legal procedures, which in some cases vest adjudicative authority in police rather than courts. As police (and technology) are used to sanction more people, states do away with even the barest of procedural protections—speeding up the punishment of the poor, and allowing for criminalization to proceed at a large scale, without consideration of the underlying facts or inequities.

These problems are structural, engaging laws, policies, practices and deeply held beliefs and cultures in our countries. They involve using tools of punishment to criminalize minority groups and poor people, rather than solve complex economic and social problems or for cynical political gain. Criminalization often serves as an easy out for those responsible: the state can show it is “tough on crime”, “tough on migration”, or that our unequal economic system is the fault of people who don’t have enough. For the people criminalized, however, the outcomes are serious and include fines they cannot pay and prison, as well as significant knock-on effects in all spheres of life.

In this introduction, we highlight three common themes, and in each of our submissions we share the details of our specific contexts, answering key questions asked by the Special Rapporteurs for this call. We hope that our joint submission, which includes geographically diverse European states, shows the connections between these problems across Europe, shedding light on both the similarities and on the different legal and policy frameworks that ultimately lead to these related injustices.

First, we highlight how mass fining disproportionately impacts people from racialized and migrantized groups. This is a consequence of policing practices across Europe, which, as activists and others have shown consistently over the last decades, include racial profiling and other tools that mean that policing, surveillance,

and enforcement are concentrated against racialized groups. Because people from racialized groups are disproportionately policed, they are also disproportionately ticketed, fined, and criminalized. In Germany, in part because of racial profiling and the designation and increased policing of so-called crime “hotspots”, over one-third of fines are against non-German citizens.¹ In France, the practice of repeatedly fining young men and youth for public order and driving-related offenses is targeted in communities labelled “sensitive urban areas”, with a high concentration of low-income people from racialized groups. Importantly, in both contexts, we observe that these policies and practices are implemented to remove certain groups from public spaces as part of a pattern of discriminatory harassment. In Germany and France, in some places policing serves the purposes of enabling gentrification, further exacerbating houselessness, poverty, and displacement.

In Hungary the practice of ethnic profiling and the recurring, discriminatory imposition of fines on Roma and the derogatory manifestations of biased police attitudes contribute to a lack of trust by Roma in the police and the criminal legal system. According to the experiences of the Working Group on Petty Offenses in Hungary, it is not a unique phenomenon in poor towns and districts inhabited primarily by Roma that the police use petty offense fining as a tool to intimidate local residents. Though practices vary by place, it is common for law enforcement to appear in areas inhabited by Roma multiple times per day and impose fines for petty offenses related to bicycle or pedestrian traffic. Fining and criminalization are a part of problematic, racially discriminatory policing practices across Europe that include discriminatory identity checks, stop and search, verbal and physical abuse, illegal police detention, and surveillance.

Second, our accounts show how people are criminalized for their poverty and houselessness under various charges or offenses, both criminal and non-criminal. People are criminalized for offenses that target activities associated with being homeless (such as squatting or begging in Hungary). They may also be fined for offenses directly connected to their poverty, such as the criminalization of riding the train without a ticket or petty theft in Germany: Because of years of a shrinking social benefits system, coupled with inflation, people simply cannot afford life’s basic necessities. Third, people without resources are criminalized because of who they are or where they live, as is the case with the criminalization of migration status in Germany, or the ticketing of young men and youth in France for quality-of-life offenses simply because they happen to be in certain places. Finally, people may be criminalized for poverty when they are targeted for enforcement of offenses connected to the consequences of their poverty, as is often the case when people are criminalized for drug-related offenses (discussed in the Germany section). While each of our submissions focuses on specific fact patterns, the other patterns may also be present in our states, and all of these scenarios, whether criminal fines or not—should be understood as the criminalization of poverty.

Finally, in all three places, we see how a move towards “fast-tracked” proceedings and other procedural shortcuts means that people are sentenced quickly, allowing the state to mass criminalize without meeting the burden of actually proving cases and protecting people’s rights. This is a trend that must urgently be reversed. In the case of France, people have almost no ability to contest the fines against them.

The consequences are serious, including prison, insurmountable debts, and immigration consequences. Importantly, research and experience also shows that the impacts accrue not only to the individual, but rather extend to families and entire communities, as people come together to support their loved ones facing criminalization. Even if they are not jailed, people simply cannot pay, and have impossible choices between

1 As is the case in Germany and in other countries in Europe, the state does not keep criminal legal system data according to race or ethnicity. Therefore, the closest proxy data is data that is kept by a person’s nationality. This is both an under and over count, as people who are non-German citizens may not be from racialized groups and German citizens who are criminalized may be from racialized groups.

paying fines or for housing or food, with serious implications on employment, housing, education and other key spheres of life.

The reason we point to a structural, Europe-wide problem is to show that states must be pushed towards bolder and structural changes —because the problems are entrenched—and not limited to small tweaks in criminal procedure (though we point to the serious shortcomings of these procedures). The European Union framework applies across our countries and needs to be applied in a manner that counters these trends and protects individuals' rights and freedoms. We urge the Special Rapporteurs to make the following recommendations:

- States should put in place the full range of measures necessary to end discriminatory and abusive fining practices and other discriminatory policing practices, including racial profiling, and discriminatory harassment at the intersection of racial, social and territorial discrimination.
- States should refrain from the criminalization and/or discriminatory enforcement of many of the offenses we discuss in this submission, abolishing offenses that criminalize poverty, homelessness, immigration status, other statuses—or the consequences of these statuses.
- States should immediately abolish debtor's prisons.
- States should invest resources to address underlying inequities. For example, in Germany, a movement is underway to demand free or affordable public transportation. This is a humane, ecological alternative to criminalizing riding public transportation without a ticket. The state should be urged to invest in this alternative.
- In both criminal and non-criminal offenses, states must provide due process guarantees that, at a bare minimum, meet the common European framework that applies to higher level offenses. While the EU requires due process, counsel, language access, and other basic protections for higher level cases, to date, this framework has not been extended to lower level cases, despite the life-changing ramifications of these cases. We encourage the Rapporteurs to recommend that the European Union remove such exceptions to procedural rights given the significant consequences of these fining practices.
- States should provide amnesty to people currently suffering under fine debts because of the practices outlined in this submission.
- The Rapporteurs should be definitive in their findings, and therefore send a clear message to our states that they cannot wait to solve these problems until they have additional data: The evidence is clear. In each of our states, in particular on issues of racism, the state does not allow for data collection, and then denies the problem exists because of a data gap.
- States should collect and make public anonymized data about fines broken down by indicators that facilitate statistical analysis of implementation to identify disproportionate, discriminatory, or abusive application against particular groups or segments of the population.

