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Fines for begging? A European judgement overrules Swiss justice

A ruling by the European Court of Human Rights has put an end to the issuance of fines for begging in Geneva. This decision, based on the imprisonment of a Roma woman, has international reach.

STÉPHANE HERZOG

Can a person be fined and imprisoned simply because they were holding their hand out to a passerby? On 19 January, the European Court of Human Rights (ECHR) ruled unanimously that this practice was in violation of Article 8 of its charter, which concerns the right to respect for private and family life. “Being in a clearly vulnerable situation, the applicant - a Roma woman - had the right, inherent in human dignity, to be able to convey her plight and attempt to meet her basic needs by begging,” ruled the court. Unable to pay several fines for begging, adding up to a total of 500 Swiss francs, the woman received a sentence of five days in prison in Geneva. This was in

2015. The ECHR has now condemned this sanction for its severity. “In view of the applicant’s precarious and vulnerable situation, the imposition of a custodial sentence (...) was liable to further increase [her] distress and vulnerability,” it wrote. The court ruled that Geneva should pay the applicant 922 euros in respect of non-pecuniary damage.

It is surprising to learn that in 2008, the Federal Supreme Court had largely anticipated the conclusions of the ECHR, stating that the right to beg should “clearly be considered as (...) forming part of the personal freedom guaranteed by the Constitution.” Yet Swiss judges at the time concluded that Geneva had a legal basis for its prohibition. In Ge-

neva, the ban on begging was intended to safeguard public order, safety and peace.

No breach of public order

The ECHR did not stop at annulling the decisions taken successively by the Geneva justice system and the Federal Supreme Court regarding the outcome for the plaintiff. In its comments, the ECHR also attacked the article of the Geneva Criminal Code, voted for in 2007, which punishes all begging by way of a fine. The judges considered that begging did not represent a breach of public order; at most, it caused moral discomfort. Finally, the argument that pursuit of beggars is intended to fight against mafia networks – a fact that Switzerland was unable to prove – was problematic. For the ECHR, the Roma appeared more as victims.

A lawyer for Roma, congratulated and threatened

On 19 January, Dina Bazarbachi, a lawyer who has defended Roma in Geneva for 14 years, was emotional at the news. “Two weeks before the announcement, I feared I would lose before the court, which would have had harmful consequences on the way Roma are treated in Europe.” The ECHR’s ruling, the jurisprudence of which applies to the 47 Member States of the Council of Europe, represents the end of a judicial battle ongoing since 2008. Dina Bazarbachi has received several messages from

A Roma beggar in Geneva holding her takings. The Genevan police went as far as confiscating such takings – until the ECHR ruling.

Photo: Eric Roset, Geneva



lawyers congratulating her on her tenacity. But she has also received hate mail, including one death threat, about which she notified the police. “This shows the hatred that certain people feel towards Roma,” she says, noting that to her mind, the Genevan law on begging had been created and applied specifically with this population group in mind. Legislative debates have indeed effectively focused on the Roma and the majority of fines, if not all of them, are issued to Roma people. This situation, if it could be proven, would constitute a violation of the prohibition on indirect discrimination, underlined the court.

Geneva prepares a new law against begging

In Geneva, the ECHR decision has caused something of a stir. The Genevan public prosecutor, Olivier Jornot, who had been involved in drawing up the law against begging, has been obliged to halt all legal proceedings underway and to end the fining of people caught begging. Hundreds of fines issued no longer apply. In 2020, the Genevan police issued 3,723 fines for begging, amounting to 457,890 francs. In these operations, 5,278 francs was seized, as money considered the product of an illegal activity is confiscated from those found begging. For years, Bazarbachli has been vigorously opposing these fines, which end up being reduced by judges, in view of the vulnerable situation of Roma. “This whole system is extremely expensive. There are

other battles to fight,” states the lawyer, who deplores the launch of new cantonal draft legislation against begging by an FDP minister. Introduced at the beginning of March, this law would notably prohibit begging in any commercial or touristic street. The lawyer considers that the sanctions stemming from this legislation risk contravening the ruling of the ECHR. She is also uncertain of the political gain to be had from the draft legislation. “The pandemic has increased poverty amongst Swiss people as well. There is more solidarity for the poverty-stricken, including the Roma,” opines Bazarbachli.

Cantons under the spotlight

The court’s ruling has forced all of the cantons to examine the legal risks of convictions which could be challenged, or even result in the paying out of compensation. In Basel, a motion concerning the reintroduction of the prohibition on begging had been adopted by the parliament. The ECHR ruling has caused this process to be suspended. In Lausanne, where the cantonal law on begging draws on the Genevan legislation, the ECHR ruling is currently under review. In Zurich, where the police currently issue fines to people found begging (700 fines in 2020), a communication issued in March indicated that for the moment, the court’s ruling would not change anything.

The ruling in question has already had an impact outside Switzerland,



as in France where criminal law only prohibits begging termed “aggressive”. In February, Parisian lawyer Lionel Crusoe, a specialist on such questions, represented the Foundation Abbé Pierre and the French League of Human Rights in contesting a municipal ruling in the town of Metz prohibiting begging. “We used the European ruling in the arguments we laid before the court and we were successful,” he said.

Above: Begging may cause a moral dilemma, but it poses no threat to public order, ruled the ECHR.

Below: “BEGGAR” – a passport note by the Genevan police, with adverse consequences for this particular Roma.

Photos: Eric Roset, Geneva