EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

FOURTH SECTION

DECISION

Application no. 44002/22
Strugurel Ion DIAN
against Denmark

The European Court of Human Rights (Fourth Section), sitting on 21 May 2024 as a Chamber composed of:

Gabriele Kucsko-Stadlmayer, *President*,
Tim Eicke,
Faris Vehabović,
Branko Lubarda,
Armen Harutyunyan,
Anja Seibert-Fohr, *judges*,
John Lundum, ad hoc *judge*,
and Andrea Tamietti, *Section Registrar*,

Having regard to:

the application (no. 44002/22) against the Kingdom of Denmark lodged with the Court under Article 34 of the Convention for the Protection of Human Rights and Fundamental Freedoms ("the Convention") by a Romanian national, Mr Strugurel Ion Dian ("the applicant"), on 12 September 2022;

the decision to give notice to the Danish Government ("the Government") of the application;

the withdrawal of Ms Anne Louise Bormann, the judge elected in respect of Denmark, from the case (Rule 28 of the Rules of Court), and the appointment of Mr John Lundum to sit as *ad hoc* judge (Article 26 § 4 of the Convention and Rule 29 § 1);

the observations submitted by ENNHRI (the European Network of National Human Rights Institutions), and the joint observations submitted by Project Udenfor and SAND (non-governmental organisations for homeless people) and Stenbroens Jurister (legal assistance organisation for street people), which were granted leave to intervene by the President of the Section;

the confirmation of the Romanian Government that they did not wish to exercise their right to intervene in the present case (Article 36 § 1 of the Convention and Rule 44 § 1 (a));

Having deliberated, decides as follows:

INTRODUCTION

1. The case concerns the applicant's complaints, under Articles 8 and 10 of the Convention, about his conviction for begging in a pedestrian street in Copenhagen. Since he had previously been convicted of begging, he was sentenced to twenty days' imprisonment.

THE FACTS

2. The applicant was born in 1957. His address is unknown. The applicant was represented by Mr Asser Gregersen, a lawyer practising in Copenhagen.

3. The Government were represented by their Agent, Mrs Vibeke Pasternak Jørgensen, of the Ministry of Foreign Affairs, and their co-Agent, Ms Nina Holst-Christensen, of the Ministry of Justice.

4. The facts of the case may be summarised as follows.

5. Over several years, the applicant has spent various periods in Denmark, usually staying for around three months before returning to Romania for about one month.

6. On 20 December 2013 he was cautioned for begging and on 13 August 2015 he was convicted by a court and sentenced to seven days' imprisonment for begging.

7. By a District Court (*Københavns Byret*) judgment of 6 March 2019, the applicant was convicted under Article 197 § 2 of the Penal Code (see paragraph 12 below) of begging before 6 p.m. on a pedestrian street in Copenhagen (Strøget) on 25 January 2019. He was also convicted of insulting a police inspector on 9 November 2018 in the exercise of her functions, in breach of Article 121 of the Penal Code (see paragraph 12 below). The overall sentence was fixed at twenty days' imprisonment. The court took into account the fact that the applicant had previously been convicted of begging (see paragraph 6 above). It also ordered the confiscation of 190.50 Danish kroner (DKK).

8. The applicant appealed against the judgment to the High Court of Eastern Denmark (*Østre Landsret*), submitting, among other things, that he had alternated between Romania and Denmark for years. He had been in Denmark for about two months when he committed the offence on 25 January 2019. He was in Denmark with his adult son, who worked at a factory in the United Kingdom. The applicant was unable to make money in Romania. In Denmark he could sell newspapers (*Hus Forbi*), collect bottles and beg. The money found on him on 25 January 2019 (106 euros (EUR) and other

currencies, equivalent to a total amount of approximately EUR 135) had come from selling newspapers and collecting bottles. He could not imagine being able to get a job in Denmark because he did not know the language and because he was illiterate. It cost him around EUR 100 to travel between Romania and Denmark. He had a house in Romania, but was unable to use it. Instead, he lived at his sister's home. He had a wife and twelve adult children. He regularly sent money to his family in Romania, where there was no public income support. He used cocaine and cannabis given to him free of charge by people putting it in the cup that he had with him in the street. He had been a cocaine and cannabis user for the past eight years, but he had never bought drugs.

9. By a judgment of 11 November 2021, the High Court upheld the applicant's conviction and sentence, stating as follows:

> "Issue of guilt
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> On the basis of the evidence produced before the High Court and for the reasons given in the judgment, the defendant is found guilty as charged under count 4. In the pedestrian street of Strøget in Copenhagen, the [applicant] begged from passers-by in that he made verbal contact with them and held out a cardboard cup and shook it. Strøget is a pedestrian zone within the meaning of Article 197 § 2 of the Penal Code.
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> Sentencing
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> On 20 December 2013 the defendant was cautioned for begging in violation of Article 197 of the Penal Code, and by a judgment of 13 August 2015 he was convicted under Article 197 of the Penal Code of begging and sentenced to imprisonment for a term of seven days.
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> According to the explanatory notes to Article 197 §§ 2 and 3 of the Penal Code, any person begging in a pedestrian zone – as in count 4 of the present case – must generally be sentenced to imprisonment for a term of fourteen days.
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> On that basis and in the light of the defendant's prior convictions and the nature of the offences committed, the High Court finds that the sentence should be fixed at imprisonment for a term of twenty days. It is observed in this connection that the stand-alone penalty for a breach of Article 121 of the Penal Code would be a fine but that this is absorbed by the prison sentence imposed for the breach of Article 197, read with Article 88 § 1, of the Penal Code.
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> However – particularly in the light of the judgment delivered by the European Court of Human Rights on 19 January 2021 in *Lacatus v. Switzerland* (... no. 14065/15) – there is an issue as to whether that penalty will amount to a violation of the defendant's rights under Articles 8 and 10 of the European Convention on Human Rights ('the ECHR'), which has been incorporated into Danish law.
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> The preparatory notes to Article 197 §§ 2 and 3 of the Penal Code include nothing regarding the ECHR. The High Court finds that Article 197, including the provision on potential remission of the penalty in the second sentence of paragraph 1, should be interpreted in the light of the ECHR and the relevant case-law of the European Court of Human Rights.