We now turn to the details of these practices in France, Germany, and Hungary.

Introduction: Multiple fines that disproportionately target poor racialized communities:

Part of a pattern of discriminatory harassment by law enforcement, discriminatory and abusive fines for minor offenses are a rapidly growing problem in France. Police target young men and children, mostly Black and North African, in neighborhoods labeled 'sensitive urban areas' (quartiers populaires), a euphemism for those areas with a high concentration of low-income visible minority families.

Criminalization of Poverty

Most reported fines are for either: a) public order related offenses such as: "pouring unsanitary liquids" (urinating, spitting); depositing garbage (cigarettes, tissues, papers); noise (speaking, whistling); and smoking where it's forbidden; or b) circulation offenses, often relating to scooters, such as: not wearing a seatbelt; not displaying an insurance certificate; lacking an air quality certificate; absence of rearview mirror; driving without gloves; bothersome parking; absence of a yellow vest; lack of mastery of the vehicle; faulty light; etc. These are often 'class 3' infractions, each sanctioned with a 68 euro fine that can increase to 180 euros after penalties for late payment.

What may appear as a relatively low penalty is generally multiplied manifold as those targeted often receive repeat fines. Sometimes they receive numerous fines at the same time (for example a 'trio' consisting of simultaneously making noise, pouring unsanitary liquids, and depositing garbage) or consecutively in the course of a day or very short period of time. Multiple fines quickly add up. Those targeted frequently describe owing several thousand euros and in the worst cases even reaching over twenty thousand, leading to large debts with significant consequences.² (see discussion below)

In a 2022 opinion commenting on a legislative proposal to extend fines to a list of minor crimes, the French Human Rights Defender (DDD) commented:

"Over the past two years or so, the Human Rights Defender has been contacted or alerted on numerous occasions about a problem that seems to be developing, known as multiple or repeated fines. In this case, a person is ticketed numerous times, with multiple concomitant fines issued each time (up to 8 at once), and the tickets are repeated.

The fines can quickly become impossible to pay, as their amount is out of all proportion to the often low or modest income of the person or family concerned. The sheer volume of tickets received also makes it almost impossible to appeal them and to follow up the appeal procedure."³

MCDS became aware of these practices due to young men arriving at its community legal aid center with bags full of fines in 2017. Mothers also began asking for advice on what to do about these fines that they had no means to pay. What were once exceptional and isolated occurrences have become routine and widespread over the last years.

2 For a detailed discussion of these repeat fining practices, see: Daillère, Aline, "L'amende forfaitaire, arme du (non)-droit », published in Open Edition Journals, pp. 6 – 14, <https://doi.org/10.4000/champpenal.14012>.

3 French Human Rights Defender, *Avis du Défenseur des Droits No. 22-06*, Paris, 24 October 2022, p. 4 available at: https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=46714. (Our translation into English from original French, assisted by DeepL)

Consequences for people

In a significant number of cases documented by (RE)Claim and MCDS, the children and young men fined deny having committed the alleged offenses or, in some cases, even having been present at the relevant time, date and place. Visible minority boys and young men in specific “quartiers populaires” are also disproportionately targeted for minor infractions that are not or far less frequently applied against other parts of the population.⁴ These repeat fines are part of a pattern of harassment that appears designed to evict those considered to be “undesirables” from public spaces.⁵ As such, they are a recent addition to discriminatory identity check, frisk and search practices, illegal police detention, and other forms of verbal and physical abuse that make up this harassment.⁶

These fines can create serious debts, contributing to the impoverishment of families already struggling to make ends meet. Families are obliged to make impossible choices between paying the fines or basic bills for housing and food, a situation that can lead to eviction from homes. Non-payment can also result in the public treasury seizing bank accounts, salary, or moveable property (such as furniture or a vehicle). If unpaid, debts can burden families for years, and even be transmitted as part of a person’s estate.⁷

A recent academic study on this problem notes that:

“It is not only those fined that are impacted, but their entire family, who, in most cases, are already in vulnerable situations and have low incomes . . . the sums that need to be paid prevent or delay other necessary family expenses. The inability of families to pay the fines or their need to solve other more immediate problems, results in fines often remaining unpaid and the fine debts to increase significantly due to late penalties. In addition to the insolvency of those that receive multiple fines, there is also a saturation effect caused by the sheer volume of fines received.”⁸

Procedural Issues

This situation is worsened by the failure of the law to protect people from these practices; the existing appeal procedure is ineffective and inefficient. While, in theory, fines may be appealed, chances of success are generally slim and near impossible in situations of multiple fines that (RE)Claim and MCDS have documented. Persons fined are required to demonstrate that they *did not* commit the alleged offense in a procedure in which the written record of the fine or report by the fining officer is considered to *constitute proof of the act* unless the complainant can bring proof of the contrary, for instance through witness testimonies or written documents.

