Thematic Report

Criminalisation of Homelessness in Oslo:

An Investigation

26 August 2015 (English version)

Criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas … raises concerns … of discrimination and cruel, inhuman or degrading treatment.
UN Human Rights Committee, 2014[1]

Nasjonal institusjon for menneskerettigheter ved
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[1] *Concluding observations on the fourth periodic report of the United States of America*, UN doc. CCPR/C/USA/CO/4, para. 19.

Executive Summary

On 15 May 2013, the Municipality of Oslo expanded the prohibition on sleeping rough so that it clearly covered sleeping in any public space in the city. This report investigates whether the adoption and implementation of this regulation can violate the European Convention on Human Rights and other international human rights treaties, as incorporated in Norwegian law. Empirically, the report is based on interviews with 81 persons living on the streets of Oslo, information requests to the authorities, and analysis of secondary literature and other studies on homeless persons, including the recent report by FAFO, *When poverty meets affluence*. Quantitative methods were used to analyse these interviews, and all the key empirical findings reached in this report are statistically significant. In addition to this, we used qualitative methods which also reveal the individual dimension of the impact of the regulation. Legally, the report draws on the jurisprudence of the European Court of Human Rights and UN human rights treaty bodies but also decisions from the courts of Austria, the United States, Canada and Hungary which have dealt with cases concerning the criminalisation of homelessness and poverty.

The National Human Rights Institution arrived at four principal conclusions which are addressed below. These findings suggest possible violations of human rights conventions and clearly demonstrate the need for a thorough investigation and potential policy reform.

However, the report also finds that certain legal and empirical claims are difficult to substantiate. For example, there was conflicting evidence over whether the blanket ban on sleeping rough could be said to be *intentionally* discriminatory. Some representatives on the municipal council stated that the ban was explicitly directed at foreigners; others gave a range of reasons although cited only examples concerning foreigners; and the representative of one party cast a vote in favour of the regulation on the condition that its implementation was non-discriminatory. This diversity of reasons for the vote makes it challenging to discern a clear and overarching discriminatory intention. Likewise, the report declined to come to a definitive conclusion on whether a blanket ban on sleeping rough can on its face be considered cruel, inhuman or degrading treatment. Courts in the United States and Hungary have reached this conclusion on comparable regulations. However, the European Court of Human Rights has not decided on this issue and its jurisprudence might be read in different ways.

Routine implementation

The first principal finding is that the Oslo prohibition on sleeping rough is being regularly implemented despite some early media reports to the contrary. Before the adoption of the law, the Oslo police indicated that they would exercise restraint in implementation. However, their response to our information request indicates that the law has been effectively operationalised. Evictions occur regularly. In the two-month period of 22 April to 22 June 2014, the Oslo police advised that: 679 people were asked to move; 140 were physically removed; 55 were arrested; and 39 prosecuted. Moreover, our survey of homeless persons reveals that evictions occurred throughout the year. This is despite statements by the Oslo police that the law was only applied during the summer months. The response of one interviewee was typical of many: “We had to walk away at 4 am and got threatened with prison if we didn’t go. It was in December and it was very cold. They [the police] don’t treat others like that, there’s no understanding. I asked where else to go in this rain, they just said go.”

Cruel, degrading or inhuman treatment

The second finding is that, in some cases, the regulation has been implemented in a manner which suggests cruel, degrading or inhuman treatment. According to the European Court of Human Rights, an eviction from a place of sleeping or residence can amount to inhuman or degrading treatment if it is accompanied by racist speech or excessive force. Interviewees reported that many evictions by the police were accompanied by racist comments, violence, and confiscation of identity documents. A typical response was: "At the ruins, the police, they would say 'go to Romania'. They would take us and then the cleaning services would take everything: luggage, clothes, and blankets. We are constantly asked for identification, we are also frisked. We are told 'fuck you, Romanians', 'If you don't like it, go back to, Romania'." However, respondents indicated that police conduct varied between individual officers. Some police were always courteous, while others were regularly rude and abusive. The report also uncovered a range of other practices. Most foreign interviewees reported being dumped by the police in forests outside Oslo (and even outside Norway) before the introduction of the Oslo prohibition.

Right to privacy and freedom of movement

The third finding is that the regulation, on its face, fails a proportionality test. It does not sufficiently balance public order concerns with the: (1) right to privacy, family life and respect for the home and (2) right to freedom of movement and choice of residence. The Oslo prohibition does not meet the criteria for eviction laws specified by the European Court of Human Right. It is framed in an absolute and broad way that permits uniform and routine eviction and there is: no consideration of whether an individual is causing a public order disturbance such that an eviction would be *justified*; no *due process* in the form of warnings or notice periods; and no evaluation of a person's ability to find *alternative accommodation*. Moreover, the Oslo municipality and Oslo police have interpreted the prohibition broadly to include sleeping in cars. Yet, a prohibition on sleeping in cars was explicitly excluded by representatives of the Oslo municipality during the drafting of the final regulation and the voting process. The report also finds in practice that the Oslo prohibition is not applied by the police in a proportional manner, except in the case of Norwegian homeless persons.

Indirect Discrimination and Discrimination in Effect

The fourth finding is that the Oslo prohibition appears to be implemented in a discriminatory manner against foreigners, particularly individuals of Roma and African descent. Decisions by the police over whether to evict a homeless individual, afford them due process, and respect their other human rights such as property seem to be heavily dependent on an individual's nationality and ethnicity rather than the circumstances. For example, non-Norwegians are more than twice as likely to be evicted as Norwegians (83% compared to 40%); the frequency of eviction of persons of Roma and African descent is two times higher than other groups; and 61% of persons of Roma and African descent reported property confiscation while only 26% of the others reported such treatment. All these results are statistically significant. In light of the evidence, it seems reasonably clear that the prohibition is indirectly discriminatory in design and certainly discriminatory in its application. Indeed, upon the adoption of the law in 2013, the Equality and Discrimination Ombud commented that the law was indirectly discriminatory since it would only be used against foreigners. This has come to pass.

Recommendations to Oslo municipality:

(1) Suspend the current regulation while investigating its effects;

(2) Require that evictions of homeless persons are carried out in accordance with human rights standards; and

(3) Develop a clear policy for the confiscation of property that is in conformity with human rights law.

Recommendations to national and municipal authorities including the Oslo police:

(4) Investigate and remedy where appropriate the specific claims of degrading treatment and discrimination raised in this report;

(5) Investigate the nature of police treatment and why it varies between individual police officers; and

(6) Develop an approach consistent with human rights when addressing issues associated with a higher number of persons sleeping in public places in Oslo.

1. Introduction

On 15 May 2013, the Municipality of Oslo voted to expand the prohibition on sleeping rough. The new regulation covers clearly sleeping in all public spaces in built areas: "In public parks, green areas, recreation areas, on roads and squares in densely built areas, the sleeping outdoors, camping, tenting or similar acts are prohibited without a specific authorisation from municipal authorities." [2] In presenting the new regulation to the council, the governing mayor argued that the police required "broader powers" in order to "prevent" individuals from sleeping outdoors.[3] The final regulation was not as broad as the original proposal from the Oslo police.[4] The police's proposal would have required permission for sleeping outdoors from the police (rather than the municipality) and covered the use of some private property (such as motor vehicles and private building sites). Nonetheless, the new regulation was comprehensive in scope and sought to remove any doubt as to the illegality of sleeping rough on public land and property.

The law was framed in neutral terms, but the municipality cited the influx of "homeless foreign citizens" as the principal reason for the reform.[5] According to the governing mayor, the increase in the number of foreigners had created public order problems and the police had received a "large number of complaints from neighbours, members of the public and businesses" in relation to "littering, unsanitary conditions and disturbances of the local living environment".[6] In addition, the Oslo police also saw the reform as an indirect way of eliminating begging. As a majority of Oslo councillors did not support a begging ban, the Oslo police argued that a blanket prohibition on sleeping rough would reduce incentives for those travelling to Norway and thus decrease the level of begging.[7]

The proposal for a new regulation was strongly criticised. Four sub-municipalities in Oslo (Old Oslo, Bjerke, St. Hanshaugen, and Grunerløkka) all opposed the ban on humanitarian grounds, arguing that homelessness must be addressed through social policies.[8] The sub-municipality of Bjerke questioned how criminal law could be used to address a situation in which people had no choice or alternatives.[9] Numerous non-governmental organisations[10] and the National Human Rights Institution (NI) were

[2] Regulation 6 June 2007 No. 577 on City ordinance of Oslo municipality, Section 2-1, last paragraph [unofficial translation]. It was affirmed by the Police Directorate 31 May 2013, as prescribed by Regulation 6 June 2007 No. 577 on City ordinance of Oslo municipality.

[3] Oslo Municipality Police Regulation, Proposal for a new section 2-1(5) on Sleeping Outdoors, Municipality Case No. 66/13, 25 April 2013, p. 5.

[4] Letter from Oslo Police to Municipality of Oslo, October 2012.

[5] Ibid.

[6] Ibid.

[7] 'Oslo-politiet vil innføre soveforbud: Vil totalforby all utendørs overnatting', *VG*, 1 February 2013. ('Oslo police will introduce a sleeping ban: A complete prohibition on sleeping outdoors').

[8] Oslo Municipality Police Regulation, Proposal for a new section 2-1(5) on Sleeping Outdoors, Municipality Case No. 66/13, 25 April 2013, p. 3.

[9] Ibid.

[10] The following organisations made submissions opposing the regulation: City Mission, Association for a Humane Drug Policy, Drugusers Interest Organisations, People are People, Jusbus (University of Oslo student legal centre), the Salvation Army, and the Humanist and Ethics Society.

critical.[11] Beyond concerns that the law potentially affected a wide-range of individuals struggling with homelessness,[12] these groups emphasised that the regulation could contravene a number of civil rights and was potentially discriminatory as it was targeted in effect against a particular ethnic group. In its submission to the municipality, the NI stated that:

> [T]he proposal may be in violation article 26 of the prohibition against discrimination under the UN Convention on Civil and Political Rights as the proposed law disproportionately affects the poor in general and the Roma in particular. Further, the NI maintains that the proposal is problematic in light of freedom to movement (ECHR, Fourth Protocol Article 2) and that the total ban is not a proportionate measure for the maintenance of public safety and order. Finally, the NI would recommend a coordinated effort by local and state governments to find a better solution to the problems associated with poor, travelling EEA nationals.[13]

Nonetheless, an enhanced prohibition on sleeping rough was passed on 15 May 2013 in the municipality by a majority (Conservative Party, Progress Party, Labour Party and Liberal Party), with three smaller parties (Socialist Left, Red and the Green party) voting against. The Liberal and Labour parties were less effusive in their support than the two others but supported the prohibition on the grounds that it was narrower than the original police proposal.[14] Moreover, in the case of the Liberal Party, the vote was premised on the expectation that the regulation would not be used in a discriminatory fashion.[15]

The adoption of the new prohibition unleashed a brief period of public protest. This was symbolised by a mass sleeping action in Sofienberg park in Oslo, organised by church priests.[16] The Equality and Discrimination Ombudsman also stated that the regulation was clearly discriminatory: "I fear that the sleeping prohibition will hit an already vulnerable group, and I cannot see how the authorities have thought to implement this law without being discriminatory. It is clear that this ban is targeted at one ethnic group, the Roma". [17]

Since the adoption of the regulation two years ago, scant information exists on its operationalisation and impact. While the Council of Europe Commissioner for Human Rights recently raised concerns about the ban,[18] it has not been subject to a close examination as to whether this regulation violates

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[11] *Parallel report of the Norwegian Centre for Human Rights related to the fifth period report of Norway*, at 8.

[12] In a 2012 report, NIBR categorised 6259 persons as homeless with 42% residing in one of Norway's four largest cities. While 77% of the homeless were born in Norway, the percentage of those with immigrant backgrounds is overly represented. The study also revealed that 54% of homeless were addicted to narcotics, 38% suffered from mental illness and 10 % had either a physical disorder or disability. Norwegian Institute for Urban and Regional Research, *Bodstedsløse i Norge I 2012 – en kartlegging*, pp. 17-18 available at: http://www.regjeringen.no/upload/KRD/Rapporter/Rapporter2013/NIBR-rapport2013-5.pdf

[13] Statement from the National Human Rights Institution regarding the hearing on the amendments to the Oslo Police regulations (15 February 2013), § 1, [unofficial translation].

[14] Minutes of the Municipal Council Meeting, 15 May 2013, pp.128-131.

[15] Ibid. p. 131.

[16] 'Prester bryter loven i protest', *NRK*, 20 May 2013, http://www.nrk.no/ostlandssendingen/prester-bryter-loven-i-protest-1.11034963

[17] Forbudet mot å sove ute er diskriminerende, *NRK*, 156 May 2013, http://www.nrk.no/ostlandssendingen/_-diskriminerende-1.11030762

[18] "The initiatives in Norway to ban begging and "sleeping rough" should be viewed in a wider context of European societies increasingly seeking to regulate and criminalise behaviours in public spaces. The

various international human rights conventions, including those incorporated within Norwegian law. It is clear though that the regulation is not a "sleeping provision", a mere law on the books. The police indicated that they rigorously enforced the regulation in summer 2013[19] and announced that they planned strictly to enforce it during the summer of 2014 after apparently taking a more lax approach during the intervening winter.[20]

This report therefore asks the following question: did the new ban on homelessness in Oslo violate *on its face* and in *practice* international human rights law? In other words, was the comprehensive restriction on sleeping out in public places in Oslo a violation of human rights treaties incorporated in Norwegian law (a facial violation)? Equally, has the implementation of law constituted a violation of the same rights, through either the direct application of the law or accompanying violations (violation in practice)?

The methodology and structure for the report are as follows:

Legal framework (Chapter 2)

While a large number of rights are implicated by the Oslo prohibition, the report focuses particularly on a sub-group of directly relevant rights:

- The prohibition on cruel and degrading treatment;
- The right to privacy, family life and respect for the home;
- Freedom of movement and choice of residence;
- The right to non-discrimination and equal treatment; and rights that often feature in the practice of eviction (e.g., rights to property and physical integrity).

The framework focuses particularly on provisions within the European Convention on Human Rights (ECHR) and the International Covenant on Civil and Political Rights (ICCPR) as well as equivalent provisions in the Norwegian constitution and Human Rights Act.

The relevant jurisprudence is taken primarily from international bodies such as the European Court of Human Rights, the UN Human Rights Committee, and the UN Committee Against torture. Some of the cited jurisprudence also comes from domestic courts in which almost identical regulations have been adjudicated. This includes countries such as Hungary but also, and particularly, the United States, in which there are approximately eighty judgments concerning local regulations affecting homeless persons. Some of the US states responsible for this case law are sociologically comparable to the situation of Norway within Europe. For example, in 2014, California accounted for 22% of the homeless

Commissioner observes that the current bans on begging and sleeping rough in Norway have a discriminatory impact towards Roma immigrants, and is particularly concerned that such moves may in reality be aimed at hiding poverty and discrimination from the public view rather than seeking solutions to the underlying problems." Report by Nils Muiznieks, Commissioner for Human Rights of the Council of Europe, following this visit to Norway from 19 to 23 January 2015, Council of Europe, 18 May 2015.

[19] Justis- og beredskapsdepartementet, *Endringer i politiloven (tigging)*, Prop. 83 L (2013–2014), Proposisjon til Stortinget (forslag til lovvedtak), p. 2.

[20] Uteseksjonen, *Bostedløs - Midlertidig Adresse: Oslo Sentrum*, Intern Rapport, May 2014.

population in the United States[21] despite only housing 12% of the country's population.[22] This is partly explained by movements of homeless persons from other states.

The chapter concludes by indicating that there are four critical legal questions to ask concerning the prohibition on sleeping out in public places:

1. Does the implementation of the regulation violate the prohibition on cruel and degrading treatment?
2. Does the blanket nature of the Oslo regulation violate the rights to privacy, family life and respect for the home and freedom of movement and choice of residence?
3. Even though the regulation is phrased in neutral terms, was (a) the intention behind the law discriminatory or (b) does the regulation amount to indirect discrimination?
4. Were other rights violated in the process of implementation, in particular the right to non-discrimination, various civil liberty rights, and rights to possessions?