Article 8 of the ECHR

It follows from Article 8 § 1 of the ECHR that everyone has the right to respect for, *inter alia*, his private life. It follows from Article 8 § 2 that there must 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 crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

In the assessment of the High Court, and as has also remained uncontested during the appeal proceedings, a sentence of imprisonment for a term of twenty days for the offence of begging committed by the defendant would amount to interference with his right to respect for his private life.

Article 197 § 1 of the Penal Code criminalises begging that causes nuisance to the public. It appears from the preparatory notes to Article 197 §§ 2 and 3 of the Penal Code that those provisions are targeted in particular at begging that generates an insecure environment, as defined in the statements on the legislature's intention in the preparatory notes and in paragraph 2.

It appears from paragraph 97 of the judgment delivered on 19 January 2021 by the European Court of Human Rights in *Lacatus v. Switzerland* that the Court does not rule out that certain types of begging, particularly aggressive forms of begging, can cause nuisance to passers-by, neighbours and business owners and can therefore justify an interference. Accordingly, an interference against begging can serve legitimate purposes as provided for in Article 8 § 2 of the ECHR, that is to prevent disorder or to protect the rights of others.

On that basis, the High Court finds that Article 197 of the Penal Code pursues legitimate aims – namely the concern to maintain public safety and order.

The penalty is warranted by law, and the essential issue is then whether such a sanction will constitute a disproportionate interference with the defendant's right to respect for his private life.

In the proportionality test carried out pursuant to Article 8 § 2 of the ECHR, an overall assessment of the specific facts of the case must be made. In the proportionality test, great weight is attached to whether, at the time of the offence under count 4, [the applicant] was in a clearly vulnerable situation where his means of survival was mainly begging, and whether he therefore effectively had no other choice. Weight is also attached to the nature and duration of the penalty, as well as the fact that the conduct exhibited by [the applicant] in respect of count 4 was neither aggressive nor intrusive.

The following is observed as to the specific factors otherwise taken into account in the proportionality test carried out pursuant to Article 8 § 2 of the ECHR:

[The applicant], who is from Romania, was 61 years of age when the offence was committed. On the basis of the information available, it appears that he is illiterate and has had no formal education. [The applicant] has not mentioned any health issues, but he stated before the High Court that he had been a cocaine and cannabis user for eight years. The extent of [the applicant's] potential abuse has not been clarified in further detail, as [the applicant] has also stated that he had not purchased cannabis or cocaine but had been given such substances by passers-by. No information has come to light that would provide a basis for assuming that [the applicant] has had any right to public income support in Denmark or in Romania. Moreover, it is accepted as a fact that [the applicant] has a low income.

[The applicant] has stayed in Denmark multiple times as he has regularly gone back to Romania where he has stayed at his sister's home for up to one month. As concerns his travel expenses, the defendant has stated that it costs EUR 100 to travel from Romania to Denmark. In Romania, the defendant has a house, to which he has no access, according to the information provided.

During his stays in Denmark, he has lived as a homeless person, sleeping on the street or in churches. He has obtained money from selling the *Hus Forbi* newspaper and from collecting bottles. The High Court observes in that connection that under the rules of the Danish deposit system, 1 to 3 Danish kroner (DKK) is payable to a person returning to a supermarket, etc. a container used for one of the drinks that are included in the deposit system.

When searched on 25 January 2019, [the applicant] was found to be in possession of cash amounting to the equivalent of more than DKK 1,000. He has further stated that he has sent money to his family in Romania on a regular basis.

The High Court finds that [the applicant] cannot be considered to have been in a clearly vulnerable situation where begging was effectively his only option to ensure his own survival. Accordingly, [the applicant] has had other ways to obtain money and has been able to afford to go back to Romania multiple times to visit his family. Moreover, he was with his son, who is of working age, around 25 January 2019 and at the time of the offence he was in possession of a not insignificant amount of cash. [The applicant] has previously been cautioned and has also been given a short-term prison sentence for begging. The third instance of begging, which is the subject-matter of this case, took place at a location where the legislature has found that begging will generally generate an insecure environment for and cause great nuisance to passers-by.

Taking those factors into account, and on the basis of an overall and specific assessment, the High Court considers that a sentence of imprisonment for a term of twenty days will not constitute a disproportionate interference with the defendant's right to respect for his private life.

Article 10 of the ECHR

The High Court finds, with reference to the proportionality test in respect of Article 8 of the ECHR, that such a sentence will also not constitute a disproportionate interference with the defendant's rights under Article 10 of the ECHR."

10. Leave to appeal to the Supreme Court was refused on 18 May 2022 by the Appeals Permission Board (*Procesbevillingsnævnet*).