4 See discussion in Daillère, *L’amende forfaitaire*, pp. 12 – 15.

5 The French National Consultative Commission on Human Rights highlighted this problem in a recent report noting: “During its hearings, the CNCDH noted the misuse of the police’s power to issue fines against certain categories of the population, with the aim of evicting them from the public space or intimidating them. In particular, this takes the form of repeated fines for “incivilities” or disturbance of the public peace (...) During the CNCDH’s hearings, it was reported that situations of debt of up to 13 to 14,000 euros are being created for unemployed young people, who are then pushed into delinquency (...)” (translated by DeepL). CNCDH, *Avis sur les rapports entre police et population : rétablir la confiance entre la police et la population*, 11 février 2021, pg. 15, available at : <https://www.cncdh.fr/sites/default/files/2021-04/A%20-%202021%20-%2020%20-%20Relations%20Police%20-%20population%2C%20f%C3%A9vrier%202021.pdf>.

6 For a discussion of these practices of discriminatory harassment aimed at evicting “undesirables” from public space and their relationship with processes of gentrification, see Boutros, Magda, “La police et les indésirables”, 14 septembre 2018, La Vie des Idées, available at : <https://laviedesidees.fr/La-police-et-les-indesirables>.

7 See discussion in Human Rights Defender, *Décision de la Défenseure des Droits No.2023-30*, 30 May 2023, pg. 16, available at : https://juridique.defenseurdesdroits.fr/index.php?lvl=notice_display&id=47513&opac_view=-1

8 Daillère, *L’amende forfaitaire*, pg. 11 (our translation into English from original French).

In essence, fines reverse the usual rule of “innocent until proven guilty” to “guilty based on a police report unless you can bring convincing evidence of your innocence”. Further jeopardizing chances of a successful appeal, fines are frequently only notified weeks or months after the alleged incidents (rather than on the spot), often without any contact with police officers, making it especially difficult to collect evidence that contradicts the police account. There is also a strong financial disincentive to challenging fines: a complaint does not suspend penalties for non-payment that are levied after 45 days. This means that complaints are usually both unsuccessful and costly.

The Human Rights Defender emphasized that this procedure “derogates from a number of principles of criminal law and criminal procedural law, in particular respect for the presumption of innocence, the adversarial principle and defense rights, the principle of individualization of penalties and, lastly, the right of access to a judge. These derogations from the main principles of criminal law and procedural law are only permissible insofar as they relate to minor offenses, with light penalties, and which can be established on a purely material basis.”⁹

Given the disproportionate targeting of poor racialized populations, the considerable sums owed due to multiple fines and the resulting indebtedness, these sanctions cannot be considered as light. Criminal law and procedural guarantees should therefore apply.

Conclusion

The problem of discriminatory and abusive fines is set to worsen exponentially in the years to come if current trends are not reversed. A 2019 Law on reform of the judicial system, presented as simplifying the criminal procedure, introduced a number of new fixed penalty criminal fines (Amendes Forfaitaires Délictuelles) including “illegal occupation of common areas of buildings”, a fine announced as targeting “lookouts” (guetteurs) in the drug trade, and a fine for use of narcotics.¹⁰ These will easily lend themselves to abuse, especially against young racialized men without any connection to drugs or the drug trade. These fines also lead to a criminal record and repeat offenses may be punished with imprisonment.¹¹

9 Human Rights Defender, *Avis No. 22-06*, pg. 3 (our translation into English from original French).

10 Le Monde, « Lutte contre le trafic de drogue : des amendes pour les guetteurs à l'automne », 24 mai 2021, available at: https://www.lemonde.fr/politique/article/2021/05/24/lutte-contre-le-traffic-de-drogue-des-amendes-pour-les-guetteurs-a-l-automne_6081289_823448.html.

11 Persons belonging to another racialized group, Travellers, have also expressed serious concerns over another new criminal fine targeting the “crime” of “illegal settlement on someone else’s land”. This fine concerns people who “settle in groups with a view to establishing a dwelling, even temporarily, on land belonging to a municipality or to any other owner without being able to justify their authorization” and is set at €500 (reduced to €400 if paid within 15 days, increased to €1,000 if paid after 45 days) and, like all criminal fixed fines, leads to a criminal record. Repeat violations can lead to increased fines and prison sentences. For more information see: <https://odci.fr/2022/01/31/note-explicative-amende-forfaitaire-delictuelle/>.

Introduction: Germany's debtor's prison disproportionately impacts people from racialized groups

Every year approximately 56,000 people are jailed in Germany for not paying fines in criminal cases.¹² Under German law, if people do not pay their fines, they are jailed, without any judicial inquiry into the reasons they did not pay, and even if they cannot afford their fines (a policy known as “Ersatzfreiheitsstrafe”). Research has consistently shown that the reason people do not pay is because they simply cannot afford to: In one study of people jailed, 95% had an income under 1,000 euro per month when they were jailed. 20% of people were facing homelessness,¹³ 55% of people had alcohol dependency,¹⁴ and 27% drug dependency.¹⁵ People are jailed every day in Germany because they are poor, and because they face other intersecting challenges.

Fines and jail disproportionately impact racialized and migrantized communities. As activists have shown, police in Germany racially profile,¹⁶ including through the designation of migrantized and racialized communities as crime “hotspots”, which are more heavily policed (and in which police have additional authority to stop people without suspicion). Because of these practices, racialized people are disproportionately fined for low-level offenses: In 2021, 38% of fines were imposed against non-German nationals.¹⁷ According to data from the Federal Statistical Office's microcensus, the risk of poverty among people with a migration background is 27.8 percent, more than twice as high as among people without migration background (11.7 percent).¹⁸ When people cannot pay their fines, the end consequence for victims of racial profiling is prison.

12 Bundesministerium des Innern & Bundesministerium der Justiz 2006, 620. This is the total number of Ersatzfreiheitsstrafe sentences in 2003, the last year for which the state has released this data.