Empirical findings (Chapter 3)

A mixed method approach was used during the empirical investigation of the homeless prohibition. This involved the following elements. First, a ***desk review*** was conducted of the adoption process behind the regulation and relevant Norwegian law that would affect the interpretation of the regulation. This includes some reference to the recent report by FAFO which documented the situation of homeless street workers in Oslo, Stockholm, and Copenhagen.[23]

Secondly, ***letters*** were sent to various government and non-government actors requesting specific information, such as the levels and nature of evictions before and after the regulation and the response of different agencies and organisations to homelessness. These actors were: Oslo police; Oslo kommune (Helseetaten; Helse-, sosial- og eldreombudet; Velferdsetaten; Helse- og sosialkomiteen and uteseksjonen); National government (Department of Health and Care); Securitas (non-state security agency); the Red Cross, =Oslo magazine and the Church City Mission. In some cases, a follow-up ***interview*** was conducted.

Third, a ***survey*** of homeless persons in Oslo was conducted between January and April 2015. The survey targeted the following four groups: "Norwegians", EU nationals (Roma), EU nationals (non-Roma) and other foreign nationals. These four different groups were selected in order to determine whether the regulation was imposed uniformly or disproportionately against particular groups. In total, 15 Norwegians, 58 EU, and 8 non-EU nationals were interviewed. Among the respondents, 30 identified as Roma individuals. As with the FAFO report, we discovered a large number of non-Roma Romanians experiencing homelessness in Oslo, which also allowed us to compare whether they were treated in the same way as Roma. Each respondent received the same set of questions, which covered background data and experience with evictions from public places. The survey was quantitative with

[21] The U.S. Department of Housing and Urban Development, *The 2013 Annual Homeless Assessment Report (AHAR) to Congress*, available at https://www.hudexchange.info/resources/documents/ahar-2013-part1.pdf
[22] United States Census Bureau, World Bank.
[23] A. Djuve, J. Friberg, g. Tyldum and H. Zhang, *When poverty meets affluence: Migrants from Romania on the streets of the Scandinavian capitals* (Oslo: Fafo and Rockwool Foundation).

set questions (which we analyse statistically throughout the report) and qualitative with information obtained on concrete experiences.

The survey was originally made in English, consisting of 29 questions, and was translated to Romanian, Spanish, Norwegian, and Polish (Annex 1 contains the survey questions). Four researchers, fluent in these languages, participated in the data collection process. The process of collecting the data is set out in Annex 2. We note that the sampling method was different from that used in the recent FAFO report - we actively sought interviews in different parts of Oslo such as emergency shelters and on the streets. Interestingly, our results are strikingly similar in those instances where we asked the same question.

A total of 86 persons were interviewed for the investigation but five were excluded from the analysis as they did not conform to the criteria used for the interviewees. The remainder of the respondents were either homeless or chose not to avail themselves of state housing schemes. While many of them were able to obtain emergency shelter at times, this was very irregular due to demand outstripping supply. In Table 1, we set out the background characteristics of the respondents who met this criterion, according to age, gender, civil status, existence of dependents, and income.

As Table 1 below reveals, female participants made up only 17 per cent of the total participants, all of which consisted of Romanian women. Homelessness in the form of sleeping rough is primarily a male phenomenon. During the time we conducted interviews, only Romanian women made use of the shelters when they were available.[24] With the exception of Romanian nationals, interviews with foreign nationals were conducted at emergency shelters; and more men made use than women.[25] This accounts for the high percentage of male participants. Also, fewer Norwegian woman vis-vis men were observed at =Oslo's headquarters. Those approached either declined to participate in the survey or did not fit the profile. Few participants noted a complete lack of income while 16% relied on a form of irregular or regular wage labour.

Table 1. Description

Gender	No.	%
Female	14	17%
Male	67	83%
Age		
50+	13	16%
30-50	46	57%
Under 30	20	25%
Unknown	2	2%
Civil status		
Single	32	40%
Married	27	33%
Other	18	22%

[24] Since the women's shelter opened in June 2013 until 30 June 2015, 96% of the females were from Romania, *Statistics: Emergency Shelter, 30 June 2015*, compiled by the Oslo City Mission and Oslo Red Cross. Figures received via email 13.08.2015.

[25] Since 2013, 58% of those who have made use of the shelters are men. Ibid.

Unknown	4	5%
Dependents		
None	29	36%
1-2	22	27%
More than 2	28	35%
Unknown	2	2%
Income Sources		
None	8	10%
Irregular wage labour (	7	8%
Regular wage labour	3	4%
Regular and Irregular wage labour	3	4%
Other (begging, recycling, street entertainment, shoe shine)	57	70%
Unknown	3	4%

Using this source material, this empirical chapter examines background to the adoption of the regulation and whether other Norwegian laws affect the interpretation of the regulation. It then moves on to examine how the Oslo police have used the regulation in practice. This includes a consideration of which individuals have been targeted, whether application of the law varies according to context (as the Oslo police said it would), and whether there was due process in applying the law. We also examine the nature of the eviction process (e.g. confiscation of any property, use of force, presence of abusive speech etc.) and other issues that emerged during the investigation (such as confiscation of ID documents, prior dumping of certain ethnic groups outside Oslo, and the growing involvement of private security actors).

Compliance and Recommendations (Chapters 4-5)

The final two chapters provide an evaluation of the legal and empirical material. Chapter 4 analyses whether the regulation and its implementation are in compliance with international human rights law. Chapter 5 contains a number of recommendations in light of these findings.

2. International Human Rights Law

The regulation and practice of evictions often raises human rights issues. This is clear in the resolutions of the former UN Commission on Human Rights.[26] In 2004, it reaffirmed that "the practice of forced eviction that is contrary to laws that are in conformity with international human rights standards constitutes a gross violation of a broad range of human rights".[27] Likewise, different eviction practices have been challenged in courts under a wide range of different rights in international and constitutional law.[28]

This report examines rights that are of direct relevance to the Oslo prohibition of homelessness and have been subject to previous adjudication. These primary rights are: cruel, inhuman and degrading treatment; privacy, family life and respect for the home; freedom of movement; and non-discrimination. Moreover, we analyse additional rights which often risk violation during the process of an eviction, such as rights to possessions and physical security. There are a range of other rights which could have been considered but these tend to be more contingent and conditional on the circumstances.[29] We will focus instead on those rights which directly address the ability of a homeless person to sleep and rest in a place.

2.1 Cruel, Inhuman and Degrading Treatment

Does the Oslo regulation constitutes a facial violation of the prohibition on cruel and degrading treatment and, alternatively, if its implementation rises to meet this threshold?

Norway has ratified a raft of international human rights treaties that protect this inviolable core of an individual's physical and mental integrity and dignity. The relevant provisions are Article 3, European Convention on Human Rights (ECHR); Article 7, International Covenant on Civil and Political Rights (ICCPR); and Article 16, Convention against Torture (CAT). The protection from cruel, inhuman or degrading treatment is also included in Norwegian law. Article 93 of the Norwegian Constitution echoes precisely the text of international instruments: "No one may be subjected to torture or other inhuman or degrading treatment or punishment." Moreover, the ECHR and ICCPR are included in the Human Rights Act of Norway and are superior to domestic legislation.

[26] Predecessor to the UN Human Rights Council.

[27] *Prohibition of forced evictions*, Commission on Human Rights Resolution: 2004/28, para. 1.

[28] See, e.g., Malcolm Langford and Jean Du Plessis, 'Dignity in the Rubble: Forced Evictions and International Human Rights Law' (COHRE Working Paper 2005) .

[29] These include the right to freedom of expression, freedom of association and the right to adequate housing. Indeed, there exists case law on the application of these rights to homelessness prohibitions. For example, if a sleeping rough prohibition is used to prevent begging it can violate the right to free speech: See, e.g., *Berkeley Community Health Project v. City of Berkeley*, 902 F.Supp. 1084 (N.D. Cal. 1995); *Clark v. City of Cincinnati*, No. 1-95-448 (S.D. Ohio Oct. 25, 1995). However, each of these is subject to a particular context, in which a sleeping out prohibition is used in a particular rather than a general way. This can make the analysis overly contingent. Instead, we will focus on those rights which protect homeless persons rights to sleep and rest in a place. Moreover, we note that the origins of the law (an indirect attempt to ban begging) may have consequences for proportionality analysis as this may not constitute a legitimate aim.

Under these instruments, States have a positive and negative duty to ensure that neither individuals acting in an official capacity nor non-state actors perpetrate acts that fall within the ambit of such treatment.[30] Given the perceived seriousness of the right, the prohibition is non-derogable.[31] However, establishing the existence of cruel, inhuman and degrading is challenging, both legally and factually. The indignity of the treatment must be sufficiently severe and backed by strong evidence.[32]

Nonetheless, whereas *cruel* treatment or punishment requires the application of severe pain, the intensity of the suffering required for *inhuman* or *degrading* treatment is less and the humiliation felt by the victim is of greater importance. In a recent concluding observation, the UN Human Rights Committee made a direct connection between bans on sleeping rough and this legal standard. It stated that that "criminalization of people living on the street for everyday activities such as eating, sleeping, sitting in particular areas, etc … raises concerns" of "cruel, inhuman or degrading treatment.[33]

Relevant jurisprudence

The European Court of Human Rights[34] and UN Committee Against Torture[35] have determined that, under certain circumstances, evictions can amount to cruel, inhuman or degrading treatment. In *Moldovan and Others v. Romania (no. 2)*,[36] a Roma house was set on fire in an effort to force out its occupants. The applicants' house and belongings were destroyed, and they were expelled from the village. While the actions occurred shortly before Romania had ratified the ECHR, the Court found a violation of the prohibition on cruel, inhuman or degrading treatment for two reasons. First, the ECtHR's previous case law established that racial discrimination can in and of itself amount to *degrading treatment* within the meaning of article 3.[37] In this case, the authorities continued to make grave discriminatory statements concerning the applicants' honesty and way of life. Secondly, the living conditions in which the applicants found themselves subsequent to their expulsion from the village were found to be absolutely deplorable.[38] The Court concluded on both issues as follows:

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[30] Manfred Nowak, *U.N. Covenant on Civil and Political Rights: CCPR Commentary* (2nd edn, N. P. Engel Publishing, 2005), pp. 162-163 and 167; and Chris Ingelse, *The UN Committee against Torture: An Assessment* (Kluwer law International 2001), pp. 58-62.

[31] See Article 3 *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5; and article 7 *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171.

[32] See review of the case law in A. Cassese, 'Can the Notion of Inhuman and Degrading Treatment be Applied to Socio-Economic conditions?', 2 *EJIL* (1991) pp. 141-145.

[33] *Concluding observations on the fourth periodic report of the United States of America*, UN doc. CCPR/C/USA/CO/4, para. 19.

[34] See for example, *Selcuk & Asker v Turkey*, 12/1997/796/998-999 at paras 74-78.

[35] *Hajrizi Dzemajl et al. v. Yugoslavia, Communication No. 161/2000*, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).

[36] *Moldovan and others v. Romania (no. 2)*, (Application no. 41138/98, 64320/01), 12. July 2005.

[37] See *East African Asians v. the United Kingdom*, Commission Report, 14 December 1973, DR 78, p. 5, at p. 62

[38] The court noted that the community were forced to live in "hen-houses, pigsties, windowless cellars, or in extremely cold and deplorable conditions" with "sixteen people in one room with no heating; seven people in one room with a mud floor; families sleeping on mud or concrete floors without adequate clothing, heat or blankets; fifteen people in a summer kitchen with a concrete floor (Melenuţa Moldovan), etc." These conditions had "lasted for several years and, in some cases, continued to the present day". *Moldovan and others v. Romania (no. 2)*, (Nos. 41138/98, 64320/01), EMK, 12. juli 2005, para. 69. These conditions also led to a finding that the right to privacy, family life and respect for the home was violated. Ibid, para 104-105

In the light of the above, the Court finds that the applicants' living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by the various authorities, constitute an interference with their human dignity which, in the special circumstances of this case, amounted to "degrading treatment" within the meaning of Article 3 of the Convention. [39]

The UN Committee Against Torture came to similar decision concerning the eviction of a Roma community in Serbia.[40] In *Hajrizi Dzemajl et. Al. v. Yugoslavia*, the means of eviction were violent, and included the use of fire, and private non-Roma individuals were behind the burning and destruction of Roma settlements. The Committee found that the violent acts of *burning and destroying* the houses together with the racist animus constituted cruel, inhuman or degrading treatment.[41] Though not committed by government officials, the police failed to take the necessary steps to protect the Roma.[42] The Committee has likewise found that Israel's demolition of Arab housing amount to cruel, inhuman and degrading treatment.[43]

These cases indicate that the carrying out of, or failure to prevent, racially-motivated evictions can amount to cruel, degrading or inhuman treatment.

However, a further question to be asked is whether a law completely prohibiting sleeping out in public places is facially a violation of this standard. The existing jurisprudence from the European Court of Human Rights suggests that the argument may be difficult. The Court seems cautious about deciding upon whether a particular decision by the authorities would amount to inhuman and degrading treatment before it is carried out. In *Yordanova & Ors. v. Bulgaria*, it was stated:

> The Court finds unconvincing the applicants' argument that … they were subjected to treatment beyond the threshold of severity required under Article 3 or suffered a separate violation of Article 8 as a result of the very fact that the authorities announced their decision to remove them and made preparatory moves. It should not be overlooked that the applicants knew at all relevant times that they occupied municipal land unlawfully and could not expect to remain there indefinitely.[44]

Nonetheless, it is difficult to know how much to read into this statement. The Court immediately concedes that if the decision or enforcement was accompanied by racism or failure to react it, the circumstances "may constitute violations of Article 3. It also found that it was unnecessary to conclude whether enforcement would amount to a violation of Article 3 given that they found it

[39] Ibid, para. 103 and 113.
[40] *Hajrizi Dzemajl et al. v. Yugoslavia*, Communication No. 161/2000, UN Doc. CAT/C/29/D/161/2000 (2 December 2002).
[41] "The nature of these acts is further aggravated by the fact that some of the complainants were still hidden in the settlement when the houses were burnt and destroyed, the particular vulnerability of the alleged victims and the fact that the acts were committed with a significant level of racial motivation." Ibid, para. 9.2.
[42] The CAT Committee found the state in violation of CAT article 16 which prohibits acts of cruel, inhuman or degrading treatment or punishment; the absence of police protection "thus implying 'acquiescence' in the sense of article 16", *Hajrizi Dzemajl et al. v. Yugoslavia, Communication*, No. 161/2000.
[43] See *Conclusions and recommendations of the Committee against Torture: Israel*, U.N. Doc. CAT/C/XXVII/Concl.5 (2001) at 6.j.
[44] Application no. 25446/06.

was violated by Article 8." Moreover, this case concerned permanent occupation of public land rather than the fleeting use of public space (sleeping rough), which is the subject of the Oslo ordinance.

However, other courts have found that a mere prohibition on sleeping out constitutes cruel, inhuman and degrading treatment. This is because such a ban criminalises essential and life-sustaining human activity. In 1992, in *Pottinger v. City of Miami,* a US District Court found that bans on sleeping out was *facially* invalid:

> [R]esisting the need to eat, sleep or engage in other life-sustaining activities is impossible. Avoiding public places when engaging in this otherwise innocent conduct is also impossible.… To paraphrase Justice White, plaintiffs have no place else to go and no place else to be. *Powell, 392 U.S. at 551.* This is so particularly at night when the public parks are closed. As long as the homeless plaintiffs do not have a single place where they can lawfully be, the challenged ordinances, as applied to them, effectively punish them for something for which they may not be convicted under the eighth amendment-sleeping, eating and other innocent conduct. Accordingly, the court finds that defendant's conduct violates the eighth amendment ban against cruel and unusual punishment and therefore that the defendant is liable on this count. [45]

The consistency in the US courts in coming to this conclusion varies, but there are some clear trends over time. The US jurisprudence is extensive, partly because of the widespread and regular use of local ordinances against homeless persons. In 1972, the Supreme Court of the United States struck down as "plainly unconstitutional" a common anti-loitering ordinance, which forbade "wandering or strolling around from place to place without any lawful purpose or object".[46] The Court found that it gave too much arbitrary power to the police, criminalised the activities of marginalised groups (the poor, dissenters, and structurally unemployed), and gave courts and police the discretion to view some individuals as "subhuman".[47] Instead, a valid law needed to be clearly written and evenly administered.