11. In the meantime, in a judgment of 2 February 2022 in another criminal case about begging, the Supreme Court had considered, particularly in the light of the Court's judgment in *Lacatus* (cited above), whether under Danish legislation it was contrary to Articles 8 and 10 of the Convention to punish a person for begging (see paragraph 17 below).

RELEVANT LEGAL FRAMEWORK AND PRACTICE

A. Domestic law

1. The Penal Code

12. The relevant provisions of the Penal Code read as follows:

Article 121

"Any person who, by means of insult, abusive language or other offensive words or gestures, attacks a public servant in the course of the public servant's duties shall be sentenced to a fine or imprisonment for a term not exceeding one year."

Article 197

"(1) Any person who, having previously been cautioned by the police, is found guilty of begging or of permitting a member of his household under 18 years of age to beg shall be sentenced to imprisonment for a term not exceeding six months. In mitigating circumstances, the penalty may be remitted. A caution under this provision will remain on record for five years.

(2) The requirement of a prior caution shall not apply if the offence was committed in a pedestrian zone, at a station, in or at a supermarket or on public transport.

(3) When determining the sentence, it shall be considered an aggravating circumstance if the offence was committed at one of the locations referred to in paragraph 2."

13. Article 197 of the Penal Code does not define the concept of "begging"; this concept has been determined by case-law, from which it can be inferred that the matter must relate to a request made for a gift as charity and in a personal manner causing nuisance to the public. Conversely, situations where the donor and the donee have a special relationship or where the request is made as a part of organised charity are not defined as begging.

14. According to the preparatory notes to Article 197 of the Penal Code, it is a precondition for conviction that the begging took place in a personal manner causing nuisance to the public.

15. Paragraphs 2 and 3 were inserted in Article 197 of the Penal Code by Act no. 753 of 19 June 2017, which entered into force on 21 June 2017. The reason for introducing more rigorous rules into these two paragraphs was that the government wanted to take action against foreign nationals travelling to Denmark for the sole purpose of obtaining money through begging. The city of Copenhagen had been experiencing particular problems with foreign travellers setting up "camps" in pedestrian streets, thereby generating insecure environments. It appears from the preparatory notes that pedestrian zones are defined as shopping streets primarily designed for pedestrians and where cars are generally prohibited, at least during store opening hours. Shopping streets in covered shopping centres are not considered pedestrian zones. It further appears that the provision applies regardless of whether the begging has in fact generated an insecure environment in the specific situation. It also appears that the sentence for first-time offences is normally fixed at imprisonment for a term of fourteen days where begging has taken place at one of the locations referred to in Article 197 § 2 of the Penal Code. However, sentences will always be determined by the courts on a case-by-case basis, taking into account all the circumstances of the particular

case. In the explanatory notes to the Bill by which the Penal Code was amended in 2017, the following was stated, among other things:

> "There is a need for a further strengthening of the efforts to prevent foreigners from travelling to Denmark and setting up camps in public spaces and generating insecure environments. In that connection, efforts are also required to take action against begging that generates an insecure environment. This applies to begging in pedestrian zones, at stations and on public transport, as it must generally be regarded as constituting a particular nuisance for others to experience begging in such places, and begging is frequent at such locations."

16. Amendments were made in 2017 by which an expiry provision was added to Article 197 §§ 2 and 3 of the Penal Code to the effect that the amendments would be repealed on 1 July 2020 unless, prior to that date, the Danish Parliament had extended the validity period of the amendments. An assessment carried out by the Danish National Police (*Rigspolitiet*) before the expiry date stated that the removal of the requirement for a prior caution issued by the police and the increased severity of sentences had contributed to ensuring a lower incidence of begging that generated an insecure environment. Accordingly, the National Police found that a potential repeal of the amendments made in 2017 might have a negative impact on that development. On that basis, the legislature decided to repeal the expiry provision by Act no. 804 of 9 June 2020. It can be seen from the preparatory notes to the Act repealing the expiry provision that it had been found to have had a positive effect in terms of combating begging that generated an insecure environment and that repealing the amendments might result in an increase in the frequency of begging in pedestrian zones, at stations, in or at supermarkets or on public transport. Accordingly, the provisions still apply today.

17. In *Attorney General v. T* (Case 91/2020), concerning the conviction of a Lithuanian national for begging under Article 197 § 2 of the Penal Code, the Supreme Court, in a judgment of 2 February 2022 (reproduced in the Danish Weekly Law Reports, ref. U.2022.1451 H), stated, *inter alia*, the following in respect of Article 8 of the Convention:

> "As set out in Article 8 § 1 of the European Convention on Human Rights, everyone has the right to respect for his private life.
>
> In the *Lacatus* judgment, the European Court of Human Rights held that the applicant's right to turn to others for help by begging fell within the protection provided by Article 8 § 1. The Court stated in paragraph 56 that, for a person who did not have sufficient means of subsistence, human dignity, which was inherent in the spirit of the Convention, was severely compromised and that, by the act of begging, the person concerned was adopting a particular way of life with the aim of rising above an inhumane and precarious situation. The applicant in that case was extremely poor, illiterate and unemployed and, according to the information provided, she was not in receipt of social benefits, nor was she supported by any third party. In those circumstances, the Court was prepared to accept that begging allowed her to secure income and alleviate her poverty. Accordingly, the Court found that, by imposing a blanket ban on begging and by giving the applicant a fine, to be replaced by a prison

sentence in the event of non-payment, the Swiss authorities had prevented her from approaching others in order to obtain a form of help which was one of the possible means of providing for her basic needs; see paragraph 58. The Court stated in paragraph 59 that, *inter alia*, the right to call on others for assistance went to the very essence of the rights protected by Article 8 of the Convention.