13 Rebecca Lobitz and Wolfgang Wirth, *Der Vollzug der Ersatzfreiheitsstrafe in Nordrhein-Westfalen: Eine empirische Aktenanalyse*, Kriminologischer Dienst des Landes Nordrhein-Westfalen (2018).

14 G. Müller-Foti, et al., *Punishing the disoriented? Medical and criminological implications of incarcerating patients with mental disorders for failing to pay a fine*, International Journal of Prisoner Health 3.2 (2007): 87-97.

15 Rebecca Lobitz and Wolfgang Wirth, *Der Vollzug der Ersatzfreiheitsstrafe in Nordrhein-Westfalen: Eine empirische Aktenanalyse*, Kriminologischer Dienst des Landes Nordrhein-Westfalen (2018).

16 Kampagne für Opfer rassistisch motivierter Polizeigewalt, Chronik rassistisch motivierter Polizeivorfälle für Berlin von 2000 bis 2021 (documenting incidents of racism and policing in Berlin, Germany); Abdul-Rahman, L., Espín Grau, H., Klaus, L., & Singelstein, T., *Rassismus und Dis-kriminierungserfahrungen im Kontext polizeilicher Gewaltausübung: Zweiter Zwischen-bericht zum Forschungsprojekt “Körperverletzung im Amt durch Polizeibeamt*innen” (KviAPol)* (2020) (academic researching on racism in policing in Germany).

17 Statistisches Bundesamt (Destatis), Fachserie 10, Reihe 3, Rechtspflege: Strafverfolgung 2021 (2022) (hereinafter “Strafverfolgung 2021”), https://www.destatis.de/DE/Themen/Staat/Justiz-Rechtspflege/Publikationen/Downloads-Strafverfolgung-Strafvollzug/strafverfolgung-2100300217004.pdf?__blob=publicationFile (According to the data, approximately 38% of all fines were against “Ausländer und Staatenlose” . The percentage without traffic offenses is also 38%).

18 See <https://www.armuts-und-reichtumsbericht.de/DE/Bericht/Der-sechste-Bericht/Der-Bericht/der-bericht.html>. For the latest data, see https://www.destatis.de/DE/Themen/Gesellschaft-Umwelt/Einkommen-Konsum-Lebensbedingungen/Lebensbedingungen-Armutsgefährdung/_inhalt.html.

Last year, the German government took up reforms of the law that calls for jailing debtors, an initiative that had been much-awaited by impacted people,¹⁹ advocates,²⁰ attorneys,²¹ academics,²² and social workers²³ in the hopes that parliament would finally abolish this poverty penalty. Unfortunately, despite mobilizations from wide-ranging constituents, and almost unanimous opinion among experts focused on the human impacts of this poverty penalty that it should be abolished,²⁴ the Bundestag's law changes merely reduced the number of days people will be jailed for not paying fines in the future—leaving in place the reality that over 50,000 people each year will continue to face prison because they are poor.²⁵

Criminalization of Poverty

Ersatzfreiheitsstrafe is a severe consequence in a broader system that systematically punishes people for their poverty on a wide scale, and disproportionately impacts people from racialized and migrantized groups. In 2021, Germany punished 524,643 low-level criminal offenses with fines. People are often punished for offenses directly connected to their poverty, or because poor people are more likely to be controlled for common behaviors. For example, as the initiative *Freiheitsfonds* has recently scandalized in Germany, the third most frequently fined offense is riding the train without a ticket, numbering 36,909 in 2021.²⁶ People simply do not have the money for train fare, and while a broad coalition has galvanized around affordable (or free) public transportation in Germany, those who can afford transportation the least are fined and jailed for being unable to pay.

The criminalization of riding the train without a ticket is not the only example of the criminalization of poverty by the system.²⁷ The second most fined case is petty theft, and as Justice Collective has seen in its court observations, people are often criminalized for stealing necessities such as food. Together riding the train without a ticket and petty theft accounted for 23% of all cases fined in 2021.²⁸ In addition, approximately

19 <https://www.dbh-online.de/aktuelles/gefangenen-gewerkschaft-fordert-abschaffung-der-ersatzfreiheitsstrafe> (article about the GG/BO, a prisoners' union and network of solidarity groups, calling for the abolition of the jailing of people for nonpayment of fines).

20 See e.g., Bündnis zur Abschaffung der Ersatzfreiheitsstrafe, STELLUNGNAHME ZUM REFERENTENENTWURF VON JUSTIZMINISTER MARCO BUSCHMANN ZUR ERSATZFREIHEITSSTRAFE, signed by 9 Euro Fonds, Berliner Obdachlosenhilfe e.V., #BVGWeilWirUnsFürchten, CrimScapes Forschungsgruppe, Entknastung - Naturfreundejugend Berlin, EXIT-EnterLife e.V., freiheitsfonds, Gefangenen Gewerkschaft / Bundesweite Organisation (GG/BO), Ihr Seid Keine Sicherheit, Justice Collective, e.V., Justizwatch, Komitee für Grundrechte und Demokratie e.V., Netzwerk Abolitionismus, Tatort Zukunft e.V., and the Verein demokratischer Ärzte*innen.

21 See e.g., Stellungnahme der Strafrechtlervereinigungen zum Referentenentwurf des Bundesministeriums der Justiz für ein Gesetz zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Erziehungsanstalt (2 September 2022).

22 See e.g., Bögelein, Nicole, Stellungnahme zur Überarbeitung des Sanktionenrechts (Drucksache 20/5913) – Ersatzfreiheitsstrafe.

23 See e.g., Stellungnahme des Paritätischen Gesamtverbands zum Referentenentwurf des Bundesministeriums der Justiz eines Gesetzes zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt (SanktionenrechtsÜbG).

24 <https://www.bundestag.de/dokumente/textarchiv/2023/kw16-pa-recht-sanktionenrecht-941082> (statements and testimony of experts before the Bundestag for its hearing on reforms to Ersatzfreiheitsstrafe).