In the wake of this judgment, many US local municipalities adopted new and specific laws against both sleeping out (as well as begging). This generated a new round of court decisions at the state and federal levels. In the 1990s, with the exception of the *Pottinger* judgment noted above, most regulations survived constitutional challenge[48] or were settled before the full trial.[49] However, from the early 2000s, an increasing number of these ordinances were struck down on their face while authorities continued also to settle claims before they reached the courts.

In *Jones v. City of Los Angeles* (2006), the US Federal Court (Circuit) found that the enforcement of an anti-loitering law "at all times and in all places against homeless individuals who are sitting, lying, or sleeping in Los Angeles's Skid Row because they cannot obtain shelter violates the Cruel and Unusual

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[45] E.g., *Pottinger v City of Miami*, 810 F. Supp. 1551 (1992), 16 November 1992. See specifically section *III. Conclusions of Law*, *C. Cruel and Unusual Punishment*, "

[46] *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), at 171 (Justice Douglas for the Court).

[47] Ibid. at 163, 168, 170.

[48] For example, claims were dismissed by federal courts in *Church v. City of Huntsville*, 30 f.3d 1332 (11th Cir. 1994); *Davidson v. City of Tucson*, 924 F.Supp. 989 (D. Ariz 1996); *Johnson v. City of Dallas*, 61 F.3d 442 (5th Cir. 1995.

[49] Cases that were settled included: *Clements v. City of Cleveland* no. 94-CV-2074 (N.D. Ohio 1994); *Patton v. City of Baltimore*, no. S-93-2389, (D. Md. Sept. 14, 1994); *Richardson v. City of Atlanta* No. 97-CV-2468 (N.D. Ga. Aug. 28, 1997).

Punishment Clause".[50] In *Joel v City of Orlando* (2001), the Court held that a prohibition would amount to cruel and degrading treatment if no alternative accommodation was available.[51] In all of these cases, the courts emphasised that the combination of the biological nature of rest/sleeping and the involuntary situation of homelessness (where there is no alternative accommodation), raises criminalisation to the threshold of inhuman or degrading treatment. However, the court in *Spencer v. City of San Diego* (2006), was cautious in deciding whether a prohibition on sleeping out amounted to cruel and degrading treatment in the absence of a concrete case.[52]

In our view, it is possible to make a strong legal argument that a blanket ban, in and of itself, on sleeping out constitutes cruel, inhuman or degrading treatment. It criminalises a life-sustaining activity and takes no account of whether individuals have an alternative choice of action, which is the underlying presumption of all criminal law. However, given the general cautious statements on this topic by the European Court of Human Rights, we will not further assess this argument. Yet were the regulation adopted with racist animus, it is highly likely that the prohibition would fail this test.

Questions for the Oslo prohibition

In light of the above discussion on cruel, inhumane and degrading treatment, the key questions to be asked are:

1. Was the adoption of a regulation that criminalises life-sustaining human activities and involuntary homelessness animated by racial discrimination?
2. Was the regulation implemented when there was no alternative accommodation?
3. Was the regulation implemented in a discriminatory manner and where there was no alternative accommodation available?

2.2 Privacy, Family Life and Respect for the Home

The Oslo regulation may not provide the relevant protections against forced eviction as required by the right to privacy, family life and respect for the home? As the following sub-section makes clear, we must ask whether it requires that (1) evictions be justified (2) alternatives are considered (3) due process is followed and (4) alternative accommodation is provided. In other words, the prohibition must meet a proportionality test.

Law and Jurisprudence

The ECtHR has developed a significant body of jurisprudence on forced evictions under the right to respect for privacy, the home, and family life in Article 8(1) of the ECHR ('the right to privacy'). The application of these provisions is based on a proportionality test, however, since Article 8(2) contains a limitation:

> There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or

[50] *Jones v. City of Los Angeles*, 444 F.3d 1118, 1135 (9th Cir. 2006).
[51] *Joel v. City of Orlando*, 232 F.3d 1353 (11th Cir. 2000) cert. denied 149 L.Ed.2d 480 (2001).
[52] See, e.g. *Spencer v. City of San Diego*, Case No. 04 CV 2314 BEN (WMC), [Doc. No. 13-1]. (S.D. Cal. Jan 11, 2006).

> crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In cases concerning evictions, the Court closely examines their "necessity" or justification (particularly if the result is homelessness) and the existence of due process. In *Marzari v Italy*, for example, considerable weight was attached to the efforts by public authorities to find a disabled tenant alternative accommodation.[53] In *Connors v United Kingdom* the Court stated:

> [T]he eviction of the applicant and his family from the local authority site was not attended by the requisite procedural safeguards, namely the requirement to establish proper **justification** for the serious interference with his rights and consequently cannot be regarded as justified by a 'pressing social need' or proportionate to the legitimate aim being pursued. There has, accordingly, been a violation of Article 8 of the Convention.[54]

The Court went onto award €15,000 in compensation for the distress caused by the eviction.

Likewise, in *Winterstein & Others v France*, the Court found that the eviction of a Traveller community in France was unjustified as "they had not had the benefit, in the context of eviction proceedings, of a proper examination of the proportionality of the interference with their right to respect for the private and family lives and their homes as required by" in Article 8.[55]

In *Yordanova & Ors v. Bulgaria*, the Court summarised its general principles on how the proportionality test would be applied in eviction cases:[56]

- The state has a wide margin of appreciation of social and economic policies, including housing, as there are a "multitude of local factors" that need to be considered.[57]
- The margin of appreciation is to be narrowed when the "right at stake is crucial to the individual's effective enjoyment of intimate or key rights". These include "physical and moral integrity" and "a settled and secure place in the community".[58]
- The "procedural safeguards available to the individual will be especially material" in determining the width of the margin of appreciation.
- Where there is a "loss of home", courts "should examine" the circumstances in detail before an eviction occurs.
- In the absence of necessity or reasons from national authorities, the right to respect for the home outweighs the state's legitimate interest in controlling property.

Importantly, in *Yordanova,* the Court found that legislation (and not just an individual eviction) could be inconsistent with Article 8. This is consistent with the Court's jurisprudence on Article 8 that a mere law can contravene the right to privacy, family life or respect for the home if it is not proportionate.[59] The planning law in this case:

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[53] (1999) 28 EHRR CD 175.

[54] *Connors v United Kingdom*, (European Court of Human Rights, Application no. 66746/01, 27 May 2004), at para. 95. (Emphasis added).

[55] ECHR 304 (2013), Application No. 27013/07. Quote taken from Press release 17 October 2013.

[56] Application no. 25446/06, para. 118.

[57] Ibid. para. 118(i).

[58] Ibid. para. 118(ii).

[59] *Dudgeon v United Kingdom* Application no. 7525/76 (1981) (European Court of Human Rights), .

> [D]id not require the examination of proportionality and was issued and reviewed under a decision-making procedure which not only did not offer safeguards against disproportionate interference but also involved a failure to consider the question of "necessity in a democratic society"

The UN Human Rights Committee has reached similar conclusions concerning Article 17 of the ICCPR. The convention has an almost identically worded protection against "arbitrary interference" with privacy, the home and family life. The Committee defines "home" as the "the place where a person resides or carries out his usual occupation".[60] In its General Comment No. 16, the UN HRC indicated that expression "arbitrary interference" can extend to "interference provided for under the law" as the protection is "intended to guarantee that even interference provided for by law should be in accordance with the provisions, aims and objectives of the Covenant and should be, in any event, reasonable in the particular circumstances."[61] The Committee has also applied a proportionality test in its periodic review of state practice. In its 2005 Concluding Observations on Kenya, the Committee recommended: "The State party should develop transparent policies and procedures for dealing with evictions and ensure that evictions from settlements do not occur unless those affected have been consulted and appropriate resettlement arrangements have been made."[62]

In this respect, the UN Human Rights Committee has partly borrowed from the UN Committee on Economic, Social and Cultural Rights. The latter had indicated that the negative obligations concerning the right to adequate housing overlapped with the civil right to respect for privacy, family life and home. In General Comment No. 4 on the *Right to Adequate Housing* (1991), the Committee states that: "…instances of forced eviction are *prima facie* incompatible with the requirements of the Covenant and can only be justified in the most exceptional circumstances, and in accordance with the relevant principles of international law".[63] It further stipulated that states are obliged to take immediate measures to confer legal security to tenure upon those persons and households currently lack such protection.[64] In General Comment No. 7 on *Forced Evictions* (1997),[65] the Committee outlines the steps a party must take to ensure that an eviction does not contravene the right to adequate housing as well as a range of other human rights.[66] The Committee notes that the problem affects developed and developing countries and it has previously expressed concern about some evictions in Norway during

[60] Human Rights Committee, *General Comment 16*, (Twenty-third session, 1988), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 21 (1994), para. 5.
[61] Ibid. para. 4.
[62] *Concluding Observations of the Human Rights Committee: Kenya*, 28 March 2005, CCPR/CO/83/KEN. See also *Concluding Observations of the Human Rights Committee: Israel*, 3 September 2010, CCPR/C/ISR/CO/3, para. 24.
[63] Committee on Economic, Social and Cultural Rights, *General Comment 4, The right to adequate housing,* (Sixth session, 1991), U.N. Doc. E/1992/23, annex III at 114 (1991) at para. 18.
[64] Ibid., para 8(a).
[65] Committee on Economic, Social and Cultural Rights, *General Comment 7, Forced evictions, and the right to adequate housing*, (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997).
[66] It states: "Owing to the interrelationship and interdependence which exist among all human rights, forced evictions frequently violate other human rights. Thus, while manifestly breaching the rights enshrined in the Covenant, the practice of forced evictions may also result in violations of civil and political rights, such as the right to life, the right to security of the person, the right to non-interference with privacy, family and home and the right to the peaceful enjoyment of possessions." Ibid, para. 4.

the periodic review process.[67] Moreover, the Government of Norway has endorsed this standard in various resolutions issued by the Council of Europe on Roma and Travellers Housing Rights in Europe.[68]

Sleeping out bans and proportionality tests

The cases above set out the general principles for evictions, including persons sleeping on public property. However, it is useful to ask two further questions about how a proportionality test would be applied to a ban on homelessness in Norway.

First, how can the requirements of "justification" and due process be afforded to homeless individuals sleeping on public property? Some courts in the United States have wrestled with the implications of this particular requirement. The result is that some courts have required that police provide a notice period and desist from evictions in the absence of alternative accommodation. For example in *Henry v. City of Cincinnati*, the Federal Court noted approvingly a settlement between homeless litigants and a municipality whereby:

> [T]he police must give a homeless individual who is engaging in prohibited activity 72 hours notice before arresting that person. The officer must transmit this notification to a designated social service agency to conduct any outreach needed to help the person find a place to go or services. The 72 hour time period does not begin until the officer contacts the social service agency. [69]

The use of a notice period is reportedly used by Swedish police when determining that sleeping out on public property is in contravention of local ordinances. FAFO reports the following:

The street workers in Stockholm do also face restrictions on sleeping in public places. However, the implementation of the regulations for street workers is more in line with the procedures for the eviction of other population groups, and it seems to be normal to give a formal warning to the rough sleepers, telling them they will have to move. Official evictions are not carried out at night. During the summer of 2014, large groups of street workers were sleeping right on the streets in the centre of the city, and did not try very hard to hide from passers-by. In spite of this, they were less likely than street workers sleeping outdoors in the other two cities to be woken up at night and told to leave; 25 percent of those sleeping outside reported being woken up during the week prior to the interview. Only a third of these were woken by police officers, another third by security guards and the final third by ordinary people or drug addicts.[70]

Secondly, it might be thought that foreigners have alternative accommodation as they are not permanent residents in Norway. However, it is highly unlikely that accommodation in another country could be considered an alternative at the moment of eviction. EU Nationals, in particular, have the

[67] CESCR, *Concluding Observations: Norway*, E/C.12/1/Add.109 (2005), at paras. 18 and 37.

[68] Recommendation Rec(2004)14 of the Committee of Ministers to member states on the movement and encampment of Travellers in Europe (Adopted by the Committee of Ministers on 1 December 2004, at the 907th meeting of the Ministers' Deputies) and Recommendation Rec(2005)4 of the Committee of Ministers to member states on improving the housing conditions of Roma and Travellers in Europe (Adopted by the Committee of Ministers on 23 February 2005 at the 916th meeting of the Ministers' Deputies).

[69] No. C-1-03-509 (S.D. Ohio July 23, 2003).

[70] A. Djuve, J. Friberg, g. Tyldum and H. Zhang, *When poverty meets affluence: Migrants from Romania on the streets of the Scandinavian capitals* (Oslo: Fafo and Rockwool Foundation), pp. 91-2.

right to reside in Norway under the EU Directive 2004/38/EC on free movement. Under Article 9, Union citizens have the right to reside for a period of three months in a host Member State's territory, provided that they hold a valid identity card or passport. The Directive sets certain limitations on the freedom of movement, conditioning the lawful residence of Union citizens on the grounds that they do not "become an unreasonable burden on the social assistance system of the host Member State during an initial period of residence". However, it cannot be claimed that sleeping out constitutes an unreasonable burden on the "social assistance system" as defined by the EU Directive.[71] This term has a particular meaning. Moreover, we note that nowhere in the background justification for the Oslo prohibition was it stated that social assistance schemes were adversely affected by a rise in the number of EU nationals.

We also note that the European Committee on Social Rights has gone much further in applying the Revised European Social Charter. It stated in a recent case that Roma from Bulgaria and Romania temporarily residing in France have a right to alternative accommodation in the event that they are evicted.[72] The French authorities accepted this ruling and it is notable that Norway is a party to the Revised European Social Charter. This report does not discuss whether Roma have such a positive right to alternative accommodation in the event of an eviction but rather raises the point in reverse: Can foreigners be evicted from the streets *in the absence of* such accommodation? Given the jurisprudence of the European Court of Human Rights, it is likely that a negative claim could be sustained, that authorities should be very slow to proceed with an eviction in the absence of alternative accommodation.

Questions for the Oslo prohibition

The above discussion of the right to privacy, family life and respect for the home requires the following questions to be addressed:

1. Does the Oslo prohibition contain a legitimate aim and is it necessary in a democratic society?
2. To what extent does the prohibition, in general and particular, affect the core of the right, particularly an individual's physical integrity, a place to sleep and family unity?
3. Does the regulation provide for due process? And do other Norwegian laws ensure that due process is incorporated in the regulation?
4. Is the law implemented in a manner consistent with the right? In particular, in each case, is there: consideration of the need for eviction; an evaluation of alternatives; due process and some form of support for alternative accommodation?

[71] In fact, Article 16 of the Directive goes on to state: "As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system. The host Member State should examine whether it is a case of temporary difficulties and take into account the duration of residence, the personal circumstances and the amount of aid granted in order to consider whether the beneficiary has become an unreasonable burden on its social assistance system and to proceed to his expulsion. In no case should an expulsion measure be adopted against workers, self-employed persons or job-seekers as defined by the Court of Justice save on grounds of public policy or public security"

[72] *Médicins du Monde – International v. France*, Complaint no. 67/2011, *Decision on the merits 11 September 2012*, para. 79-82..