In Denmark, persons whose basic needs cannot be satisfied through income or maintenance provided by others have access to public assistance. Foreign nationals who have no right of residence in Denmark have access to public assistance until their departure or return can be effected. It would therefore be possible for persons in Denmark to have their basic needs covered through public assistance schemes.

In circumstances such as those referred to above, the Supreme Court believes it to be uncertain as to what extent the right to beg is protected under Article 8 § 1 of the European Convention on Human Rights.

...

Accordingly, the decision as to whether a sentence of imprisonment for begging will amount to a violation of the relevant person's right to respect for his private life under Article 8 § 1 must be made following a proportionality test.

In the *Lacatus* judgment, the Court held that, in the proportionality test balancing the interests of the parties, substantial weight had to be attached to whether the person in question was in a clearly vulnerable situation and therefore had a right to convey his or her plight and attempt to meet his or her basic needs through begging; see, *inter alia*, paragraph 107. The test must also take into account, *inter alia*, the nature and severity of the penalty and whether the behaviour exhibited by the person in question was aggressive or intrusive; see paragraphs 108 and 113.

The first sentence of Article 197 § 1 of the Penal Code sets out that any person who, having previously been cautioned by the police, is found guilty of begging is to be sentenced to imprisonment for a term not exceeding six months. It is apparent from the second sentence of Article 197 § 1 of the Penal Code that the penalty can be remitted in mitigating circumstances. According to the preparatory notes to Article 197 of the Penal Code, it is a precondition for conviction that the begging took place in a personal manner causing nuisance to the public. That persons convicted of begging will generally be sentenced to imprisonment must be assumed to be because it would make no sense to issue such persons with a fine as they would normally be unable to pay.

Under Article 197 §§ 2 and 3 of the Penal Code, the requirement of a prior caution does not apply where the offence was committed in a pedestrian zone, at a station, in or at a supermarket or on public transport, and a court determining the sentence must consider it an aggravating circumstance if the offence was committed at one of the locations referred to. The provisions of paragraphs 2 and 3, which were inserted into Article 197 of the Penal Code in 2017, are targeted in particular at begging that generates an insecure environment as it must generally be regarded as constituting a particular nuisance to others if they experience begging in such places. According to the preparatory notes, such begging is punishable even without a prior caution, regardless of whether the begging in fact generated an insecure environment in the specific situation.

As mentioned, the preparatory notes to Article 197 §§ 2 and 3 specified that the sentence for first-time offences would normally be imprisonment for a term of fourteen days where the begging took place at one of the locations referred to in paragraph 2. This is justified on general preventive grounds. However, sentences will still be determined by the courts on a case-by-case basis, taking into account all the

> circumstances of the particular case. In mitigating circumstances, a more lenient sentence can be given, or the penalty can be remitted.
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> As mentioned, Denmark provides a right to public assistance for persons in distress. Accordingly, it will be only in exceptional circumstances that a person's human dignity comes under serious threat because he or she does not have the funds to cover his or her basic needs. The option of remitting the penalty can be used in such exceptional cases."

18. The Government have submitted the following statistics concerning the yearly number of decisions relating to Article 197 of the Penal Code on illegal begging (based on data extracted on 24 June 2023 from the police filing and case management system). There were fifty convictions in 2017, thirty-one convictions in 2018, fourteen convictions in 2019, twenty convictions in 2020, seven convictions in 2021, fourteen convictions in 2022 and eight convictions from January to July 2023.

2. Relevant law on access to public benefits

19. The fundamental right to public income support follows from Article 75 § 2 of the Danish Constitution (*grundloven*), which reads as follows:

> "Any person who is unable to maintain himself or herself or his or her family shall be eligible, when no other person is responsible for such maintenance, to receive public assistance subject to the person's compliance with the obligations imposed by the relevant legislation."

20. The provision was introduced by the Constitution of 5 June 1849 and has been reproduced with certain editorial amendments in subsequent revisions of the Constitution. A person becomes eligible for public assistance when unable to maintain himself or herself. That person must have exhausted all other avenues of maintaining himself or herself or being maintained by others. In the light of the wording of Article 75 § 2 of the Constitution and recent constitutional commentary, the provision is considered to make the State responsible for ensuring a minimum level of subsistence for any person who remains in Denmark for more than a very short period of time and whose maintenance no other person is responsible for. That also applies to foreign nationals who are present in Denmark illegally.

21. In *A v. Municipality of Egedal and Ministry of Labour* (Case 159/2009, 15 February 2012; Danish Weekly Law Reports, ref. U.2012.1761 H – known as "the starting allowance case"), the Supreme Court established that Article 75 § 2 of the Constitution had to be interpreted to mean that it was the responsibility of the State to ensure minimum subsistence for persons falling within that constitutional provision and that such persons could ask the courts to determine whether the requirement had been met. In that case, the Supreme Court found that a refugee staying lawfully in Denmark and receiving a starting allowance (equal to the student grant rate) and various individual benefits was receiving the public assistance to which he was entitled under Article 75 § 2 of the Constitution – a provision

which does not specify in what form the assistance is to be provided. However, in legal textbooks it is presumed that assistance granted pursuant to Article 75 § 2 of the Constitution can be financial or given in kind.