25 The bill also includes additional small changes, including additional efforts to inform people of payment plans and community services options and a suggestion to courts about how to set fines. The inadequacy of both reforms in bringing about meaningful change are discussed later herein.

26 Strafverfolgung 2021 (Riding the train without a ticket (charged under Section 265a, Erschleichen von Leistungen) is the third most frequent offense fined when traffic offenses are excluded from the data and the fourth most frequent with traffic offenses included.). The 2021 number of cases is lower than in the past (the number was 46,916 in 2019), and may reflect a change in practice or the ongoing effects of COVID on people's travel.

27 Strafverfolgung 2021.

28 Strafverfolgung 2021, without traffic offenses.

50,000 cases of alleged social benefits fraud are referred to prosecutors each year.²⁹ While we do not know how many of these cases lead to conviction for social benefit fraud, independent research suggests many do—and that the job centers often have little or no evidence of intended misconduct.³⁰

These are just some examples of the mass punishment of low-level cases in Germany.³¹ In 2021, almost 9,000 people were charged with offenses connected to their migration status, and as mentioned, migration status correlates with poverty. Society also turns to punishment rather than truly addressing harms and solving social problems. Another 44,070 people were fined in 2021 for drug-related offenses, including 29,640 for possession. But not all drug possession is problematic (as evidenced by result calls for marijuana legalization) and even for people who may need help with substance use, criminalization worsens the situation. People experiencing houselessness, poverty, and from racialized groups are more likely to be stopped and charged with drug offenses, because of patterns of policing.

Consequences for People

The ultimate consequence of being unable to pay fines is prison, which impacts 56,000 people per year. Without cataloguing the full range of consequences people face, from unpayable debts and the related psychological stress to interruptions in therapy and treatment because of Ersatzfreiheitsstrafe, we detail here two underlooked consequences: Impacts on people's migration status and the possibility of harsher criminal consequences as a result of low-level offenses.

People with criminal records face immigration consequences in Germany, even for the offenses described above. For example, low-level cases are punished by days, and under current regulations and practices, people with over 50 days of punishment for non-immigration offenses or 90 days for immigration offenses are usually unable to apply for residence.³² But it is also the case that people in Germany without permanent status are often not allowed to work and receive limited cash benefits. Convictions for offenses related to their lack of resources and migration status can thus harm people's opportunities for a more secure legal status.

Second, while we typically talk about low-level offenses as punished by fines, in practice, if people have prior offenses, they also face harsher consequences. Yet, people who ride the train without a ticket sometimes have multiple cases for the same offense—because of their underlying inability to afford transportation.³³ In these cases, or in cases of repeated low-level theft, we have observed in our court—watching that courts sentence people to prison and/or long periods of probation. In 2021, 1,724 people were sentenced to either prison or probation for riding the train without a ticket.

Procedural Issues

While we may hope that the courts serve as a check on these inequities, this is not the case because of the legal framework, and because of a court culture that is not easy to change.³⁴ In cases of low-level criminal offenses,

29 Antwort der Bundesregierung auf die Kleine Anfrage der Abgeordneten Pascal Kober, Johannes Vogel (Olpe), Till Mansmann, weiterer Abgeordneter und der Fraktion der FDP, Duetscher Bundestag, 19. Wahlperiode, Drucksache 19/16066 (18.12.2019).

30 Mathias Klose, »Strafrecht für Sozialrechtler – Der ›Hartz IV-Betrug‹« *info also*, 4/2016, S.157-161.

31 Strafverfolgung 2021.

32 <https://www.proasyl.de/news/faq-fragen-und-antworten-zum-chancen-aufenthaltsrecht/> (describing provisions of new migration law passed in 2022).

33 See e.g., Bögelein, Nicole, Stellungnahme zur Überarbeitung des Sanktionenrechts (Drucksache 20/5913) – Ersatzfreiheitsstrafe.

34 Mitali Nagrecha, Sharon Brett, and Colin Doyle. "Court culture and criminal law reform." *Duke LJ Online* 69 (2019): 84.

the courts are explicitly designed to move through mass cases quickly, often at the expense of accuracy and justice. As one respondent in our interviews of judges and prosecutors said, “When you set the sixth fine that day, of course that’s a routine thing in your head: bam, bam, bam . . .”. The person was expressing how they simply move through the cases quickly, without precise calculations, to set fines. This speed is facilitated by the fact that about 90% of fine cases are punished via summary proceedings (Strafbefehl), in which people are sentenced by mail rather than at a hearing, and have limited opportunities to challenge their sentence or seek redress in court. Among other issues, they are not provided access to counsel, and rarely are materials translated for people who do not speak German.³⁵ The system is designed to punish mass offenses against poor people quickly.

Further, in theory, Germany has a system in which fines should be tailored to people’s financial circumstances, so that people can afford their fines, but in reality—because of the legal standard and court practices—fines amounts are draconian. A person receiving public benefits (formerly Hartz-IV, and now called Bürgergeld) can be fined between 150 and 400 euros for a charge of driving without a ticket. This is equivalent to about over one-third to almost all of people’s monthly cash benefits amount. It is no surprise that so often people are unable to pay and end up in prison.