2.3 Freedom of Movement and Choice of Residence

The prohibition on sleeping rough raises questions concerning the right to "freedom of movement" and "choice of residence", as protected in Article 12 ICCPR and Article 2 of the Protocol No. 4 to the ECHR. In the submission by the National Institution to the Oslo Municipality, the right to freedom of movement was named as a key right that may be violated by the prohibition on sleeping out.[73]

According to Article 12(1) ICCPR, everyone residing lawfully in a state territory shall have the right to move and choose freely their residence. Interferences with the right are permissible under both conventions providing that certain conditions are met. For instance, Article 12(3) ICCPR, provides that restrictions are only those "which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant." A similar provision is set out in the ECHR Protocol.

Jurisprudence

Both the Human Rights Committee (UN HRC) and the European Court of Human Rights (ECtHR) apply a proportionality test in assessing whether an interference with the freedom of movement is "necessary". The UN HRC commented that, "it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them."[74] Accordingly, "Restrictive measures must conform to the principle of proportionality; they must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected."[75] Importantly, this requirement applies to *all residents* within a state and not only citizens.[76] In addition, effective remedies, including compensation and guarantees of non-repetition, are necessary.[77]

In the Human Rights Committee's jurisprudence there is some variation in the manner in which the proportionality test is applied. Generally, a strict standard of review is adopted. In *Gorji-Dinka v. Cameroon,* the Committee found that justifications for restrictions on the freedom of movement must be in the form of "exceptional circumstances adduced by the State party".[78] Moreover, arbitrariness is to be interpreted broadly. In the context of the right to liberty, the Committee stated in *Hugo van Alphen v. The Netherlands*:

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[73] Letter from Norwegian National Institution for Human Rights to Oslo Municipality, 15 February 2013, pp. 4-6.

[74] Human Rights Committee, *General Comment 27 Freedom of movement (Art. 12)*, (Sixty-seventh session, 1999), U.N. Doc. CCPR/C/21/Rev.1/Add.9 (1999), § 14. See *Sandra Lovelace v. Canada*, Communication No. R.6/24, U.N. Doc. Supp. No. 40 (A/36/40) at 166 (1981) ("On reasonability and objective justification for infringement of right (§ 16 statutory restitutions affecting the right to residence must have both a reasonable and objective justification and be consistent with other Covenant provisions read as a whole.") For a broader discussion on necessity and proportionality (though not directly related freedom of movement), see *Rafael Marques de Morais v. Angola*, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (2005).

[75] Ibid.

[76] *El Ghar v. Libyan Arab Jamahiriya*, Communication No. 1107/2002, U.N. Doc. CCPR/C/82/D/1107/2002 (2004), para. 7.3.

[77] Ibid. para. 9.

[78] Communication No. 1134/2002, U.N. Doc. CCPR/C/83/D/1134/2002 (2005).

The drafting history of article '9, paragraph 1, confirms that "arbitrariness" is not to be equated with "against the law", but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances.

However, in cases concerning freedom of movement and national security (including suspected terrorism) the standard appears to be more lenient. The Committee places greater weight on this public interest argument. Nonetheless, it requires that the restrictions on freedom of movement be proportionate to the security concerns and that they be regularly reviewed.[79]

Similarly, the ECHR requires that in determining whether interference to the freedom of movement is justified, it must "necessary in a democratic society". This requires an assessment of whether the interference corresponds to a "legitimate aim" and implicitly meets with the requirement of proportionality.[80] In *Bartik v Russia*, the Court reiterated that the test as to whether the impugned measure was "necessary in a democratic society" involves showing that the action taken was in pursuit of that legitimate aim, and that the interference with the rights protected was no greater than was necessary to achieve it.[81] In *Hajlik v Hungary*, the Court held that this requirement was ongoing even if the proportionality test was met at a point in time: periodic assessment of the proportionality of the measure is needed to ensure that the limitation to freedom of movement strikes a balance between individual right and public interest. [82]

The right to freedom of movement has been invoked successfully in judicial evaluations of prohibitions on sleeping rough.[83] For example, in November 2012, the Hungarian Constitutional Court annulled a similar provision to the Oslo regulation. The Petty Offences Act was found to violate the right to

[79] See *Celepli v. Sweden*, Communication No. 456/1991 U.N. Doc. CCPR/C/51/D/456/1991 (1994) ("Moreover, bearing in mind that the State party has invoked reasons of national security to justify the restrictions on the author's freedom of movement, the Committee finds that the restrictions to which the author was subjected were compatible with those allowed pursuant to article 12, paragraph 3, of the Covenant. In this connection, the Committee also notes that the State party motu proprio reviewed said restrictions and ultimately lifted them.", para. 9.2; and *Karker v. France* Communication No. 833/1998, U.N. Doc. CCPR/C/70/D/833/1998 (2000) ("The Committee notes that Mr. Karker's expulsion was ordered in October 1993, but that his expulsion could not be enforced, following which his residence in France was subjected to restrictions of his freedom of movement. The State party has argued that the restrictions to which the author is subjected are necessary for reasons of national security. In this respect, the State party produced evidence to the domestic courts that Mr. Karker was an active supporter of a movement which advocates violent action. It should also be noted that the restrictions of movement on Mr. Karker allowed him to reside in a comparatively wide area. Moreover, the restrictions on Mr. Karker's freedom of movement were examined by the domestic courts which, after reviewing all the evidence, held them to be necessary for reasons of national security. Mr. Karker has only challenged the courts' original decision on this question and chose not to challenge the necessity of subsequent restriction orders before the domestic courts. In these circumstances, the Committee is of the view that the materials before it do not allow it to conclude that the State party has misapplied the restrictions in article 12, paragraph 3.").

[80] *Case of Stamose v. Bulgaria,* ECtHR, (Application No. 29713/05), 27 November 2014, § 32-33. See also *Labita v. Italy*, ECtHR, Application no. 26772/92 on discussion of "necessary": § 194-197; *Baumann v. France*, ECtHR, Application no. 33592/96 (Must strike a balance between public interest and individual's rights § 61 and interference must be necessary and proportionate to the aims sought: § 65-67).

[81] Application no. 55565/00, para. 46

[82] Application no. 41463/02, para. 32.

[83] See, e.g., *Fifth Avenue Presbyterian Church v. City of New York*, 2004 WL 2471406 (S.D.N.Y. 2004).

freedom of movement and right to human dignity in the Hungarian constitution.[84] The law failed a proportionality test because "the fact that someone lives in public space does not infringe on other people's rights, cause damage or endanger the habitual use of space or public order".[85] Moreover, the Court found that "homelessness is a social condition". As a consequence, a key criterion of criminal law is not satisfied, namely the presence of "subjective fault".[86]

Questions for the Oslo regulation

This legal overview of the right to freedom of movement and choice of residence raises the following questions as to whether the blanket ban against sleeping outdoors in Oslo:

1. Does it constitute a legitimate aim and is it an appropriate tool in achieving public order?
2. Does it representsthe least intrusive means through which to achieve the desired result?
3. Is it proportionate to the interests protected?
4. Is it regularly re-assessed?

2.4 Non-Discrimination

Non-discrimination is one of the basic and most fundamental principles in international human rights law. Article 14 of the ECHR provides protection against discrimination in the exercise or enjoyment of the other rights in the Convention. Article 26 of the ICCPR provides a self-standing protection against discrimination and entitles individuals to equality before the law. Prohibited grounds of discrimination under both conventions are "race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". The UN Convention on Racial Discrimination also provides special protection against racial discrimination.[87]

The nature of discrimination may vary: it may be a "distinction, exclusion, restriction or preference".[88] The relevant law, act, or omission does not need to be explicit or direct. It may be discriminatory if it "has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms."[89] Discrimination can therefore occur if it is intended or if a law has the effect of weakening the rights of a protected group. In determining whether the authorities have engaged in discrimination a proportionality-like test is applied: a distinction, exclusion, restriction, or preference may be justified if it meets objective and reasonable criteria.[90]

The Oslo prohibition is worded in neutral terms, but it may be discriminatory in three respects: (1) intentional discrimination; (2) indirect discrimination; and (3) discrimination in practice.

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[84] Decision 38/2012, 14.11.2012, Magyar Közlöny (Official Gazette), 2012/151, [CODICES: HUN-2012-3-006].
[85] Ibid.
[86] Ibid. Likewise, in 2009, the Court of Appeal for British Colombia in Canada found that a prohibition on sleeping in parks violated the rights to life, liberty and security when there is an absence of temporary shelter: *Victoria (City) v. Adams*, 2009 BCCA 563.
[87] Articles 1, 2 and 5.
[88] Human Rights Committee, *General Comment 18, Non-discrimination* (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), at para. 7.
[89] Ibid**.**
[90] *General Comment 18,* n. 87 above, para. 13.

Intentional discrimination

A neutral law may be suspect because it was intended to discriminate. However, proving intention is difficult as actors rarely reveal their deeper intentions and the factors leading to a law's adoption are often complex. Nonetheless, given the background to the Oslo prohibition, a legitimate question to ask is whether the law was motivated by discriminatory intentions on the basis of nationality or ethnicity.

Discriminatory intent may also be relevant to establishing indirect discrimination – to be discussed below. A Roma housing case before the UN Committee on the Elimination on Racial Discrimination provides a comparable example. In *L. R. et al v. Slovakia*, the Dobšiná municipality's annulled a resolution to provide for low-cost housing for about 1800 individuals in the Roma community. retrogressive act was found to constitute at least indirect discrimination by the CERD Committee.[91] While the annulment made no reference to Roma,[92] the local petition for it "was advanced by its proponents on the basis of ethnicity" and "was *understood* as such by the council as the primary if not exclusive basis for revoking its first resolution".[93]

Indirect discrimination

Does the Oslo regulation unreasonably affect certain groups as defined by prohibited grounds and thus constitute indirect discrimination? In the wake of the adoption of the law, many predicted that the effects of the law would fall unfairly and disproportionately on foreigners.

To establish *indirect discrimination*, there must be proof that the law disproportionately impacts certain individuals. In *Rupert Althammer et al. v. Austria,* the UN Human Rights Committee described the claim as one alleging "discriminatory effect of a rule or measure that is neutral at face value or without intent to discriminate"[94] but found that the "impact of this measure" (an abolition of social security payments) was not "disproportionate" for retirees.[95]

In establishing the existence of indirect discrimination, the use of statistics can be particularly useful in measuring the differential application of a law. In the ECtHR case of *D.H. and Others v. the Czeck* Republic, the applicants relied on statistical evidence to illustrate that Roma children from their town were 27 times more likely to be assigned to special schools for children suffering a mental or social handicap than non-Roma children.[96] The Grand Chamber of the Court in this case determined that such evidence shifted the burden of proof to the state authorities. "Where an applicant alleging indirect discrimination thus establishes a rebuttable presumption that the effect of a measure or practice is discriminatory, the burden then shifts to the respondent State, which must show that the difference in treatment is not discriminatory."[97] Thus, statistics, "which appear on critical examination to be

[91] *L. R. v. Slovakia* Communication No. 31/2003, Decision on the Merits UN doc. CERD/C/66/D/31/2003 (2005) (UN CERD), .
[92] Ibid para. 10.4.
[93] Ibidpara. 10.5.
[94] *Rupert Althammer et al. v. Austria*, *Communication No. 998/2001*, U.N. Doc. CCPR/78/998/2991 (2003), para. 10.3.
[95] Ibid.
[96] *D. H. and Others v. the Czech Republic*, *no. 57325/00*, ECtHR, 13 November 2007, para 18.
[97] Ibid, para. 189.

reliable and significant",[98] can be used to *prima facie* show a difference in treatment. In this report, we place heavy reliance on statistics in order to test whether there is a *prima facie* case of indirect discrimination. However, the government can still plead a case that the differential impact is nevertheless objective and reasonably justified. Thus, it is important to investigate the circumstantial nature of the treatment.

Besides race and ethnicity, the Oslo prohibition may discriminate on the grounds of poverty as an "other status" ground.[99] The Oslo prohibition should be seen in light of wider international trends in which states increasingly seek to regulate and criminalise the behaviours, actions, and movements of people in public spaces. Those living in poverty are more dependent on access to public areas and may fall under protections against non-discrimination. As noted in the 2011 report of the Special Rapporteur on extreme poverty and human rights:

While regulations [i.e. those that restrict behaviors in public spaces] are not explicitly addressed towards persons living in poverty, they affect them disproportionately. Owing to their lack of or limited access to housing, persons living in poverty rely more heavily on public spaces for their daily activities. Thus individuals who have no choice but to live on the street find that daily life-sustaining activities can put them in danger of criminal sanctions. Although these types of measures are ostensibly neutral, studies show that authorities target those living in poverty, particularly homeless persons. This disproportionate application clearly violates the obligation to ensure equality and non-discrimination in the implementation of all laws and policies.[100]

Direct discrimination in practice

Finally, it may be possible that the law is being applied in a discriminatory manner. This may be manifest in a number of ways. First, particular groups may be targeted in the application of the regulation. Secondly, the manner of implementation of the law may be uneven – for example, as to notice periods, support for alternative accommodation, keeping of possessions, use of force etc. Thirdly, racist speech may accompany the eviction.[101]

Questions for the Oslo prohibition

The above analysis of the right to non-discrimination requires us to ask:

1. Was the Oslo prohibition intentionally discriminatory since it was aimed at groups defined by prohibited grounds (e.g. race, nationality, and possibly poverty)?
2. Is the law indirectly discriminatory because it targets in effect a particular group?
3. Is the law being implemented in a discriminatory fashion?

[98] Ibid, para. 188.
[99] See, e.g., Committee on Economic, Social and Cultural Rights, *General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2)* U.N. Doc. E/C.12/GC/20 (2009).
[100] *Report to the Secretary General 4 August 2011* (A/66/265) at para. 34.
[101] See discussion in *Yordanova & Ors v. Bulgaria* Application no. 25446/06.

2.5 Associated Violations: Possessions and Use of Force

Violations of other rights can sometimes accompany an eviction process. One feature may be the confiscation of personal possessions. [102] Such confiscation would normally be considered an interference with the ***right to property*** in Article 1 of Protocol 1 of the ECHR. The ECtHR has affirmed, for example, that this right covers shacks used by informal dwellers and that compensation must be paid for any damage arising from a failure to respect or protect this property. In *Öneryildiz v Turkey*,[103] the Court determined that "notwithstanding" the "breach of the planning rules and the lack of any valid title" in the case of an informal settlement, the applicant was "to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it". [104] Thus, the legal status of the occupation of land by homeless persons has no consequences for the control and ownership of possessions, including those used to erect a shelter.[105] However, Article 1 also contains a limitation clause and states can justify confiscation of property if it is "necessary" in "in accordance with the general interest or to secure the payment of taxes or other contributions or penalties."

The rights of homeless persons to their property has also been affirmed by UN human rights treaty bodies. The CESCR has stipulated that certain property rights form part of the protections against forced evictions.[106] In the United States, courts have affirmed in almost all cases concerning arrests of homeless persons for trespassing that they maintain rights to their possessions.[107]

Equally, the use of force during an eviction or arrest by the police under the law cannot disproportionately interference with a person's physical security. This may raise issues of rights to bodily integrity, cruel, inhuman or degrading treatment, or even the right to life. The European Court of Human Rights has indicated that the justification of the use of force is contextual: it must not be disproportionate to the situation.[108]

Questions for the Oslo prohibition

1. Was the property of homeless individuals confiscated during any eviction under the regulation, and, if so, was it necessary in the public interest?
2. Has excessive force been used in the implementation of the regulation?

[102] This issue arises often in the US jurisprudence: see, e.g., *Ashcraft v. City of Covington*, No. 02-124-JGW (E.D. Ky. Sept. 23, 2003).
[103] *Öneryildiz v Turkey* (Application No. 48939/99), European Court of Human Rights, 18 June 2002.
[104] Ibid.
[105] Ibid. para. 141.
[106] "Legal remedies or procedures should be provided to those who are affected by eviction orders. States parties shall also see to it that all the individuals concerned have a right to adequate compensation for any property, both personal and real, which is affected." *General Comment 7, Forced evictions, and the right to adequate housing* (Sixteenth session, 1997), U.N. Doc. E/1998/22, annex IV at 113 (1997). (CESCR), para. 14.
[107] See, e.g., *Lavan v. City of Los Angeles*, #11-56253, 2012 U.S. App. Lexis 18639, (9th Cir).
[108] *Perrillat-Bottonet v. Switzerland* (application no. 66773/13).

