# RESILIENCE AND RESISTANCE

## IN DEFIANCE OF THE CRIMINALISATION OF SOLIDARITY ACROSS EUROPE


**A study by:**
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# LIST OF **ACRONYMS**

| | |
|---|---|
| AMIF | ASYLUM, MIGRATION AND INTEGRATION FUND |
| CEAS | COMMON EUROPEAN ASYLUM SYSTEM |
| CERV | CITIZENS, EQUALITY, RIGHTS AND VALUES |
| CJEU | COURT OF JUSTICE OF THE EUROPEAN UNION |
| CPT | THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT |
| CSO | CIVIL SOCIETY ORGANISATION |
| EC | EUROPEAN COMMISSION |
| ECHR | EUROPEAN CONVENTION ON HUMAN RIGHTS |
| ECRE | EUROPEAN COUNCIL ON REFUGEES AND EXILES |
| ENNHRI | EUROPEAN NETWORK OF NATIONAL HUMAN RIGHTS INSTITUTIONS |
| EP | EUROPEAN PARLIAMENT |
| EU | EUROPEAN UNION |
| FRA | FUNDAMENTAL RIGHTS AGENCY |
| LIBE | COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS |
| MEP | MEMBER OF THE EUROPEAN PARLIAMENT |
| NHRI | NATIONAL HUMAN RIGHTS INSTITUTION |
| OHCHR | OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS |
| SLAPP | STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION |
| TFEU | TREATY ON THE FUNCTIONING OF THE EUROPEAN UNION |
| UN | UNITED NATIONS |

# KEY **TERMINOLOGY**

**"Civic space"**[1] has been defined by the United Nations Office of the High Commissioner for Human Rights (OHCHR) as "the environment that enables civil society to play a role in the political, economic and social life of our societies. In particular, civic space allows individuals and groups to contribute to policy-making that affects their lives, including by: accessing information, engaging in dialogue, expressing dissent or disagreement, and joining together to express their views." Freedom of expression and opinion as well as freedom of assembly and association are key tenets of an open and pluralistic civic space.

**"Shrinking civic space"** thus refers to a diminishing space for civil society engagement as defined above. It is a result of measures that aim to limit civic participation and which may infringe on fundamental rights including freedom of expression, of assembly and association.

**"Criminalisation of migration"** refers to policies that treat undocumented migrants as a potential security threat and irregular migration as a crime and that, therefore, often involve the use of criminal sanctions for irregular entry or stay.[2]

**"Criminalisation of solidarity"** refers to "the increased policing of people who help migrants, including through search and rescue operations, reception activities and the provision of food, housing and services."[3] It can concern different people helping migrants, including lifeguards, journalists, volunteers, NGOs, and migrants themselves."

The term **"human rights defender"** is used to describe people who, individually or with others, act to promote or protect human rights.[4]

**"Humanitarian assistance"** should not be narrowly defined or catalogued simply as a short list of a few activities. Drawing on a recent Council of Europe study, which builds inter alia upon tw UN General Assembly Resolutions,[5] humanitarian action should be interpreted as including, but not being limited to:

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1 United Nations Office of the High Commissioner for Human Rights (OHCHR), 'OHCHR and protecting and expanding civic space'.

2 Marta Gionco, *Criminalisation of solidarity is a political act: The EU needs to stand up for human rights at home too* (2022); See also Fundamental Rights Agency of the European Union (FRA), *Criminalisation of migrants in an irregular situation and of persons engaging with them (2014).*

3 Research Social Platform on Migration and Asylum (ReSOMA), *The Criminalisation of Solidarity in Europe* (2020).

4 OHCHR, *Factsheet #29: Human Rights Defenders: Protecting the Right to Defend Human Rights* (2004).

5 UN General Assembly, Resolution 46/182: 'Strengthening of the Coordination of Humanitarian Emergency Assistance of the United Nations', Annex, Guiding Principles, 19 December 1991; UN General Assembly, *Resolution 58/114*, 5 February 2004; The Council of Europe further refers to the following sources: International Committee of the Red Cross, '*Code of Conduct for the International Red Cross and Red Crescent Movement and NGOs in Disaster Relief* (1992); CHS Alliance, Group URD and the Sphere Project, *The Core Humanitarian Standard on Quality and Accountability* (2014); Council of the European Union and the Representatives of the Governments of the Member States meeting within the Council, the European Parliament and the European Commission 'European Consensus on Humanitarian Aid', Joint Statement, 2008/C 25/01, OJ C 25.