Conclusion

The injustices are deep and widespread, and the solutions offered by the German government so far do not work. For example, it is often said that a solution is that people may simply pay on payment plans or with community service. But these so-called “alternatives” do not help people avoid prison: People are still punished for offenses connected to poverty, and many cannot pay or work off their debts, even using these tools. As a recent report from a working group of justice ministries in Germany details, states have engaged in efforts to increase the number of people performing community service to pay their debts for decades. Yet, the number of cases completed through community service continues to decline (from 6.15% in 2004 to just 3.58% in 2019)³⁶ while the rate of Ersatzfreiheitsstrafe continues to increase.³⁷ The barriers to completing these requirements are the systemic ones detailed: Fines and Ersatzfreiheitsstrafe punish poor, racialized communities for offenses related to poverty.³⁸

Similarly, the government has proposed converting riding the train without a ticket to a violation (Ordnungswidrigkeiten), rather than a criminal offense. But fare evasion is a common pretext for discriminatory stops of racialized people, migrants, people facing houselessness and others. If the offense is converted to an ordinance violation, racial profiling will continue unabated, and people will still owe high fine amounts (a consequence of non-criminal violations as well). Further, under current law, people who do not pay their violations can still be jailed for non-payment if they are judged unwilling to pay. As our research detailed above shows, decision makers often overestimate people’s ability –and therefore assume an unwillingness to pay.

35 For more on these procedural issues, see Stellungnahme des RAV zum RefE des Bundesministeriums der Justiz für ein Gesetz zur Überarbeitung des Sanktionenrechts – Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt (13. Juli 2022).

36 Gesetzentwurf at 11.

37 Hans-Jörg Albrecht, *Day Fines in Germany*, Day fines in Europe: Assessing income-based sanctions in criminal justice systems. Kantorowicz-Reznichenko, Elena, and Michael Faure, eds. Cambridge University Press (2021).

38 Therefore, the government’s argument is incorrect that under the new law, because people will have to complete fewer days of community service to avoid prison, they will do so and Ersatzfreiheitsstrafe numbers will go down. People simply cannot complete community service.

Hungary

Introduction

In Hungary complex societal problems are often treated as questions of penal policy and instead of dedicating intellectual and financial resources to solve or at least to attenuate the underlying causes of poverty the government and the parliament resort to the means of criminal law.

This approach has disparate impacts on many groups, including Roma, as detailed in the introduction, and on people with disabilities and youth. Disability is often not established during criminal procedures. As a result, people with disabilities are often incarcerated unlawfully, in spite of the law excluding their confinement.³⁹ Contrary to the CRC's recommendation⁴⁰ and in violation of UN standards,⁴¹ juveniles may be taken into petty offense confinement, which is not applied only as a measure of last resort, and is executed in penitentiaries instead of juvenile reformatories (the latter having a less strict regime).⁴²

Punishment of Poverty

Several articles of Act II of 2012 on Misdemeanors (hereinafter: Act of Misdemeanors)⁴³ and Act C of 2012 on the Criminal Code⁴⁴ criminalize directly or indirectly homelessness and extreme poverty.

Number of misdemeanor procedures initiated for having committed the following petty offenses criminalizing poverty						
Source: Source: Criminal Statistical System of the Ministry of Internal Affairs, bsr.bm.hu						
	2018	2019	2020	2021	2022	2023 1 th – 17 th months
Squatting (Art. 167)	255	313	263	226	140	127
Prohibited prostitution (Art. 172)	1 096	797	1 079	953	1 237	1 198
Driving a vehicle without a license (Art. 176 (1))			7	9 173	14 100	7 642
Petty offence against property (Art. 177 (1))	40 962	27 427	22 800	20 814	23 630	15 526
Violation of the rules on habitual residence in public spaces (Art. 178/B)	14	11	5	5	7	2
Begging (Art. 185)	4912	4 127	4 595	5 039	3 857	2 789
Littering (Art. 196 (1))	23 976	19 799	21 180	7 836	6 543	3 133

39 Submission by the Hungarian Helsinki Committee for the third cycle of the Universal Periodic Review of Hungary on criminal justice and law enforcement, 2021, https://helsinki.hu/wp-content/uploads/2021/03/HHC_UPR2021_Hungary_criminal_justice_web.pdf, p. 5.

40 Committee on the Rights of the Child, Concluding observations on the sixth periodic report of Hungary, CRC/C/HUN/CO/6, 3 March 2020, § 40(c).

41 Cf. Article 37 of the Convention on the Rights of the Child and the UN Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”).

42 Submission by the Hungarian Helsinki Committee for the third cycle of the Universal Periodic Review of Hungary on criminal justice and law enforcement, 2021, https://helsinki.hu/wp-content/uploads/2021/03/HHC_UPR2021_Hungary_criminal_justice_web.pdf, p. 5.

43 The official translation of Act II of 2012 on Misdemeanors is available in the National Legislation Database at: <https://njt.hu/jogszabaly/en/2012-2-00-00>.

44 See the official translation of the Criminal Code in the National Legislation Database, <https://njt.hu/jogszabaly/en/2012-100-00-00>.

Violation of rules on the mandatory participation in pre-primary and public education (Art. 247)	8 393	8 914	6 316	7 139	8 051	4 462
--	-------	-------	-------	-------	-------	-------

Many of these offenses are thoroughly analyzed in the written contribution of Streetlawyer Association to the present call for submissions.

The Act on Misdemeanors originally set out that living on public premises and storing related personal property on public premises constituted a petty offense, and those living in public premises may have been punished with a fine or with confinement.⁴⁵ In its Decision 38/2012. (XI. 14.) the Constitutional Court of Hungary invalidated the respective provisions of the Act on Misdemeanors on the ground that the criminalization of homelessness violated the right to human dignity. Following the Fourth and the Seventh Amendments to the Fundamental Law, in 2018, the National Assembly reintroduced a provision in the Act on Misdemeanors (Article 178/B) making it punishable to violate the rules on habitual residence in public spaces.⁴⁶ Despite criticism by the respective UN Special Rapporteur,⁴⁷ the HRC,⁴⁸ and domestic judges arguing for the annulment of the legislation that violates human dignity, in 2019 the Constitutional Court upheld the law criminalizing homelessness.⁴⁹