3. Empirical Findings

This chapter sets out empirical findings on the principal issues raised in the legal framework. It begins with the process behind the adoption of the law (3.1), followed by its interpretation (3.2), implementation (3.3-3.10), and some other issues which arose during the investigation (3.11-3.12). In the chapter that follows, we will analyse the implications of these findings for compliance with Norway's international obligations.

3.1 The process and intention behind the regulation

On 29 October 2012, the Oslo Police sent a formal proposal to the Oslo municipality with a request for a complete ban on sleeping out in public places. In media appearances, the police indicated that a principal reason for the proposal was the failure of the municipality to ban begging.[109] In their view, a ban on sleeping out would contribute significantly to a reduction in begging. In the proposal for the blanket ban, the police and municipality cited the rising presence of "visiting, homeless foreign nationals" sleeping outside.[110] In addition, they cited various public order problems associated with a rise in rough sleeping. The Deputy Police Chief highlighted the experience of summer 2012:

> Residents feel unsafe and are afraid to send out their children to play or walk past people on the street. Sidewalks are often covered with people and their belongings. We received complaints of littering, smell, and sanitary acts. 17-18 cars could be parked in one place for a long period. Many slept overnight together in a car and put what was in the car on the sidewalk. Clothes could be hung out to dry everywhere.[111]

The police are thus fairly clear as to the targets of the regulation. It would principally concern foreigners (all the examples given relate to foreigners) and it would also prevent foreigners coming to Norway (as it would operate as an indirect ban on begging). Whether this position can be objectively and reasonably justified will be returned to later.

However, it is difficult to characterise the positions of the political parties who voted for the regulation with such clarity. The governing mayor of the Oslo municipality (from the Conservative party Høyre) welcomed the police proposal. In his public statements, he generally avoided stating that the regulation was directed at foreigners. Instead, he emphasised that it represented a clarification of the existing prohibition on "camping out".[112] However, the concrete examples given only concerned foreigners,[113] with an emphasis on those who "visited Oslo".[114] During the vote on the new regulation,

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[109] 'Oslo-politiet vil innføre soveforbud: Vil totalforby all utendørs overnatting', *VG*, 1 February 2013. For a longer justification, see http://www.osloby.no/nyheter/Uteliggere-skal-jages-7179567.html

[110] NI, *Uttalelse fra Nasjonal institutsjon for menneskerettigheter i forbindelse med høring om endringer i Oslo kommunes politivedtekter* (15.02.2013), p. 3.

[111] 'Oslo-politiet vil innføre soveforbud: Vil totalforby all utendørs overnatting', *VG*, 1 February 2013. For a longer justification, see http://www.osloby.no/nyheter/Uteliggere-skal-jages-7179567.html These complaints are set out in a longer form in the Letter from Oslo Police to the Municipality of Oslo, 30 May 2012, pp. 5-6.

[112] For example, he gave the following example: "Slik det var tidligere, var det forbudt å overnatte i parken på østsiden av rådhuset, men man kunne si at det var tillatt på selve Rådhusplassen. Den uklarheten er nå ryddet av veien - nå er det ikke tillatt noen av stedene", see http://www.osloby.no/nyheter/Sov-i-Sofienbergparken-i-protest-mot-overnattingsforbud--7206782.html

[113] 'Uteliggere skal jages', *Aftenposten (OsloBy)*, 21 May 2013.

[114] Ibid.

some members of his Conservative party continued with this multifaceted justification. One raised the issue of the general rise in the number of people sleeping rough and the problems associated with some "begging groups", noted that existing formal camping sites were not allowed to discriminate, and pointed out that Norway has recently given 2.3 billion Norwegian kroner to Romania, which should help alleviate poverty there.[115] Another member of the Conservatives was more direct. He stated bluntly that the Norwegian debate on sleeping rough and begging concerned principally "individuals from Romania, often Roma". It was not a debate about Norwegian drug users or persons with disabilities as they had the right to accommodation.[116]

The second party voting for the regulation was the FRP party. In public statements, they were clear that the regulation was to be directed at Roma and foreigners. In welcoming the proposal, the national leader of FRP, Siv Jensen, made this statement to the newspaper VG:

> This proposal concerns foreign beggars not drug users or other groups. We see them all the time. Some are very aggressive, and I am uncomfortable with that. Littering and the smell of public areas in summer last year indicates a total lack of respect for a society one has come to. That we tried to fix this situation is the least we can do.[117]

The statements made by FRP during the municipal voting were more mixed. One municipal representative made it clear in his statement that the law, in effect, would only concern foreigners.[118] This is because permanent Norwegian residents have rights to social services and different forms of accommodation. [119] The leader of FRP Oslo, however, did not explicitly state that the law was directed at foreigners but indicated that this was the reason for the discussion. He argued that: (1) the condition for coming to Norway under the EU Freedom of Movement Directive is that an individual must be able to look after himself or herself; and (2) there is plenty of existing accommodation for foreign visitors.[120] Both statements are factually problematic. The EU Freedom of Movement Directive states that "Union citizens should have the right of residence in the host Member State for a period not exceeding three months without being subject to any conditions or any formalities other than the requirement to hold a valid identity card or passport". Moreover, Oslo has a limited range of accommodation facilities in relation to demand. Only one camping site is open all year-round (Bogstad) with Ekeberg and Fjordcamp only open in summer. The price for a tent site is also two to three times the price named in the municipal discussions.[121]

The other two parties, Labour and Liberal who voted for the law, were more general in their support. The Labour party expressed contentment that the proposed prohibition was narrower than the original police proposal. Moreover, the proposal was "intuitive and right" because there are many public places one can physically sleep in, even if there is no "grass" on which to sleep.[122] The Liberal Party likewise

[115] Minutes of the Municipal Council Meeting, 15 May 2013, pp. 129-130 (statement of Trine Nicolaysen Dahl).
[116] Ibid. p. 135. (Statement of Ola Kvisgaard).
[117] 'Frp støtter forslag om utendørs soveforbud i Oslo', *VG*, 2 February 2013.
[118] Ibid. pp. 134-5. (Statement of Mazyar Keshvari).
[119] Ibid.
[120] Minutes of the Municipal Council Meeting, 15 May 2013, p. 131 (Statement of Carl I. Hagen).
[121] A Conservative party member stated that the price of a tentsite (boenhet) in Oslo was 80 kroner per person. The prices on the websites for Bogstad, Ekeberg and Fjordcamp range from 160 kroner to 275 kroner per night. See http://www.visitoslo.com/en/accommodation/camping/camping-site/
[122] Minutes of the Municipal Council Meeting, 15 May 2013, p.129 (Statement of Rina Mariann Hansen).

expressed their satisfaction with a narrower regulation.[123] Yet, their vote was explicitly premised on the expectation that the regulation would not be used in a discriminatory fashion and expressed with the hope that non-governmental organisations would be creative in providing extra and affordable sleeping facilities. [124]

Three parties (Socialist Left, Red party, and the Green party) voted against the municipal proposal. The representative of the Socialist Left argued that poverty should not be criminalised as individuals experiencing homelessness had no choice in the matter.[125] She also emphasised that existing laws were sufficient in dealing with cases of disturbances to public order and that housing was a human right. The Red Party made a similar point and noted that if the laws were only applied to Roma, this would amount to discrimination.[126] The representative affirmed that existing laws were sufficient to deal with public order and that the regulation instead represented a "collective punishment" on all homeless persons. [127] It was further highlighted that the fire department was concerned that individuals could turn to sleeping in abandoned and unsafe houses. The Green Party echoed these critiques and noted the largely unsuccessful prior experience in Oslo of hunting particular groups (previously drug users) from place to place over the city.[128]

3.2 The interpretation of the regulation

In understanding the meaning and effect of the Oslo prohibition, its text cannot be understood in isolation. We need to examine how the authorities have interpreted the law in practice and how it should be interpreted in light of other laws.

It appears that Oslo municipality has interpreted the law in a broad fashion. This interpretation includes elements of the original police proposal that were rejected in the municipal council vote. A legal information document, translated into five languages, states that sleeping in cars is prohibited under the law.[129] This is the English text in a brochure handed out by the Municipality of Oslo:

> All visitors are of course welcome to Oslo, but they must find a place to stay and must also have the means to provide for themselves. Sleeping outdoors is not allowed in Oslo, whether in the streets, parks or in *cars*. Camping in the forests around the city is not allowed for more than two days at a time.[130]

And our interviews indicate that Roma individuals at least are regularly stopped from sleeping in cars (see below).

Reading the regulation, this interpretation might be justifiable under the law as it includes the proviso of "other similar acts". This wording potentially permits an implicit and broad interpretation, covering sleeping in cars, even though they are private property. However, if the provision was tested in a

[123] Ibid. p. 131 (Statement of Odd Einar Dørum).
[124] Ibid.
[125] Ibid. p. 132 (Statement of Ingvild Reymert).
[126] Ibid. p. 133 (Statement of Bjørnar Moxnes).
[127] Ibid.
[128] Ibid. p. 134 (Statement of Harald Nissen).
[129] See: http://www.nrk.no/ostlandssendingen/prioriterte-ikke-presteprotest-1.11035210
[130] Oslo Police District and Muncipality of Oslo, *Information for visitors to Oslo who do not have a place to stay*. Emphasis added.

Norwegian court, there would be a reasonable chance that sleeping in cars would not be included. Weight could be placed on the "lovforarbeid" – the drafting processes behind a law. The provision has not been tested in court though, which makes it difficult to conclude precisely what is the correct interpretation.

For the principal purposes of this report, the precise legal interpretation under Norwegian law is not pertinent. From the perspective of international law, it remains problematic that the authorities have (i) adopted a law capable of such broad interpretation; (ii) persistently maintained a broad interpretation of the law; and (iii) implemented this broad interpretation.

It may also be possible that Norwegian national law provides general procedural protections against evictions. However, in our understanding no such general protections exist. Regulation of housing and sleeping outside is sectoral and thematic in focus. Thus, there is a fairly developed regime of tenancy protections in housing law while under the *Friluftsloven,* sleeping in forest areas is permitted, but only for a maximum of 72 hours.[131] Likewise, the use of police discretion in implementing the law is only guided by general criminal law and practice rather than any specific provision concerning homeless groups or removal from public places. This lack of overarching regulation has been subject to criticism by the UN Committee on Economic, Social and Cultural Rights.[132] Thus, in this respect, the most directly relevant Norwegian law is the human rights provisions in the Human Rights Act and the Constitution.

3.3 General Implementation

Some early media reports suggested that the regulation was not being implemented. Indeed, during the consultation process on the proposed regulation*,* the Oslo Police indicated that they would exercise restraint in implementing the law. The police would only impose penalties if it were "strictly necessary" in order to achieve the regulations' "purpose".[133] According to them, such an approach was consistent with the general use of police power.

However, it is clear from the evidence amassed that law has been fully implemented by the police. The municipality itself expected significant police action and the governing mayor predicted that the police would be "running after" homeless groups during the summer.[134] In response to our request for information, the Oslo police indicated that the law has been effectively operationalised. In the two-month period of 22 April to 22 June 2014, the Oslo police advised that: 679 people were asked to move; 140 were physically removed; 55 were arrested; and 39 prosecuted.[135]

Moreover, it appears that implementation occurs throughout the year. Despite the Oslo police indicating to the media that the law was only applied during the summer months, our survey results

[131] See discussion in Oslo Municipality Police Regulation, Proposal for a new section 2-1(5) on Sleeping Outdoors, Municipality Case No. 66/13, 25 April 2013.
[132] In its Concluding Observations to Norway in 2005, the Committee urged Norway "to ensure that evictions of tenants who cannot pay their rents and of squatters comply with the guidelines established by the Committee in its general comment No. 7 (1997) on the right to adequate housing (art. 11, para. 1, of the Covenant): forced evictions."
[133] Oslo Municipality Police Regulation, Proposal for a new section 2-1(5) on Sleeping Outdoors, Municipality Case No. 66/13, 25 April 2013, p.3.
[134] 'Uteliggere skal jages', n. 112 above.
[135] Letter from Oslo Police to Norwegian Centre for Human Rights, 8 December 2014.

contradict this claim. Only five respondents reported that they were not evicted in winter: the overwhelming majority described consistent eviction throughout the year. For example, one respondent informed us:

We had to walk away at 4 am and got threatened with prison if we didn't go. It was in December and it was very cold. They [the police] don't treat others like that, there's no understanding. I asked where else to go in this rain, they just said go.

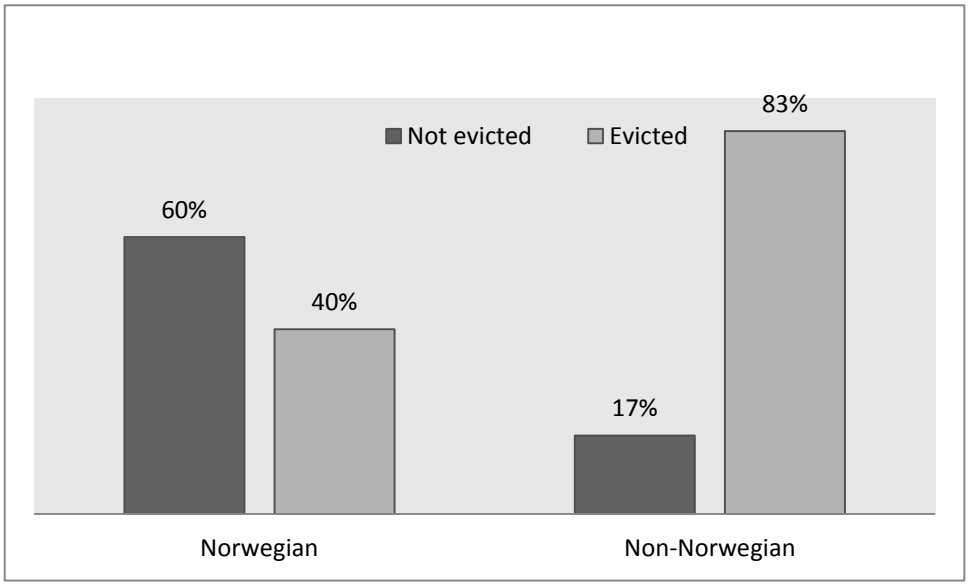
This pattern was constant in our survey. Indeed, most of our interviews were conducted during the winter months and recent evictions were constantly reported. This is of particular concern in itself as some international standards indicate that evictions should be avoided where possible in cold and wet weather (see section 2.2 above).

3.4 Targeting of groups

While the law is formulated in neutral terms, there are real questions as to whether it is indirectly discriminatory. The background statements of the police and municipality and the statements of some members of FRP and Høyre indicate that the law was targeted at foreigners or specific ethnic groups. Has this occurred in practice? Does the Oslo regulation unreasonably affect certain groups as defined by prohibited grounds? As discussed in section 2.4, to establish *indirect discrimination*, there must be *prima facie* evidence that the law disproportionately impacts certain individuals.

Figure 1 sets out the rates of eviction by ***nationality*** in our survey. As can be seen, only 40% of Norwegians sleeping rough reported eviction against 83% of foreigners. The difference is statistically significant[136] and a probit analysis indicates that non-Norwegians are more than twice as likely to be evicted as Norwegians.[137]

Figure 1. Rate of Eviction by Nationality



[136] At the 1 per cent level. The Chi-squared ratio was 10.88.
[137] The precise figure is 122 per cent.