22. The Danish Active Social Policy Act (*lov om aktiv socialpolitik*) aims, among other things, to create a financial safety net for a person who is unable to otherwise meet the needs of himself or herself and his or her family (see section 1(1)(ii) of the Act). The relevant sections read as follows:

> "3. *(1)* Any person staying lawfully in Denmark shall be eligible for assistance under this Act.
>
> *(2)* To be eligible for public income support of a continuing nature, the beneficiary –
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> ...
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> (ii) must be a national of an EU/EEA country or a family member of such a national and have a right of residence in Denmark under the rules of the European Union; or ...
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> ...
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> 12a. Persons and their family members who have a right of residence in Denmark under the rules of the European Union on residence for first-time job seekers [for up to six months] and persons who have a right of residence in Denmark for up to three months without any administrative requirements shall only be eligible for assistance in connection with their return."

23. Accordingly, persons who have a right of residence in Denmark for up to three months without any administrative requirements (under Article 6 of Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) No. 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC, OJ 2004 L 158, p. 77 – "Directive 2004/38/EC") are eligible for assistance in connection with their return under the Active Social Policy Act. The Act does not authorise the granting of public income support of a continuing nature to such persons.

24. Assistance in connection with a person's return is granted under section 81 of the Act on assistance for non-recurring expenses. The assistance is subject to the relevant person otherwise satisfying the conditions for receiving assistance. The assistance may be granted subject to an obligation to repay the amount granted, provided that the relevant conditions are met and provided also that it is realistic for the local authorities to be reimbursed.

Return assistance will normally cover expenses for essentials during any waiting period, ticket expenses and expenses necessarily incurred on the journey for the relevant person and any accompanying family members. Such expenses may include accommodation assistance if no same-day departure is available.

25. Section 12a on return assistance (see paragraph 22 above) was inserted by Law no. 282 of 26 April 2004. The following appears, *inter alia*,

from the introductory notes to the amending legislation (Bill no. 2003/1 LSF 153):

> "The Government proposes a general clarification of the rules to the effect that persons and their family members who have a right of residence in Denmark under the rules of the European Union on residence for all first-time job seekers (for six months) and persons who have a right of residence in Denmark for up to three months without any administrative requirements are eligible only for assistance in connection with their return. All EU citizens and their family members may reside in Denmark for up to three months in connection with holidays, family visits, etc.
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> The proposal comprises only the groups of persons referred to above and does not restrict other provisions of the Act relating to the offering and granting of assistance in connection with such persons' return under Part 10 of the Act on an Active Social Policy.
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> The proposal clarifies that EU citizens who reside in Denmark as job-seekers and persons who have a right of residence in Denmark for up to three months without any administrative requirements are eligible only for return assistance, including essentials in connection with the return journey.
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> It is further clarified that EU citizens whose right of residence has been revoked are entitled only to return assistance and possibly assistance under the Act on an Active Social Policy for non-recurring expenses until the expiry of the time-limit for their departure. As has also been the case so far, no assistance can be granted under the Act on an Active Social Policy after the expiry of any time-limit for departure.
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> ...
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> Under EU law, first-time job seekers and persons who want to pursue an activity in a self-employed capacity may move freely in other member States for a period of time, provided that they do not become a burden on the social assistance system of the host member State.
>
> Any person staying in Denmark lawfully is eligible for public income support under the Act on an Active Social Policy. A clarification is therefore proposed, specifying that no public income support of a continuing nature may be paid to maintain such persons in Denmark and thus that they do not become a burden on Denmark's social assistance system.
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> Generally, section 81 of the Act on an Active Social Policy only authorises the grant of return assistance for the relevant persons and their family members, provided that they otherwise satisfy the conditions. The assistance may be granted subject to an obligation to repay the amount granted, provided that the relevant conditions are met and provided also that it is realistic that the local authorities will be reimbursed."

26. The Danish Agency for Labour Market and Recruitment (*Styrelsen for Arbejdsmarked og Rekruttering*) has contacted the local authorities of the two Danish municipalities with the largest populations (the City of Copenhagen and the Municipality of Aarhus). According to the information provided by those local authorities, neither have any registered data on the precise number of cases involving return assistance under section 12a of the Active Social Policy Act (see paragraph 22 above). The local authorities of Aarhus estimate that they have five to ten cases each year, and have also provided information that they have internal guidelines on the handling of

cases concerning return assistance under section 12a, from which it appears, *inter alia*, that persons applying for assistance cannot be expected to have Danish civil registration numbers or bank accounts, and consequently that the standard procedure for documentation is not followed.

3. The Danish Aliens Act

27. Under section 42a(2) of the Danish Aliens Act (*udlændingeloven*), foreign nationals who have no right of residence in Denmark under the rules of Parts 1 and 3 to 5 of the Aliens Act can have their expenses for subsistence and necessary healthcare services covered by the Danish Immigration Service (*Udlændingestyrelsen*) if this is required for their maintenance. The Danish Immigration Service has a duty to provide minimum subsistence payments only when that is required for the maintenance of the foreign national concerned. It is therefore a prerequisite that the foreign national is otherwise unable to provide for his or her accommodation and subsistence, either on his or her own account or through family members with a legal responsibility to maintain him or her, and that the foreign national does not in actual fact provide for his or her accommodation and subsistence, either on his or her own account or through other family members or friends. Under section 42a(3)(iv) of the Aliens Act, it is also a condition that the foreign national is not eligible for public income support under other legislation. Section 42a(2) of the Aliens Act is based on the fundamental principle that the duty of the Danish Immigration Service to provide a foreign national with minimum subsistence does not arise unless the foreign national concerned expresses a desire to that effect. On a practical level that means that the foreign national must contact the Danish Immigration Service on his or her own initiative and accept the accommodation option made available by the Danish Immigration Service. The provision is only rarely relevant to European Union (EU) citizens, who will normally have a right of lawful residence in Denmark under the rules laid down in Part 1 of the Aliens Act and in Directive 2004/38/EC. However, an EU citizen can fall within the Danish Immigration Service's duty to provide a minimum subsistence if it is ascertained that the EU citizen in question is staying in Denmark illegally and otherwise satisfies the conditions referred to above.