In its written contribution to the present call for submissions, Streetlawyer Association already provided a detailed analysis of the regulation and practice of this petty offense. We wish to emphasize that even though Article 178/B is rarely applied by the Hungarian authorities in practice, the law still stigmatizes a vulnerable group of people based solely on their social status. Homeless people are also punished for offenses that they “commit” simply because they live on the street. For example, there are well-documented cases showing that during the Covid-19 pandemic a homeless person was fined for not residing in their residence,⁵⁰ and another was fined for not wearing a mask in a public space while eating a cake on their birthday.⁵¹

The Criminal Code has turned towards the criminalization of indigent people. For instance, many people participate in the business of garbage collection, which includes collecting thrown out furniture or old electronic devices. This kind of act became a crime in 2012 (the “violation of waste management policy”) punishable by up to three years imprisonment.⁵² This kind of substantive legal provisions (such as the provision on a petty offense applicable also for cases of indigent individuals collecting sticks in the woods)⁵³ provide the police wide discretion, even in cases where the requirement of social dangerousness is entirely

45 Hungarian Helsinki Committee, Criminalization of homelessness in Hungary, 2013, https://helsinki.hu/wp-content/uploads/Criminalization_of_homelessness_in_Hungary_October2013.pdf.

46 On 15th October, the government shifts to high gear in the persecution of vulnerable groups, szabalysertes.hu, 2018, <https://szabalysertes.hu/on-15th-october-the-government-shifts-to-high-gear-in-the-persecution-of-vulnerable-groups/>.

47 Hungary: UN expert expresses outrage at attempt to criminalize homelessness, 20 June 2018, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23229&LangID=E>.

48 Human Rights Committee, Concluding observations on the sixth periodic report of Hungary, CCPR/C/HUN/CO/6, 9 May 2018, § 34

49 Decision 19/2019. (VI. 18.) AB. For the short evaluation of the decision by Hungarian NGOs, see Hungarian Helsinki Committee – Hungarian Civil Liberties Unions – Streetlawyer Association, According to the Hungarian Constitutional Court “nobody has the right to poverty and homelessness, this condition is not part of the right to human dignity”, 2019, <https://helsinki.hu/en/nobody-has-the-right-to-poverty/>.

50 25 ezer forintos bírság – hajléktalanságért, 2021, <https://szabalysertes.hu/25-ezer-forintos-birsag-hajlektalansagert/>.

51 Ötvenezres bírság a születésnap suti mellé, 2022, <https://helsinkifigvelo.444.hu/2022/02/18/otvenezres-birsag-a-szuletesnap-suti-melle>.

52 Criminal Code, Article 248.

53 Act II of 2012 on petty offenses, petty offense procedure and petty offense registration system, Article 243.

missing. In previous research conducted by the HHC a lawyer interviewee noted that a couple was arrested because they had 38 leaden accumulators in their car, which they had collected (with the intention to sell them) in places like the edge of the woods where others got rid of them.⁵⁴

Consequences for People

It needs to be emphasized that in general the Hungarian criminal justice system is centered around custodial sentences despite the fact that there seems to be a slow increase in applying alternative sanctions, based on data relating to the period between 2013 and 2019. In 2013, courts imposed imprisonment in 25 percent of the decisions establishing criminal liability, while in 2019 in 19 percent of such decisions. The most often applied alternative sanction appears to be fines, however, in many cases, it cannot be effectively applied due to the financial situation of the defendant, and often it is not actually paid by the person fined but by someone else, so, in reality, it becomes a financial burden for the family of the person fined.⁵⁵

In addition, in Hungary, the overall trend in the number of prisoners is on the rise again since 2017 despite the steady decrease of the number of registered crimes. According to the Hungarian Helsinki Committee's field experience and public data analysis, the reasons for the acute increase in the prison population may include: alternatives to imprisonment are rarely used, even where the law allows it (for example, the rate of use of the community service penalty has shown a steady downward trend between 2013 and 2019).⁵⁶ If not paid or carried out, a fine or community service imposed for a petty offense may be converted into confinement without hearing the person.⁵⁷ Those who are unable to pay high fines serve confinement for minor offenses,⁵⁸ and the practice disproportionately penalizes the socially deprived. Statistical data show that in a very large number of cases the two types of fines are converted into confinement. The figures peaked in 2021 and the 2022 data show some decrease but the number of conversions still remained above 135.000 cases.

As to the system of misdemeanors, statistical data provided below show that on-the-spot fines and fines are by far the most often used sanctions in cases of petty offenses. Confinement is relatively rarely imposed. However, these figures may be misleading in light of the practice of the conversion of fines to confinement.

Sanctions imposed in misdemeanor procedures based on the final decision (29 August 2023.)						
Source: Criminal Statistical System of the Ministry of Internal Affairs, bsr.bm.hu						
	2018	2019	2020	2021	2022	2023 1 st – 7 th months
On-the-spot fine	494 210	438 941	492 828	472 451	481 155	329 788
Fine	136 192	128 181	139 321	157 418	122 586	67 504
Warning	53 939	46 642	52 801	53 801	36 083	16 413
Disqualification from driving a vehicle	17 078	19 343	21 180	14 870	12 262	7 693

54 Annie Kazarján – Eszter Kirs, Discrimination against Roma people in the Hungarian criminal justice system, https://helsinki.hu/wp-content/uploads/Discrimination_against_Roma_people_in_the_Hungarian_criminal_justice_system.pdf, p. 11-12

55 Lili Krámer – Adél Lukovics – Dóra Szegő, Alternatives to Prison - Hungarian Law and Practice on Non-custodial Sentences, 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/05/HHC_noncustodial_study_report_EN.pdf, p. 3

56 Tünde Komoróczy – Lili Krámer – Balázs Tóth, Alternative Measures - Review and Analysis of Hungarian Law on Sentencing with Regard to Vulnerable Social Groups, 2022, https://helsinki.hu/en/wp-content/uploads/sites/2/2022/12/HHC_review_analysis_alter_111022_fin.pdf, p. 5

57 Act II of 2012 on Petty Offenses, the Petty Offense Procedure, and the Petty Offense Registry System, Articles 12 and 15

58 See also: Report of the Working Group on Arbitrary Detention Mission to Hungary from 23 September to 2 October 2013, A/HRC/27/48/Add.4 (2014), §§ 112–113.