This phenomenon was confirmed in interviews. For example, organisations working with homeless Norwegians described the ban as a "dormant regulation"; as did Norwegian respondents, who described their relationship with patrolling police as good. Many identified a particular behaviour that those sleeping rough needed to assume when on the streets in Oslo. This suggested that an understanding existed between the police and Norwegians as to where one could and could not sleep rough. As one stated, "If you behave properly, respectfully, and take care to keep the area around you clean, then things usually work out all rights" while another commented that "They [the police] take care of us at night".

Table 2A. Rate of Eviction by Ethnicity

	Caucasian	%	Roma/African	%
Not evicted	13	30%	7	18%
Evicted	30	70%	31	82%
Total	**43**		**38**	

In relation to ***ethnicity***, the rate of eviction is more complex. Respondents of Roma and African decent report slightly higher rates of eviction (82%) compared to those of Caucasian appearance ("white") (70%): Table 2A. A probit analysis indicates that the former category is slightly more likely to be evicted but this is not statistically significant.[138] However, there is a significant difference in the *frequency* of eviction. Respondents of Roma and African descent report more regular evictions: see Table 2B. The reported frequency of eviction for this group is two times higher than Caucasian respondents, which is statistically significant.[139]

Table2B. Frequency of Eviction by Ethnicity

	Caucasian	%	Roma/African	%
Rarely	7	24%	5	17%
Monthly	5	17%	2	7%
Weekly	9	31%	5	17%
Constantly	8	26%	17	59%
Total	**29**		**29**	

3.5 Contextual Justification

While the law may be rather absolute in prohibiting sleeping out in public places, it is important to consider whether the context changes the use of police discretion. As was discussed in the previous sub-section, Norwegian homeless persons rarely experienced evictions. Thus, a question that may arise is whether there were specific reasons for evicting non-Norwegians. Some Norwegian

[138] Not even at the 10 per cent level; p-score=21.Chi-squared ratio is 1.54.
[139] At the 5 per cent level. Chi-squared ratio is 4.31.

respondents said they took particular care in the way they slept out in public places. The police have also made various claims about Roma and the way in which they sleep in public places (see section 3.1).

However, it is not clear that police make such a distinction in practice. Foreigners seem to be routinely evicted regardless of the circumstances. First, eighteen of those evicted reported that they received no reason and twenty-five were told that it was on the basis of a law. Only twelve were given a non-legal reason, which might relate to the specific circumstances of sleeping rough. Secondly, many respondents reported that they were prevented from sleeping in cars, which would appear to have little or negligible effect on public space. While police have earlier indicated the problems of individuals sleeping in cars and using public space for the placement of personal possessions, respondents indicated that they were stopped from sleeping in cars under any circumstances. Thirdly, the evidence indicates that street cleaning operations are undertaken in systemic ways after eviction sweeps. The collaboration between the police and Rusken (identified by respondents as the street cleaning service) suggests a routine approach to evictions rather than one driven specific disturbances to public order. Fourthly, many statements by respondents indicate a perfunctory approach by the police to eviction:

> I was sleeping, they woke me up and told me that I could not sleep there. They were nice and I didn't want any trouble. (EU national, non-Roma, male)
>
> They [the police] simply said that I cannot sleep there. They said that you are not allowed to sleep outside. (Non-EU national, Sub-Saharan Africa, male)
>
> We were sleeping and put in a van and taken to the police. We were given a 6000 Crown fine and were kept there for 24 hours. We got a translator who explained that we were not allowed to sleep out according to the law. (EU national, Roma, female)

Thus, there does not seem to be much evidence for the notion that eviction was based on actual and concrete disturbances to public order.

3.6 Due Process: Warning, Notice Periods, and Season

We asked respondents in the survey whether they received a warning or notice period before an eviction. This is particularly relevant for assessing the proportionality of the law and its implementation (see Section 3.2). This might include a warning or a particular period in which to vacate. Table 3 breaks down respondents who reported whether they ever received a *warning*. As is clear, warnings were not particularly common. Only 7 of 53 respondents reported such an occurrence. Norwegians were twice as likely to be given a warning, which was statistically significant (P=.09). However, there was no statistically significance difference on the basis of ethnicity even though a lower percentage of persons of Roma and African descent received a warning.

Table 3. Warning by Nationality and Ethnicity

	Norwegian	%	Non-Norwegian	%
Warning	2	40%	5	17%
No Warning	3	60%	48	91%
Total	**5**		**53**	
	Caucasian'	%	Roma/African	%

Warning	5	17%	2	7%
No warning	24	83%	27	93%
Total	**29**		**29**	

In the case of *notice periods*, the frequency almost drops to zero. One Roma respondent reported being given 24 hours to move; while one other foreigner received a notice period of 48 hours. However, these notice periods appear to apply to the use of forests where anyone is entitled to sleep for 72 hours. Thus, one non-Roma EU national reported a consistent practice on warnings when they slept in the forest:

> I was camping in the forest. The police came and showed us a paper which said we had to leave in 48 hours, my friend understands English, and then stay 500 meters away from the area after we had left. This happened about 7 times this summer. Sometimes, in the morning we were awoken by the police, but they were very kind, apologetic even.

However, another respondent reported that even the notice period for the forests was not always properly applied:

> They would come and see the tents in the day time and then at about 5-6 in the morning, to make sure we were there. They would come and tell us to go. They would say 'go' and that it was not allowed. If we were eating, they would wait for us to finish. They were patient and waited for us to go, we didn't talk back, we didn't want to be put in the van. Once they took my tent, I didn't buy a tent anymore, it was not worth it.

3.7 Alternative Accommodation

The availability of alternative accommodation is an important element in considering whether the application of the regulation meets the tests for cruel and degrading treatment and rights to privacy/freedom of movement (see Sections 2.1-3). In interviews with *Norwegian* respondents, all revealed a high knowledge of alternative accommodations, and described that sleeping rough was an alternative they chose over other social housing schemes. Therefore, they did not ask the police or private patrolmen about alternative accommodation. This reveals an interesting paradox in the application of the law. The group with a legally enshrined right to accommodation in Norway was the least likely to be evicted by police.

> For non-Norwegian respondents, few asked the police about where they could sleep, and where they did ask, the police did not offer alternatives.

> I asked them [the police] and they told me that it was not their responsibility, that if you come to Norway, you need to have enough money to sleep somewhere. I do not want to cause any trouble, so I always leave when they ask. (EU national, white other, male)

> My days are about finding money for food and alternative places to sleep. One time I slept for hours in four days. Private security forces and the police kept waking me up and forced to move every time. At the end of the fourth day, I had a constant nose bleed from lack of sleep and a severe headache. The police to go to the hospital, that I could sleep there and they were open 24/7. (EU national, white other, male)

> I had been in Norway for two months when I was woken up by the police and asked to move. I asked the police where should I go, I said they'll just come and find me again; they said it was not

> their fault, they were just doing their job, this is their job, they don't want to do this … I would then just walk around, not to fall asleep, not to freeze, it's desperate. (EU national, Roma, male)

However, there were five exceptions: five EU nationals (one of them Roma) reported being advised of alternative accommodation by police in at least one instance.

3.8 Confiscation of property

Table 10 reports responses on the question as to whether confiscation of property accompanied an eviction. The results in this case are very startling. No Norwegians reported a loss of property while half of the foreign sample indicated their possessions had sometimes or always been confiscated. The figures are also significant for ethnicity. The figures reveal that 61 per cent of persons of Roma and African descent report confiscation while only 26% of the others reported such treatment (statistically significant at the 5 per cent level). The former were almost four times more likely to lose their possessions during an eviction.

Table 10. Confiscation of Property

	Norwegian	%	Non-Norwegian	%
Never	5	100%	26	52%
Sometimes	0	0%	9	18%
Always	0	0%	15	30%
Total	**5**		**50**	
	Caucasian	%	Roma/African	%
Never	20	74%	1	39%
Sometimes	2	7%	7	25%
Always	5	19%	10	36%
Total	**27**		**28**	

A closer examination of the information provided by Roma respondents in particular indicates that this loss of possessions can be serious. Many reported that their identification documents were confiscated in addition to clothes, blankets, and shelter fixtures.

> We were in Grønland in the park [when the police came] and we said we had nowhere else to sleep. We needed time to get our blankets and coats, but weren't allowed and my things were thrown into the trash by the cleaning people that were called by the police. I said it was my jacket and I needed my jacket but the police said 'no' and it was thrown away. (EU national, Roma, female)

With the exception of the confiscation of identification documents, respondents stated that all other items were taken by *Rusken*, a municipal programme whose mandate is to keep Oslo clean and tidy.

In an interview conducted with the Director of *Rusken*, Jan Hauger, he noted that since 2010, increasingly private actors, businesses, and the police have called on Rusken's patrol unit to dispose of litter and clear public areas in which individuals have slept. Rusken's experience is limited to the cleaning up of areas where larger groups have slept outdoors and Hauger states to have not encountered Norwegian nationals in these activities. Hauger spoke of the necessity of clearing the area of items, otherwise illegal sleeping would likely continue the following even. Individuals who sleep

rough are first instructed by the police to gather their personal property. Hauger holds that it is Rusken's policy not to confiscate or dispose of personal items. However, tarpaulins, mattresses, cardboard, and in some instances clothes, were not identified by Rusken as personal property:

> Then they [the police] instruct individuals to bring belongings, which are of a personal nature, with them. They are given time to clean up, and for the most part, this results in that they leave behind, clothes, which they have most likely taken from UFF- and Fretex- donation containers.
>
> …
>
> What we [*Rusken*] take with us is what they leave behind. As I have mentioned previously, this is usually cardboard and mats they lie on at night, and clothes that they have had on at night. Often, it rains at night and these items are wet, so they are not private property. What is left behind is per definition trash.

However, as we shall discuss later, it is not clear that even this formal policy conforms to the requirements of the European Convention of Human Rights.

3.9 Force and Violence

During the survey, we inquired as to whether force was used during the eviction. Fifteen of 56 respondents who answered the question indicated that force had been used during the eviction. There was a higher rate of force used for respondents of Roma and African descent (34% against 17%), but the difference was just outside the zone of statistical significance.

We also asked respondents to describe the eviction process and some response indicate concern – particularly as the use of force appears to be unprovoked or unnecessary. While a few respondents in the Norwegian group noted problems, including violence, with private security patrolmen, none of the Norwegian respondents indicated police brutality whatsoever. In fact, many spoke of maintaining a good relationship with the police, and felt that the police provided them with security at night:

> [Explaining why he believed he was asked to move by the police] Because there were too many of us [sleeping] at the same place. If the groups are too big, then we are woken up and asked not to sleep there. I have no problems with the police, on the contrary. They take care of us at night. 058 (Norwegian, male)

However, the situation was described rather differently by Roma respondents:

> It all depended on the police officers; some were kind, but some seemed angry with us, as if they wanted to push us to go faster, then we would barely be able to take our stuff and go. (EU national, Roma, female)
>
> I was woken up by shouting and kicking and was told to go leave the place where I was sleeping. I had just enough time to take luggage and go. (EU national, Roma, male)
>
> We were sleeping in Gamlebyen by the ruins and bridge. They would look for us with flashlights, 5-6 policemen. They would wake us up, sometimes by kicking us. They don't take Norwegians, just us. Sometimes things taken by trash collectors afterwards. They have no respect for us. (EU national, Roma, male)

3.10 Racist speech

Roma respondents reported widely varying police practices and forms of interaction. Approximately half the respondents reported experiencing police who were courteous. At the same time, a significant number indicated the use of abusive and racist speech. This included English and Norwegian words but also increasingly the use of Romanian and Roma words. One Roma woman reported the following:

> We were at the ruins at the museum here [Gamlebyen]. We were sleeping there and the police arrived with about 4 cars, with the sirens on. We tried to run away because they would ID us and said they would put us in jail. We were taken to the police station …. While many other times we were kept for two hours, this time it was seven hours. We got a translator and were asked to choose whether to pay a fine or be put in jail. We said we would pay so that we could go, but that we did not have that amount of money. My daughter and I cried, we didn't know what we had done wrong.
>
> At the ruins, the police, they would say 'go to Romania' [in English]. They would take us then the cleaning services would take everything: luggage, clothes, and blankets.
>
> We are constantly asked for identification, we are also frisked. We are told 'fuck you, Romanians', 'If you don't like it, go back to, Romania' [English translation]. We are also chased away from parks, when eating and sitting.

Other examples include:

> It was raining, we were with 4, we put our clothes on and went to look for shelter. We were offended 'fuck you, fuck you' (Eng), 'go to Romania' (Eng). They kicked our stuff. (EU national, white other, male)
>
> I was sleeping; the police came and told me to go. Police: "Go to your country. This is not your country. You don't have the right to stay here." There is a lot of racism here. (EU national, Roma, male)
>
> Some Sub-Saharan African respondents spoke of being very visible due to the police and private security patrolmen on account of their skin colour. If they woke up and saw the police or private security approach them, they simply chose to leave before being confronted. Here are two responses:
>
> I never stay in one place for too long to avoid embarrassing myself. I know when to leave.
>
> Sub-Saharan Africans undergo inhumane treatment and discrimination. The laws are not racially biased. Police treatment is discriminatory. We are intimidated due to our skin color. … We have invisible tears in our eyes, which we cannot express. We did not create ourselves.

3.11 Dumping and Impunity

When we asked survey respondents about evictions before the introduction of the legislation, almost all Roma respondents reported a police practice of "dumping" that was regular before May 2013. While we were concerned with establishing eviction patterns, we did not expect to be informed about this type of practice. Yet, it was referred to in numerous interviews. Police would reportedly round up an individual or several persons and drive them outside of Oslo. Many respondents identified one police officer who was often involved in the dumping practices and continually racist in his speech.

One Roma woman told us the following story of being dumped 40 km outside Oslo:

> In 2012 to 2013 (last event in April): I was in Grønland, we were about 20 women, and they [the police] put us in the van and took us out of town and dropped us of one by one. It was maybe 40 km out of town. Some of us weren't able to come back that night, they got lost, families were separated. It used to be this one police officer, and he laughed when we asked why [he was doing this] he said 'go back to Romania' [Eng]. I asked him for his police identification card but he didn't want to show it. One time, when they stepped on my food, in the park, I cried and asked and he said 'go back to Romania' [Eng]. I tried to film them, the woman [police officer] tried to break my phone, we were drinking coffee at the Indian place, the only place where we could go, we got chased away. We were often told [prior to 2012] 'fuck off', 'go back to Romania'.

The practice of dumping has been the subject of a number of complaints to the *Spesialenheten* (The Norwegian Bureau for the Investigation of Police Affairs). In Case No. 6. Ref no. 489/12 123, five Romanians of Roma origin complained that they were dumped outside Oslo on several occasions. The Spesialenheten found that such dumping was only permissible in accordance with a decision of the Norwegian Supreme Court (Rt. 1995 s. 1195). Police could drive away persons if (1) it was a necessary means of ensuring public order in the city centre during the night on account of drunkenness or anti-social behaviour and (2) it was only a short distance and there was public transport available.

The Spesialenheten criticised strongly the police's action but did not proceed to prosecution for lack of sufficient evidence. They also ordered the Oslo police chief to investigate the practice and criticised the failure of police to record the dumping in their logbooks. In their report of 2012, the Spesialenheten indicated that it had come to a similar conclusion on similar complaints, including one in which the Roma complainants had been driven to and dumped in Sweden. They noted that it was highly doubtful that such a practice was lawful and criticised the lack of documentation of the practice in logbooks.

The documentation in this report indicates that the practice may have been even more systematic than assumed by the Spesialenheten. In this respect, it is arguable that a full investigation by the Oslo police, Oslo municipality, and the Likestilling and Diskriminering Ombud (LDO) should be conducted. Moreover, there are some indications the practice has been used since that time. For example, a man of African descent was driven out of Oslo by the police and dumped in a forest just six days after the introduction of the homelessness prohibition.[140] We have also received a report of a Roma woman being dumped in May 2015.