B. Comparative legislation

28. Reference is made to the overview of comparative legislation in thirty-eight Council of Europe member States set out in *Lacatus* (cited above, §§ 19-26).

29. The respondent Government submitted, after consulting the Norwegian government, that in Norway a general national prohibition against begging had been repealed in 2005. However, following a significant increase in the number of beggars, a right for local authorities to impose bans on

begging at municipal level was reintroduced in 2014 (section 14 of the Norwegian Police Act). Section 30 of the Norwegian Police Act provides that a breach of a municipal ban on begging imposed by a local authority carries a penalty of a fine or imprisonment for a term not exceeding three months. It appears from the preparatory notes to the Act (Prop 83 L 2013-2014) that, according to feedback from local police districts, beggars had caused disturbances of peace and public order and had generated an insecure environment at multiple locations and that there had been widespread problems at certain locations, while begging had occurred to a limited extent and in a more acceptable manner at other locations. The right to impose a ban was apparently no longer widely used.

C. International material

30. In its Resolution no. 21/11, adopted during its 21st session in September 2012, the United Nations Human Rights Council adopted the Guiding Principles on Extreme Poverty and Human Rights. The section concerning "Rights to liberty and security of the person" set out the following:

> "65. Various structural and social factors, including discrimination, cause persons living in poverty to come into contact with the criminal justice system with a disproportionately high frequency. They also encounter considerable obstacles in exiting the system. Consequently, disproportionately high numbers of the poorest and most excluded persons are arrested, detained and imprisoned. Many are subject to pre-trial detention for long periods without meaningful recourse to bail or review. Often unable to afford adequate legal representation, they are more likely to be convicted. While in detention they often have no accessible means of challenging infringements of their rights, such as unsafe or unsanitary conditions, abuse or lengthy delays. Fines imposed on persons living in poverty have a disproportionate impact on them, worsen their situation and perpetuate the vicious circle of poverty. Homeless persons in particular are frequently subject to restrictions on their freedom of movement and criminalized for using public space.
>
> 66. States should:
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> a. Assess and address any disproportionate effect of criminal sanctions and incarceration proceedings on persons living in poverty;
>
> b. Ensure that, to the greatest extent possible, bail processes take into account the economic and societal circumstances of persons living in poverty;
>
> c. Repeal or reform any laws that criminalise life-sustaining activities in public places, such as sleeping, begging, eating or performing personal hygiene activities;
>
> d. Review sanctions procedures that require the payment of disproportionate fines by persons living in poverty, especially those related to begging, use of public space and welfare fraud, and consider abolishing prison sentences for non-payment of fines for those unable to pay."

31. In its report of 12 November 2019, "Concluding observations on the sixth periodic report of Denmark" (UN Doc. E/C.12/DNK/CO/6), the United

Nations Committee on Economic, Social and Cultural Rights stated as follows:

> "48. The Committee recommends that, in the context of the implementation of the 2018-2021 Action Plan against Homelessness, the State party:
>
> (a) Increase the capacity of shelters for homeless people and remove administrative barriers to accessing them;
>
> (b) Invest in measures that provide long-term solutions and support the social reintegration of homeless people;
>
> (c) Repeal the legal provisions criminalizing conducts associated with situations of poverty and of deprivation of the right to adequate housing, such as begging and rough sleeping."

32. In a letter of 21 February 2022 from the United Nations High Commissioner for Human Rights to the Minister for Foreign Affairs on the follow-up to Denmark's Universal Periodic Review, the High Commissioner looked forward to discussing ways to offer assistance in the areas identified in the letter and its annex, including

> "[r]epealing the legal provisions criminalising conducts associated with situations of poverty and of deprivation of the right to adequate housing, such as begging and rough sleeping as well as investing in measures that provide long-term solutions and support the social reintegration of homeless people and increasing the capacity of shelters for homeless people".

COMPLAINTS

33. The applicant complained that the High Court's judgment of 11 November 2021, which became final on 18 May 2022, was in violation of Articles 8 and 10 of the Convention.

THE LAW

A. Complaint under Article 8 of the Convention

34. The applicant alleged that his conviction for begging violated Article 8 of the Convention, the relevant parts of which read as follows:

> "1. Everyone has the right to respect for his private ... life, ...
>
> 2. 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 crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

1. The parties' arguments

(a) The Government

35. The Government submitted that the application should be declared inadmissible *ratione materiae* since, in their view, the right to beg did not as such fall within the ambit of Article 8. Moreover, having regard to the specificities of the case before the Court, notably the economic and social realities of the applicant (the Government cited *Lacatus v. Switzerland*, no. 14065/15, §§ 56-57, 19 January 2021), they disputed that there had been an interference with the applicant's right to respect for his private life.