Confiscation	5 025	4 526	4 103	3 780	2 920	1 667
Confinement	1 440	1 512	1 970	1 722	1 037	460
Community service	1 223	1 146	998	843	640	333
Conditional confinement with probation supervision	18	15	3	4	9	10
Ban on entering certain areas	4	7	4	7	14	6
In total	709 129	640 313	713 208	704 896	656 706	423 874

Conversion to confinement of fines and on-the-spot fines imposed in misdemeanor procedures (29 August 2023)						
Source: Source: Criminal Statistical System of the Ministry of Internal Affairs, bsr.bm.hu						
	2018	2019	2020	2021	2022	2023 1 th -7 th months
Fine	19 931	40 288	44 420	71 071	50 757	24 842
On-the-spot fine	56 051	64 426	81 370	109 757	84 926	48 351
In total	75 982	104 714	125 790	180 828	135 683	73 193

Procedural Issues

Act XC of 2017 on the Code of Criminal Procedure⁵⁹ (hereinafter: CCP) sets it out as a fundamental principle in Article 3 that defendants shall have the right to an effective defense in every phase of the criminal procedure. Based on our previous research,⁶⁰ the conditions for receiving cost reductions for the cost of counsel are too rigid and it is highly uncertain whether cost reduction is indeed available to all indigent defendants. This concern is further aggravated by Articles 5 and 9 of Act LXXX of 2003 on Legal Aid (hereafter: Legal Aid Act), which says that defendants may be regarded as indigent (and so eligible for cost reduction) if their net monthly income does not exceed the actual minimum old age pension (or, if they live alone, 150% of the actual minimum old age pension), and have no assets. To put these criteria into context: since 2012 the minimum old age pension has been HUF 28,500 (c. EUR) 75 per month.⁶¹ At the same time, the Legal Aid Act upholds the system that under certain circumstances a defendant shall be regarded indigent regardless of their income and financial situation: under the rules currently in force, this is the case for example when someone is homeless and lives in a temporary shelter, or if the defendant is a refugee. Results of other HHC research, showed that defense counsels are appointed on the basis of cost exemption very rarely, and the research revealed significant shortcomings concerning the information provided to defendants about personal cost exemption as well.

Letters of Rights provided to defendants are not formulated in an easy-to-understand manner. Warnings about their rights are read out to suspects at the beginning of the interrogation, and written information is provided only after the interrogation is over, and/or after they are taken into detention.⁶² None of the

59 The official translation of the Code of Criminal Procedure is available in the National Legislation Database, <https://njt.hu/jogszabaly/en/2017-90-00-00>.

60 András Kristóf Kádár - Nóra Novoszádek - Dóra Szegő, Inside Police Custody 2, Country Report for Hungary, 2018, https://helsinki.hu/wp-content/uploads/IPC_Country_Report_Hungary_Eng_fin.pdf p. 75-78.

61 <https://ado.hu/tb-nyugdij/szocialis-vetitesi-alap-lesz-az-oregsegi-nyugdijminimum/>.

62 For more details, see: Hungarian Helsinki Committee, Accessible Letters of Rights in Europe – Comparative study, 2017, https://www.helsinki.hu/wp-content/uploads/Comparative-Report_FINAL_ENG.pdf, pp. 19–20 and 32.

materials comply with Directive 2012/13/EU.⁶³ The anomalies of the misdemeanor procedure were pointed out by the Commissions for Fundamental Rights as well.⁶⁴

Joint Conclusion

The International Covenant on Civil and Political Rights (“ICCPR”) requires parties to respect individual’s civil and political rights. Article 9(1) of the ICCPR provides that “[e]veryone has the right to liberty and security of person.” Under Article 9, “deprivation of liberty must be authorized by law,” “must not be manifestly unproportional, unjust or unpredictable,” and must not be arbitrary.⁶⁵ Article 11 of the ICCPR prohibits imprisonment “merely on the ground of inability to fulfill a contractual obligation,” including failure to pay debts. “Some national courts have read Article 11 as imposing requirements that debtors can only be imprisoned for failure to pay that was willful rather than due to inability to pay.”⁶⁶ Policies requiring the jailing of people for non-payment of fines, notably in Germany and Hungary, run afoul of these international protections. The ICCPR also prohibits discrimination. In France, Germany, and Hungary, practices around policing and fining offenses connected to poverty discriminate against people without financial resources, and disproportionately target people from racialized groups. These practices also harm people at other intersections, including people with disabilities. We refer to the recommendations in our introduction as important starting points on the path towards justice.

63 Articles 3 and 4 of Directive 2012/13/EU of the European Parliament and of the Council on the right to information in criminal proceedings.

64 Commissioner for Fundamental Rights, Report no. AJB-164/2017., <https://szabalyertes.hu/wp-content/uploads/2017/05/AJB-ve%CC%81dekeze%CC%81shez-valo%CC%81-jog.pdf>.

65 Harvard Criminal Justice Policy Program and Human Rights Watch, *Criminalization of Poverty as a Driver of Poverty in the United States: Harvard Criminal Justice Policy Program and Human Rights Watch Submission to the UN Special Rapporteur on extreme poverty and human rights* (October 2017), <https://www.hrw.org/news/2017/10/04/criminalization-poverty-driver-poverty-united-states>, citing Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary*, (Arlington: N P Engel Publisher, 1993), p. 172-73; *accord Van Alphen v. the Netherlands*, Human Rights Committee, Communication No. 305/1988, U.N. Doc. CCPR/C/39/D/305/1988 (1990), para. 5.8.

66 *Id.*