3.12 Private Security Actors: Securitas

Finally, a significant number of both Norwegian and non-Norwegian respondents reported problems with Securitas, a private security agency. The problems included incidents of violence and, with the exception of Norwegian respondents, racist comments. In some cases, a relationship might be established between a security guard and an individual but then changed with the deployment of new security guards. A female non-Roma national reported that "the new ones [private security patrolmen] always ask us to move until they get to know us or the old ones tell them we're alright." The role of private security actors was beyond the remit of this report but their presence in many of the accounts

[140] Henrik Arneberg, Batongoffer: - Jeg ble kjørt ut av byen og dumpet i skogen, Aftenposten (Osloby), 17 February 2015, http://www.osloby.no/nyheter/krim/Batongoffer---Jeg-ble-kjort-ut-av-byen-og-dumpet-i-skogen-7890825.html This was also criticised later by the Spesialenheten.

by respondents suggest that their role in enforcing public laws require investigation. This is of particular concern since they receive markedly less training than police and there are no clear avenues of accountability for their behaviour.

4. Compliance with Human Rights: Analysis

4.1 Cruel, Inhuman or Degrading Treatment

This report began by asking whether the Oslo prohibition amounted to inhuman or degrading treatment. In order for an eviction from a sleeping place to contravene this standard, it was determined that two factors are most likely required under the European Convention on Human Rights. These are: (1) the presence of racial motivations or speech or the use of excessive and unnecessary force; and (2) the eviction of an individual without recourse to alternative accommodation.[141] As the European Court of Human Rights stated in *Moldovan v Romania*:

> the Court finds that the applicants' living conditions and the racial discrimination to which they have been publicly subjected by the way in which their grievances were dealt with by the various authorities, constitute an interference with their human dignity which, in the special circumstances of this case, amounted to "degrading treatment" within the meaning of Article 3 of the Convention. [142]

If the empirical findings in this report are correct, then it is arguable that Oslo police have engaged in inhuman and degrading treatment during the implementation of this regulation. Turning to the first limb of the test, there appears to be a strong *discriminatory* element to the rate and frequency of eviction. In our survey of homeless persons in Oslo, non-Norwegian respondents reported eviction more than twice as often as Norwegian respondents, which was statistically significant. Further, EU nationals of Roma origin reported a higher frequency of eviction than other respondents. Almost two-thirds (59%) reported experiencing constant eviction (against a quarter of other foreigners).

Discriminatory treatment was evident in the nature of the evictions. EU nationals of Roma descent and migrants of African descent reported much higher rates of confiscation of property and use of force. Such police behaviour was also identified in the FAFO report.[143] Many Roma reported the confiscation of personal identity documents. Abusive speech was also reported by half of Roma respondents and many respondents of African descent. However, the interviews paint a picture of a police culture that varies widely between different individual police officers. Some respondents indicate that the police were civil and courteous, almost apologetic. Other reported racist and abusive speech. A typical example of the latter type of police conduct was reported as follows: "We are constantly asked for identification, we are also frisked. We are told 'fuck you, Romanians', 'If you don't like it, go back to, Romania'".

Turning to the second limb, it is clear that police do not satisfy themselves that individuals have an alternative to an eviction or that public order concerns justify removal. The pattern of police evictions against foreigners in particular seems to reveal a blanket rather than contextual practice. There is no consideration of whether there is a disturbance to the public order and there is no consideration of whether an individual has access to alternative accommodation. Individuals were evicted regardless

[141] See section 2.1 and particular the cases of *Moldovan and others v. Romania (no. 2)*, (Application no. 41138/98, 64320/01), 12. July 2005 and *Yordanova & Ors. v. Bulgaria,* Application no. 25446/06.
[142] Ibid, para. 103 and 113.
[143] A. Djuve, J. Friberg, g. Tyldum and H. Zhang, *When poverty meets affluence: Migrants from Romania on the streets of the Scandinavian capitals* (Oslo: Fafo and Rockwool Foundation). pp. 106-108.

of the temperature or weather. As one stated, "We had to walk away at 4 am and got threatened with prison if we didn't go. It was in December and it was very cold… I asked where else to go in this rain, they just said go." Moreover, only twelve of those evicted were given a substantive reason for why they could not remain in a particular place. The collaboration between the police and Rusken suggests a routine approach to evictions rather than one driven specific disturbances to public order.

In Oslo, emergency accommodation is available to permanent Norwegian residents but only partly to foreigners with temporary residence.[144] The Red Cross' and Church City Mission's emergency shelter accommodations provide only 100 beds a night to foreigners and have documented that demand greatly outstrips supply most of the year.[145] The result is paradoxical situation from the perspective of the inhuman and degrading treatment standard. The group with the least access to alternative accommodation in Oslo is the group most regularly targeted under the Oslo prohibition.

Therefore, in our opinion, there is reason to believe that the Oslo police have engaged in specific acts during their implementation of the regulation that in some cases may amount to inhuman or degrading treatment.

While this conclusion is focused on the actions of police, it also has general implications for the regulation itself. The broad discretion provided by the Oslo prohibition provides an opportunity for abusive treatment. The Constitutional Court of Hungary and various American courts have noted the same problem in relation to similar prohibitions on sleeping out: they over-empower the police.[146] Such regulations provide police with broad and expansive authority over homeless persons, which can easily result in arbitrary action. Thus, attention also needs to be directed towards the role of the regulation in creating an environment conducive to the abuse of rights. Under Article 3 of the European Convention on Human Rights, Norway has a positive obligation to investigate whether its regulatory and institutional framework facilitates rather than prevents cruel, inhuman or degrading treatment.

4.2 Rights to Privacy and Freedom of Movement

The Oslo prohibition potentially implicates two other civil rights in the European Convention on Human Rights and the International Covenant on Civil and Political Rights. The first of these considered was the ***right to privacy, family life and respect for the home***. Evictions from a place of sleeping may constitute an interference of each element of this right.[147] However, the right is relative. Interference by the state with these rights is justifiable if it passes a proportionality test. This requires that the Oslo

[144] Persons ineligible for social housing schemes in Norway are individuals without permanent residency or citizenship in Norway. Since 2001, the Norwegian Ministry of Labour and Social Affairs has produced two regulations (see FOR-2014-03-14-278 and FOR-2011-12-16-1251, available at www.lovdata.no) stipulating that when individuals who are not covered under Norwegian housing social schemes are unable to support themselves they have an emergency right to financial benefits and temporary housing for a short period of time. Under these regulations, Oslo municipality and Norwegian Labour and Welfare Administration (NAV) offer emergency, short-term housing alternatives for vulnerable individuals. Aid is granted until the individual can, in practice, leave the country. Persons are required to actively contribute to their departure, including that the necessary travel documents are obtained. These services were in effect before the implementation of the ban on sleeping rough in Oslo and they continue to be so.

[145] *Statistics: Emergency Shelter, 30 June 2015*, n. 25 above.

[146] See discussion in sections 2.1 and 2.3

[147] Although the right to family life only applies when a family is a sleeping together.

prohibition represents a legitimate aim; is necessary in a democratic society; and provides the necessary due process protections.

Does the law on its face pass a proportionality test? First, there are real doubts over whether the regulation serves a *legitimate aim*. The background to the adoption of the regulation suggests that its aims are rather remote from its substance and are also problematic in orientation. The police and municipality do name several instances of rough sleeping that caused public order problems. Such instances should be taken seriously, but these events do not appear to be the principal reason for the new regulation. The Oslo police already possessed the legal power to tackle such concrete public order problems. Instead, the aim of the law seems to be to reduce or indirectly ban begging and thereby reduce the number of poorer foreigners in Norway. Indeed, the police proposed the law in lieu of a begging ban.[148]

While certain policies aimed at reducing the incidence of begging may be positive, the Oslo prohibition does not appear aimed at trying to solve the underlying problem of poverty. Rather it is meant to be an effective substitute for a begging ban. Given that a begging ban is likely to violate the freedom of speech,[149] these motives behind the law should be scrutinised closely. In addition, some political parties explicitly or implicitly indicated that the Oslo would only target foreigners.[150] Not all parties gave this express reason. However, if the law were intended to be only applied to one group (in this case foreigners), regardless of a person's behaviour, it is doubtful that the aim of such regulation could be considered legitimate.

Secondly, it is far from clear that the law is *necessary* in a *democratic society*. In determining whether an eviction law sufficiently balances different interests, the European Court of Human Rights examines whether it protects an "individual's effective enjoyment of intimate or key rights", including "physical and moral integrity" and "a settled and secure place in the community". These protections are not built explicitly or implicitly into the regulation. The Oslo prohibition can be applied routinely to individuals, regardless of whether there are minimal or drastic consequences for their physical and moral integrity and a place to sleep. It is also applicable regardless of whether sleeping out creates significant or negligible public order disturbances. Thus, in achieving the formal desired aim of the regulation (reducing public disturbance), less intrusive means would arguably be available. A regulation could be adopted that sought to protect basic rights while also ensuring that public property and order was not affected.

Instead, the law constitutes an absolute prohibition. Inflexible laws customarily raises problems in a proportionality test. Even if a law could be considered as seeking to achieve a legitimate aim, its absoluteness automatically excludes consideration of countervailing rights and interests. In the adoption of the law, the municipality did attempt to make one exception. The language of the

[148] See discussion in section 3.1

[149] See the US decision of *Speet and Sims v Schuette*, Court of Appeals, Sixth Circuit, No. 12-2213, 14 August 2013 and the judgment of the Austrian Constitutional Court of 2012, reprinted in 39 Europäische Grundrechte-Zeitschrift (2012), pp. 762 *et seq.* For a discussion of the Austrian case, see V. Aga, 'Kronikk: Tiggeforbud kan bryte med ytringsfriheten', *Aftenposten*, 11 September 2014, available at http://www.aftenposten.no/meninger/kronikker/Kronikk-Tiggeforbud-kan-bryte-med-ytringsfriheten-7699830.html

[150] See discussion in section 3.1 and the quotations of statements by FRP members.

prohibition was amended so that it would not extend to sleeping in cars. However, even this minor exception has little effect. The broad and sweeping nature of the language has permitted its interpretation and use as an absolute prohibition. After the adoption of the law, it was stated that it would apply to sleeping in cars and Roma respondents reported being confronted by police while they slept in motor vehicles.

Thirdly, the law provides no requirements for *due process*. At a minimum this would require some form of warning or notice procedure and arguably the existence, or some procedure for checking, of the availability of alternative accommodation.

Each of these requirements could be equally applied to the operation of the law in practice. From the available evidence, the police have not attempted to ensure that the Oslo prohibition is interpreted and applied in accordance with the right to privacy, family life and respect for the home. This applies to both the necessity of the application of the prohibition in each individual case and the provision of due process. It is only in the case of homeless Norwegians, that the police seem to adopt a consistent proportionality-based approach. If there are no public order concerns, the police leave this group alone and permit them to sleep in public places. If the police had concerns, a warning was given (40% of Norwegians reported receiving a warning against 17% of non-Norwegians). However, it was much rarer to find a proportionality-based approach applied to foreigners. Only twelve of 55 reported receiving reasons that were not legal and possibly related to conduct. The rest reported receiving no reason or that it was on the basis of a law. Moreover, very few received warnings or information on alternative accommodation. Instead, the standard police approach was the seeming invention of a punishment in the cases where arrests were not made. Respondents consistently reported that were "banned" from a certain place for 48 hours.

The second relevant civil right that involves a proportionality test is the ***freedom of movement and choice of residence*.** The findings for this right would largely mirror those of the right to privacy discussed above. The empirical findings raise real doubts over the legitimate aim of the regulation and whether it is proportionate to the interests protected. Importantly, in its case-law on the right to freedom of movement and choice of residence, the European Court on Human Rights has also required that any regulation of freedom of movement requires regular reassessment. This does not appear to have occurred.

4.3 Right to Non-Discrimination

Serious concerns were raised about the possibly discriminatory nature of the regulation before it was passed. Non-discrimination represents one of the basic and most fundamental principles in international human rights law. The relevant official act that distinguishes between groups does not need to be direct. It may be intentional ("purpose") or indirect ("effect").[151] A neutrally worded law can therefore be discriminatory if it (1) were so intended or (2) has the effect of disproportionately depriving a particular group of its rights or freedoms. Alternatively, (3) the implementation of the law may simply be discriminatory.

[151] Ibid.

In determining whether the authorities have engaged in discrimination a proportionality-like test is applied: a distinction, exclusion, restriction, or preference may be justified if it meets objective and reasonable criteria.[152] While some laws may be more legitimately directed at non-nationals (e.g. migration laws), any such distinctions must be justified. In the present case, the passing of a regulation concerning *public order and use of public property* that was *only* directed at legally resident foreigners is highly unlikely to be reasonable and objective. Thus, the key question to be determined is whether the law was directed in intention or effect at foreigners.

There is some evidence that the law was discriminatory in *intent*. The statements by the national leader of the FRP party leave no doubt as for whom this law was intended. She stated: "This proposal concerns foreign beggars not drug users or other groups."[153] Statements from the Oslo police and members of the Conservative party suggest that the law was targeted at a particular group, foreign nationals of Roma origin. In justifying the law, they only cited examples of foreigners causing public order concerns through rough sleeping. Moreover, they never provide an affirmative statement that the law will be applied to all groups in the same way. It is *only* the Liberal party in the Oslo municipality that makes explicit that its vote for the law is premised on the regulation not being applied in a discriminatory manner. However, it remains difficult to prove decidedly that lawmakers at Oslo municipality did have discriminatory intent. This is because members of FRP, Conservative and the Labour parties also cited various public order problems and the Liberal party premised its vote on the law's non-discrimination application. Proving intention requires proving prejudice behind a series of statements that are put in objective and general terms.

However, the evidence we have accumulated is relatively clear in showing that the regulation is discriminatory in *effect*. The law is more *regularly* and more *harshly* applied to foreigners of certain ethnicity, especially individuals of Roma and African descent. Whether it concerns the frequency of eviction, the use of force, application of warnings, information on alternative accommodation, and confiscation of property, foreigners were more likely to be affected. All of these survey findings were statistically significant. In section 3 of the report, we examined whether this differential treatment may be justified. Perhaps foreigners were engaging in problematic practices such as extensive littering in places where they slept. However, we found it difficult to identify a difference in police treatment according to an individual's actions and their use of public space. Instead, it seems that eviction has been routinized. Individuals were regularly arrested or asked to move on without any specific substantive reason.

Combining the evidence of the law's effect with the background to its adoption, we would suggest that the law is *indirectly* discriminatory. Despite its neutral language, its application is unfairly and disproportionately affecting foreigners. This is partly comparable to the case of *L. R. v. Slovakia,* decided by the UN Committee on the Elimination of Racial Discrimination. In that case, the municipality withdrew a housing programme and made no reference to the affected Roma,[154] but the local petition for the annulment "was advanced by its proponents on the basis of ethnicity" and "was *understood* as

[152] Human Rights Committee, *General Comment 18, Non-discrimination* (Thirty-seventh session, 1989), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 26 (1994), para. 13.
[153] See Frp støtter forslag om utendørs soveforbud i Oslo', *VG*, 2 February 2013 and discussion in section 3.1
[154] *L. R. v. Slovakia*. para. 10.4.

such by the council as the primary if not exclusive basis for revoking its first resolution".[155] Moreover, the statistical and qualitative evidence provided in this report requires Norway and the Oslo Municipality to provide reasonable and objective justification as to why the regulation is not discriminatory in effect. In *D.H. v Czech Republic*, the European Court of Human Rights notes that the provision of statistics to prove indirect discrimination can amount to *prima facie* evidence, which shifts the burden of proof to the state.[156]

4.4 Other rights and issues

The report has found authorities regularly confiscate property during evictions. Under international law, it is clear that homeless persons have a right to their possessions. The European Court of Human Rights has made this clear. In *Öneryildiz v Turkey*,[157] the Court determined that "notwithstanding" the "breach of the planning rules and the lack of any valid title" in the case of an informal settlement, the applicant was "to all intents and purposes the owner of the structure and fixtures and fittings of the dwelling he had built and of all the household and personal effects which might have been in it". [158] Compensation was payable for such destruction.