36. The Government pointed out that in Denmark, persons whose basic needs could not be satisfied through income or maintenance provided by others had access to public assistance. Furthermore, aliens who did not have a right of residence in Denmark would nevertheless have access to public assistance until their departure or return could be effected. It would therefore be possible for any persons in Denmark to have their basic needs covered through public-assistance schemes. The Government referred in particular to the reasoning set out by the Danish Supreme Court in its judgment of 2 February 2022 in *Attorney General v. T* (see paragraph 17 above).

37. The Government also submitted that the present case differed significantly from *Lacatus* (cited above), in which the applicant had been very poor, illiterate, unemployed and in receipt of neither social benefits nor any other support. The applicant in the present case stated that he had been in Denmark for two months when the offence was committed on 25 January 2019. Therefore, if he had entered under the rules of the European Union on residence for first-time job seekers, and so had had a right of residence in Denmark for up to six months, or if he had had a right of residence for up to three months without any administrative requirements, he would have had the option of applying for return assistance under section 12a of the Active Social Policy Act (see paragraphs 22 and 23 above). If the applicant had not had a right of lawful residence in Denmark at that time, he would have been eligible for assistance under the rules of the Aliens Act (see paragraph 27 above). Furthermore, the applicant in the present case was not in a particularly difficult and vulnerable situation. He regularly travelled back and forth between Denmark and Romania, paying approximately EUR 100 for each trip. He stayed in Denmark for three months at a time and regularly sent money to his family in Romania. The applicant had also been found in possession of approximately EUR 135 in cash (see paragraph 8 above).

38. Lastly, in the Government's opinion, Article 8 could not be interpreted so as to protect the right of beggars travelling to Denmark with the sole purpose of begging and thereby obtaining money to send back to their countries of origin, where there was no access to public income support. That would effectively leave host States responsible for social and economic

conditions in other member States and give rise to an increased incentive for professional beggars to travel to such host States.

(b) The applicant

39. The applicant disagreed. He pointed out that during the domestic proceedings, his conviction and sentence of imprisonment for a term of twenty days for begging had been acknowledged as an interference with his right to respect for his private life.

40. Moreover, like the applicant in *Lacatus* (cited above), the applicant in the present case was illiterate and uneducated. He was 61 years old and very poor. In Denmark he lived as a homeless person. He could not find a job and he did not qualify for any public support. Accordingly, he had resorted to begging as a means of survival.

2. The third parties' arguments

41. The arguments put forward by the third parties, namely ENNHRI, Project Udenfor, SAND and Stenbroens Jurister, concentrated on the merits of the complaint under Article 8, rather than on the issue of the applicability of this provision.

42. ENNHRI submitted, among other things, that whether a person was sufficiently vulnerable to enjoy the protection of Article 8 of the Convention should not be a decision falling within a State's margin of appreciation.

43. In their joint third-party submission, Project Udenfor, SAND and Stenbroens Jurister provided information about the background and context of the criminalisation of begging in Denmark. They contended that the human rights and dignity of all homeless people in Denmark were affected by such criminalisation.

3. The Court's assessment

44. The Court observes that in *Lacatus* (cited above, §§ 52-60), although the respondent Government in that case did not dispute the admissibility of the applicant's complaint, the Court nevertheless proceeded to examine that issue of its own motion under Article 32 of the Convention. The Court did not conclude that there was a right as such under Article 8 of the Convention to beg. It took the view, however, that "the concept of human dignity is inherent in the spirit of the Convention" and that "a person's dignity is severely compromised if he or she does not have sufficient means of subsistence" and that in such circumstances, "[b]y the act of begging, the person concerned is adopting a particular way of life with the aim of rising above an inhumane and precarious situation" (ibid., § 56). The Court pointed out, however, that "the specific circumstances of each case must be taken into consideration, in particular the person's economic and social situation" (ibid., § 57).

45. In *Lacatus*, the applicant was 19 years old, illiterate, unemployed and extremely poor. That was not contested. According to the information provided, she had received no social benefits or support from a third person. The Court accepted that begging allowed her to secure an income and to alleviate her poverty. By imposing a blanket ban on begging and by giving the applicant a fine, to be replaced by a prison sentence in the event of non-payment, the "authorities prevented her from approaching others in order to obtain a form of help which, in her situation, was one of the possible means of providing for her basic needs" (ibid., § 58). In such a situation "the right to call on others for assistance goes to the very essence of the rights protected by Article 8 of the Convention" (ibid., § 59).

46. In the present case, it appears that the High Court proceeded on the assumption that the applicant's complaint fell within the scope of Article 8, in that it went on to accept that the conviction and sentence for begging amounted to an interference with the applicant's right to respect for his private life (see paragraph 9 above).

47. Nevertheless, the High Court also concluded that the applicant could not be considered to have been in a clearly vulnerable situation where begging was effectively his only option to ensure his own survival. It had regard to, among other things, the fact that he had an income from other activities, that he had been able to travel multiple times between Romania and Denmark, that he regularly sent money to his family in Romania, and that he had been found in possession of approximately EUR 135 (see paragraph 9 above).

48. The High Court did state that no information had come to light indicating that the applicant had any right to public income support in Denmark or Romania (see paragraph 9 above). However, as stated by the Government (see paragraph 37 above) and the Supreme Court in its judgment of 2 February 2022 (see paragraph 17 above), persons in Denmark whose basic needs cannot be satisfied through income or maintenance provided by others have access to public assistance. Foreign nationals who have no right of residence in Denmark have access to public assistance until their departure or return can be effected. It will therefore be possible for persons staying in Denmark to have their basic needs covered through public assistance schemes. In these circumstances the Government (see paragraphs 35-37 above), like the Supreme Court, found it uncertain to what extent the right to beg was protected under Article 8 of the Convention.