Obviously there are some limits: property that significantly obstructs public spaces requires public intervention. The interview with Rusken indicated that in some cases, there were larger items which could not be moved immediately. However, the general policy of destroying immediately all property that homeless people cannot take with them during an eviction process is problematic if not unlawful. A proportionate policy is necessary under Article1 of Protocol 1 to the European Convention on Human Rights. This would seemingly require a process by which homeless persons could recover their property from the state within a fixed period. Moreover, compensation must be paid for the property that is wrongfully destroyed.[159]

The claims that police confiscate identity documents are of significant concern and require a formal investigation. In our interviews, we encountered frequent reference to a phenomenon by which Roma individuals were forced to attend a police station to recover their identity papers/documents. They would then be asked to sign a document in Norwegian in order to retrieve them. However, they were unaware that the signature amounted to an admission of a criminal offence. If this constituted the second criminal offence committed in Norway, then they could be deported from Norway in accordance with the revision of the immigration law. We thus encountered numerous stories of family members who never returned from the police station and later reported that they were deported back to Romania. These allegations require investigation.

The report has also revealed a number of other issues of concern. The first of these is the systemic and previous dumping of Roma and Africans in forests with impunity before the adoption of the blanket ban on sleeping rough in May 2013. Such action constitutes a clear deprivation of liberty and freedom

[155] Ibidpara. 10.5.
[156] *D. H. and Others v. the Czech Republic*, *no. 57325/00*, ECtHR, 13 November 2007, para. 189.
[157] *Öneryildiz v Turkey* (Application No. 48939/99), European Court of Human Rights, 18 June 2002.
[158] Ibid.
[159] For example, Fredrikstad municipality recently compensation for the unlawful destruction of six campervans belonging to Romanian nationals. See; S. Nilsson, 'Nå får romfolket pengene sine', *Fredrikstad Blad,* 11 February 2014, http://www.f-b.no/nyheter/nyheter/na-far-romfolket-pengene-sine/s/2-2.952-1.8287602.

of movement unless there were clear exceptional circumstances. In Rt. 1995 s. 1195), the Supreme Court of Norway clearly indicated the situations under which such a police action could be justified: it was a necessary means of ensuring public order in the city centre during the night on account of drunkenness or anti-social behaviour or it was only a short distance and there was public transport available. These do not cover the cases we have catalogued. The practice was likewise criticised by the *Spesialenheten* (The Norwegian Bureau for the Investigation of Police Affairs) in Case No. 6. Ref no. 489/12 123, who criticised the lack of use of police logbooks during such actions. Our report suggests that the practice was much more widespread and serious than assumed by the Spesialenheten and that the practice has continued in isolated incidents since May 2013. This requires renewed investigation and a proper remedy to victims.

The other matter of concern is the seemingly unregulated use of private security actors. Both Norwegians and foreigners experiencing homelessness recounted negative experience with the security agency, Securitas. We do not have sufficient information on the nature of these interactions but the pattern in the interviews reveals a significant number of security guards who engage in racist and abusive speech and possibly lack sufficient training for the tasks to which they are assigned. This requires further and proper investigation.

5. Recommendations

In championing the Oslo prohibition, the Oslo police and municipality suggested that there were no alternative policies in dealing with "the influx of foreign" persons without significant means of support. In 2014, we expressed an understanding that the increased number of poorer Eastern European citizens is challenging for the Oslo police and local authorities.[160] However, as we indicated, solutions need to be found that do not implicate Norway's human rights obligations. Indeed, the response of the Oslo police to our letter of inquiry was to indicate that the core issues were "migration" and "social" rather than concerns about "criminal" behaviour.[161]

The aim of this report is *not* to identify the proper or ideal public policy in relation to the presence of poorer EU nationals. There are many different configurations of policy which have been tried across Europe and which may be appropriate to the Norwegian and Oslo situation. For example, the policy of the Stockholm police seems to more closely reflect the requirements for proportionality and non-discrimination. Sweden also recently appointed a National coordinator for work concerning vulnerable EEA citizens in Sweden whose task it is to help with national coordination between Swedish municipalities and the effective use of Swedish aid funds to Romania (see Annex 3). We note that the Council of Europe Commissioner for Human Rights has also stated that Norway should do more to provide "emergency accommodation to those in need, including immigrants".[162]

Instead, the principal message of this report is that any policy must comply with the state's human rights obligations. We therefore make the following recommendations:

5.1 Suspension and Compliance

The municipality of Oslo should:

1. Suspend the regulation immediately and investigate its effects.
2. Require that any eviction of homeless persons be carried out in accordance with human rights law.
3. Develop a clear policy for the confiscation of property that is conformity with human rights law.

5.2 Investigations

The Government of Norway, the municipality of Oslo and the Oslo police:

4. Should investigate and remediate where appropriate the specific claims of degrading treatment and discrimination raised in this report.
5. Investigate the nature of police treatment and why it varies between individual police officers.

[160] Letter from Norwegian National Institution for Human Rights to Oslo Municipality, 15 February 2013.
[161] Letter from Oslo Police to Norwegian Centre for Human Rights, 8 December 2014, p. 5.
[162] 'Norway: people with disabilities and Roma need more attention', Council of Europe, 18 May http://www.coe.int/en/web/commissioner/-/norway-people-with-disabilities-and-roma-need-more-attention

5.3 Human Right Compliant Policy

6. We recommend that the Government of Norway and the Municipality of Oslo develop a human right compliant approach to addressing issues associated with a higher number of persons sleeping in public places in Oslo.

Annex 1. Survey

INTRODUCTORY PROTOCOL:

This survey will explore the situation of individuals sleeping outdoors. Thank you for agreeing to participate. All information will be held confidential, unless stated otherwise, your participation is voluntary, and you may stop at any time. The survey will take no longer than 10 minutes.

SURVEY QUESTIONS:

1. Nationality: 1 Norwegian 2 EU28 3 Non-EU

2. Ethnicity: 1 White Norwegian 2 White other 3 Minority Norwegian

4 Roma 5 North-Africa and Middle East 6 Sub-Saharan Africa

7 East Asia 8 South-East Asia 9 Hispanic 10 Indigenous

11 Mixed 12 Other

3. Gender: 1 Female 2 Male 3 Other

4. Date of Birth: 1 Prior 1965 2 1965 -1985 3 1985 - present

5. Marital status: 1 Single 2 Married 3 Other

6. Dependents: 1 One 2 Two 3 Three 4 Four 5 Five … 95 None

7. Sources of income: 1 None 2 not a fixed salary 3 fixed salary 4 both

5 Other (6 begging, 7 recycling, 8 street entertainment, 9 shoe shine)

8. Disability: 0 No 1 Yes

9. Education: 1 None 2 Primary 3 Secondary 4 High school

5 University and above

10. Language(s): 1 Norwegian 2 English 3 Romanian

4 Romani 5 Other

11. Reading skills: 1 Functional illiteracy 2 Basic literacy 3 Adequate literacy

4 High literacy

12. Have you ever slept rough in the past year in Norway? (If no, please go to Q 27)

0 No 1 Yes

13. Where was this?

13 a. Type of location: 1 street 2 park 3 under bridge/over pass 4 train station 5 bus stop 6 public transportation 7 camping (urban) 8 camping (nature) 9 squatting 10 vehicle 11 homeless shelter 12 other

13 b. Geographical location: 1 city centre 2 outside the centre 3 outskirts 4 out of the city 5 other

14. When you were sleeping outside, did the police ever ask you to move? (If no, please go to Q 26)

0 No 1 Yes

15. How often?

1 Hardly ever 2 Monthly 3 Weekly 4 Every time

16. What were the reasons the police gave you?

1 No reason 2 I did not understand the reason 3 A law 4 Other

17. Before the police asked you to move, were you given warning? (if no, please go to Q20)

0 No 1 Yes

18. What type of warning were you given?

1 Verbal 2 Written 3 Both

19. Did you understand (the language) of the warning?

1 No 2 Yes 3 To some extent 4 To a large extent

20. How much time were you given to leave?

1 None (had to leave immediately) 2 24 hours 3 48 hours 4 More than 48 hours

21. When during the year were you removed?

1 Spring 2 Summer 3 Fall 4 Winter 5 All

22. When during the day were you removed?

1 Day 2 Night 3 Both

23. What were the weather conditions?

1 Warm 2 Dry 3 Cold 4 Wet 5 All types of weather

24. Were you able to take all of your belongings with you?

1 No 2 Yes 3 Sometimes

25. Did the police tell you about somewhere else where you could sleep?

0 No 1 Yes

26. Have you been physically removed by the police in Norway from a place where you were sleeping in the past year? (If no, please go to Q27)

0 No 1 Yes

27. Have you been asked to move by the police in Norway from a place where you were sleeping before the spring of 2013? (If no, please go to Q29)

0 No 1 Yes

28. Did the Norwegian police physically move you from a place where you were sleeping before the spring of 2013?

0 No 1 Yes

29. Could you please describe what happened when you were removed?

Annex 2 – Collection of Data

Data for many but not all of the surveys were collected with the assistance of the Oslo Red Cross, Oslo City Mission, Møtestedet i Oslo, and =Oslo. Non-Norwegian respondents were questioned at the Oslo Red Cross' and Oslo City Mission emergency shelter accommodations, Møtestedet, and on the street. Oslo Red Cross and Oslo City Mission provide bedding for foreigners without access to Norwegian social housing schemes. Two such emergency shelters exist in Oslo, one for females and the other for males, each housing 50 beds. Møtestedet is a social cafe for persons suffering from substance abuse and homeless persons. =Oslo is a street magazine sold by vulnerable persons who are, for various reasons, unemployed. Surveys from Norwegian respondents were collected at =Oslo headquarters where the sellers collect the magazine and their profits.

The emergency shelters of the Oslo Red Cross and Oslo City Mission Shelters are open every day between 22.00 – 07.30. Guests enter between 22.15 -23.00, and they sleep in a common hall. Lights go out at approximately 23.30-23.45. Surveys were collected during 22.15 – 23.30. The shelters do not have a common sitting area, nor are beds sectioned off in make-shift cubicles. Given this limit to personal space, conducting the survey in private areas was not possible. At the men's shelter, generally, groupings of guests formed in according to nationality or similar geographical location. We therefore sought to collect data from each such formation. At the women's shelter, guests grouped by region of origin in Romania. We sought to include different regions in the survey. Of the male guests, we observed that many individuals who declined to participate in the survey were those who did not have a working visa in Norway or were otherwise residing on an illegal basis, and for that reason felt uncomfortable participating in the survey. Of the female guests, some declined to participate, as they thought this would be detrimental to their stay in Norway, should they relate their experiences with Oslo police. Others, especially Roma men and women, noted respondent fatigue from participating in interviews for other projects. At Møtestedet and on the street, we conducted random sampling.

Sellers of the =Oslo magazine can purchase magazines and collect their sales earnings at the magazine's headquarters, weekdays from 09.00 - 16.00. The headquarters offer a small sitting area where sellers can eat and socialise. Most interviews were conducted at the eating area, or when respondents wished for more privacy, directly outside the headquarters. Though several thousand magazine sellers are registered at =Oslo, approximately 150 individuals regularly purchase and sell the magazine. A significant majority of those sellers who were observed were male. All female sellers who entered the headquarters were approached. Of these, more than half did not fit the survey profile, as they generally did not sleep rough or had not done so in the survey time frame. The others, for various reasons such as noting scepticism towards the project's ability to affect change and respondent fatigue, were unwilling to participate. Fewer men than women noted these reasons when declining to participate. Where they declined to participate, many noted that they were at work and could not spare the time to be interviewed. When conducting some of the interviews, the researcher observed that some respondents had concentration difficulty, struggled to recall past events, and at times appeared under the influence of substances. When this occurred and the degree was such to put into question the respondent's credibility, the data collected did not form part of the project.

A trial run of the survey in December 2014 revealed that some respondents had difficulty reading the questions. Some participants' reading skills were not adequate enough in the survey language, and

other respondents did not have general reading skills which were at a level to complete the survey independently. Therefore, with some exceptions, a researcher, who read aloud the questions, facilitated the process. Additionally, some Non-Norwegian respondents at the Oslo Red Cross shelters consented to participate with the assistance of a third party for translation purposes.

We note two other issues concerning the survey. First, it was challenging conducting the survey in a private, secluded area. It proved difficult while conducting interviews with both Norwegians and foreign nationals. For each group, the surveys were conducted also under time constraints: the Norwegian respondents were interviewed during their working hours, and the foreign nationals were interviewed during a hectic interval before bedtime. On the street, participants welcomed the presence of the researcher, commenting that it provided "protection" from being moved. Second, while conducting the survey, the researchers noted that Question 20 ("*How much time were you given to leave the premises* [*by the police*]*?*") caused respondent confusion. Many thought that the question referred to the quarantine period from the area where they had been sleeping outdoors. The implications of this informal police practice of "quarantining" are taken up in Chapter 4.2.

Annex 3. Swedish policies

Sweden may provide a useful illustration of more human rights compliant policies that also seek to tackle the underlying causes of a rise in sleeping rough. Similar to the Norwegian context, the influx of EEA citizens traveling to Sweden on temporary basis for a period of three to six months has increased in the last few years in Sweden.

In relation to restrictions on sleeping in public places, the Stockholm police are empowered to regulate sleeping out in public places. However, police reportedly take a more contextual approach to when they evict and use a notice period.[163] They also appear to apply the same approach to all groups, regardless of ethnicity and nationality.[164] In terms of alternative accommodation, there has been a reportedly more proactive attempt by the municipality in Stockholm to ensure that there is sufficient accommodation as well as sanitation facilities that cater to different groups.[165]

At the national level, the government has been proactive in attempting to develop more comprehensive policies to address accommodation and access to employment in Sweden as well as ensure aid to Romania and Bulgaria to address poverty is effective. In 2015, a *National coordinator for work concerning vulnerable EEA citizens in Sweden* was appointed. As in Norway, support afforded to temporarily residing EEA citizens varies not only in the amount of resources earmarked but also the kind of support granted amongst Swedish municipalities. Some municipalities have funnelled support through outreach activities, some have financed NGO initiatives, and other municipalities have worked jointly with NGOs to erect shelters and emergency travel funds for EEA citizens. However, the approach has been fragmented and the national government has recognized the need to exchange and share experience amongst its municipalities and non-governmental organizations.

The new National Coordinator is to support government and non-government bodies, including government agencies, municipalities, country councils and organisations, in their workings with EEA citizens who temporary stay in Sweden for three months. Those EEA citizens who fall within the mandate of the national coordinator are those staying for three months, and who do not have a right to residence. The aim of the national coordinator is to assist these actors in securing long-term sustainable conditions for cooperation. By tailoring the temporary support the EEA citizens receive the goal is to achieve more appropriate assistance. The national coordinator is will submit a report to the government on 1 January 2016, which will include an overview of efficient forms of cooperation, best practices amongst municipalities, country councils, government agencies and organisations.

As part of this process, Sweden also established a Fund for European Aid to the Most Deprived (FEAD). FEAD supports country efforts to provide material support for the most deprived. Sweden receives 13 million SEK annually (from 2015-2020) from the fund, and the Council for the European Social Fund in Sweden (the Swedish ESF Council) is tasked with the managing and certifying authority of FEAD funds. Concrete project applications will be announced in the fall of 2015. Generally, the proposed Swedish programme aims to raise vulnerable EEA/EU citizens' potential for social inclusion and empowerment by offering non-financial assistance such as civic information, e.g. direction to shelters, showers, and

[163] A. Djuve, J. Friberg, g. Tyldum and H. Zhang, *When poverty meets affluence: Migrants from Romania on the streets of the Scandinavian capitals* (Oslo: Fafo and Rockwool Foundation), pp. 91-2.
[164] Ibid.
[165] http://www.aftenposten.no/nyheter/uriks/Sverige-hjelper-sine-romfolk-7186610.html

toilets; information on the conditions, rights, and obligation that apply in Sweden; and initiatives that promote health and prevent illness open to EEA/EU citizens on temporary stay.