49. In the Court's assessment of the circumstances of the present case, "in particular the person's economic and social situation" (see paragraph 44 *in fine* above), it notes that, as in *Lacatus*, the elements required to establish whether or not the applicant had the funds for his own subsistence depended mainly on the information provided by the applicant himself, which could not, or could not easily, be verified by the domestic authorities, primarily because he was a foreigner. In the Court's view the onus must therefore be on the applicant to substantiate his assertion that he was in a precarious and

vulnerable situation, including the contention that he lacked sufficient funds for his own subsistence.

50. It remains unknown, for example, how the applicant had been able to live in Denmark for the two months preceding 25 January 2019 (besides living on the streets); how he had managed to live in Denmark during his previous stays; how much money he obtained by collecting bottles and by selling the *Hus Forbi* newspaper in Denmark; how much money he had sent to his family in Romania; whether he received any assistance from his wife, his twelve adult children (including the adult son who was with him in Copenhagen on 25 January 2019 and who apparently lived and worked in the United Kingdom), or other third parties; why he did not have access to his own house in Romania; whether his unemployment could be considered permanent; whether he had indeed been refused financial support in Romania; and how he had been able to use cocaine and cannabis for eight years solely by way of donations from passers-by (see paragraphs 8 and 9 above).

51. Nevertheless, although a significant number of facts, on which only the applicant could shed light, remain unknown, he did explain that he was 61 years old, illiterate and unemployed. He had been able to travel between Romania and Denmark multiple times since 2013, despite incurring travel expenses of approximately EUR 100 each time, and during his stays in Denmark he had obtained money from selling the *Hus Forbi* newspaper and from collecting bottles. He had been able to send money to his family in Romania regularly, where he had a house. He had been a cocaine and cannabis user for eight years. Lastly, on the day of the offence of which he was convicted, the applicant was found to be in possession of cash amounting to approximately EUR 135 (see paragraph 8 above).

52. The Court notes in addition that the applicant, being an EU citizen, had a right to enter and reside in Denmark for up to three months, without any administrative requirements, pursuant to Article 6 of Directive 2004/38/EC. Moreover, in the event of a financial emergency, he could have applied for "return assistance" (see paragraphs 22 to 25 above).

53. In these circumstances, the Court is not convinced that the applicant lacked sufficient means of subsistence, or that begging was his only option to ensure his own survival, or that by the act of begging, he adopted a particular way of life with the aim of rising above an inhumane and precarious situation, and thus of protecting his human dignity (see the case-law quoted in paragraph 44 above).

54. It appears that from 2013 onwards, the applicant availed himself of the possibility of making a living in Denmark, an economically well-developed country, by selling the *Hus Forbi* newspaper, collecting bottles and begging, and that from those sources of income not only was he able to make a living, he was also able to send money to his family in Romania regularly. The act of begging was thus a means, or at least an additional means, of income for the applicant.

55. Moreover, the present case does not concern a blanket ban on begging. As opposed to the situation in, for example, *Lacatus* (cited above, § 16), where an absolute ban on begging covered the entire Canton of Geneva, in Denmark begging was allowed under certain conditions. Despite the wording of Article 197 § 1 of the Penal Code (see paragraph 12 above), a person could only be convicted of begging if it took place in a personal manner causing nuisance to the public and the person had been warned beforehand. That understanding followed from the preparatory notes and the case-law relating to Article 197 (see paragraphs 14 and 17 above). There is no indication either, nor has it been submitted by the applicant, that during his multiple stays in Denmark he had been regularly convicted under that provision (as noted in paragraph 6 above, he had received one warning in 2013 and had been convicted once, in 2015, before his second conviction on 6 March 2019), or that Article 197 *in fine* prevented him from begging at all in Denmark. In addition, from June 2017, a person could be convicted of begging if it took place in a pedestrian street, at stations, in or outside supermarkets or on public transport – regardless of whether or not the begging could be considered aggressive or intrusive. That followed from Article 197 § 2 of the Penal Code (see paragraph 12 above). Thus, the applicant in the present case could, and can continue to, beg in Copenhagen, and elsewhere in Denmark, outside the designated areas, provided that it does not take place in a personal manner causing nuisance to the public.

56. In view of the foregoing, the Court concludes that Article 8 is not applicable to the facts of the present case.

57. Accordingly, this part of the application must be dismissed as incompatible *ratione materiae* with the provisions of the Convention pursuant to Article 35 §§ 3 (a) and 4.

B. Complaint under Article 10 of the Convention

58. The applicant submitted that his conviction for begging had also violated Article 10 of the Convention, which reads as follows:

> "1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.
>
> 2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary."

59. In so far as the applicant's complaint under Article 10 of the Convention raises a separate issue from the complaint already considered

under Article 8, and assuming that such a complaint falls within the scope of Article 10, in the light of all the material in its possession, as well as its above findings under Article 8, the Court finds that the matter complained of does not disclose any appearance of a violation of Article 10.

60. It follows that this part of the application must be rejected as manifestly ill-founded, pursuant to Article 35 §§ 3 (a) and 4 of the Convention.

For these reasons, the Court, unanimously,

Declares the application inadmissible.

Done in English, and notified in writing on 13 June 2024.

Andrea Tamietti Registrar	Gabriele Kucsko-Stadlmayer President