*"classic humanitarian assistance work as well as protection initiatives and the promotion of social cohesion. This encompasses both short and longer-term actions taken to save lives, alleviate suffering and maintain human dignity during and after natural or man-made crises and disasters, including actions to reduce vulnerabilities and promote and protect human rights."*[6]

The scope of humanitarian action should include activities carried out both at sea and at land, and not be exclusively linked with the state of necessity.

"**Strategic Lawsuits Against Public Participation**" (SLAPP) are "lawsuits or other legal actions (e.g. injunctions, asset-freezing) brought forward by private individuals and entities, and also by public officials, public bodies and publicly controlled entities, directed at one or more individuals or groups, using a variety of legal bases mostly in civil and criminal law, as well as the threats of such actions, with the purpose of preventing investigation and reporting on breaches of Union and national law, corruption or other abusive practices or of blocking or otherwise undermining public participation."[7]

**'Undocumented people' or 'undocumented migrants'** are people whose residence is not recognised by the country they live in. They are unable to obtain a residence permit or citizenship because of restrictive migration and residence policies. Many have had residence permissions linked to employment, study, family, or international protection, but those permits were either temporary or very precarious and their validity expired. There are also children who are born to undocumented parents and inherit this precarious residence status.

6 Dr Carla Ferstman, *Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States* (Expert Council on NGO Law of the Conference of INGOs of the Council of Europe 2019) para. 3. This definition is consistent with the recommendations of EU FRA: "Such guidance should explicitly exclude punishment for humanitarian assistance at entry (rescue at sea and assisting refugees to seek safety) as well as the provision of non-profit humanitarian assistance (e.g. food, shelter, medical care, legal advice) to migrants in an irregular situation." FRA (n 2).

7 European Parliament, *Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society* (2021/2036(INI)).

# EXECUTIVE **SUMMARY**

The European Union (EU) is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.[8] The Treaty on European Union (TEU) underlines that these values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and gender equality prevail.[9]

> ***"The protection of civil society – politically, legally, economically – to create a stable environment – has to become a priority."***
>
> – Doros Polykarpou, KISA

Yet, in recent years, these values have been under threat within the EU, as many Member States' policies and actions have led to a "shrinking space" for civil society. Perhaps this trend is nowhere more evident than in the treatment of migrants in Europe and the human rights defenders working to assist them. The "criminalisation of solidarity" strikes at the heart of European values and contributes to the erosion of rule of law and democracy, while seriously impacting the rights and welfare of the most vulnerable in our societies and those who seek to protect and assist them.

The criminalisation of solidarity with migrants remains a widespread phenomenon across the EU. According to our media monitoring, **at least 89 people were criminalised in the EU between January 2021 and March 2022.[10] Out of them, 18 people faced new charges, while the other 71 were ongoing cases from previous years. Four of them are migrants themselves. Three people were convicted and 15 acquitted, while all the other cases are still ongoing.** People have been criminalised for actions including providing food, shelter, medical assistance, transportation and other humanitarian aid to migrants in dire conditions; assisting with asylum applications; and rescuing migrants at sea.

**In the vast majority of the cases (88%), human rights defenders were charged with facilitation of entry, transit or stay, or migrant smuggling** (depending on how the crime is defined in the national legislation).[11] It is also notable that the criminalisation of solidarity has continued, and in certain cases even soared (see section 1.2), during periods in which many countries adopted COVID-19 restrictions, at a time when human rights defenders risked their own personal safety and health to leave their homes to help others. Emergency measures adopted to address the COVID-19 pandemic have been used to limit access to reception facilities and detention centres, to impose fines on organisations providing services during lock-downs or after the curfew, and to limit the right to freedom of assembly.

National data further contributes to give an idea of the **magnitude of the criminalisation of solidarity in the EU.** For example, according to the Polish civil society network Grupa Granica, **nearly 330 people** were

8 Article 2, *Consolidated Version of the Treaty on European Union* [2008] OJ C115/13.

9 ibid.

10 See Annex 3 for a list of media monitoring of case of criminalisation.

11 Weronika Strzyżyńska, *'Poland detains activists accused of smuggling migrants over Belarus border' The Guardian* (25 March 2022); Iuventa, *'Italian prosecutor presses charges against the Iuventa crew'* (4 March 2021); *'Un juez italiano archiva la investigación contra ONG por tráfico de migrantes' swissinfo.ch* (28 January 2022); Bartosz Rumieńczyk, *'Aktywistka przesłuchana w kajdankach. KIK: „Dlaczego są dwie kategorie uchodźców i pomagających?'* [Activist interviewed in handcuffs. KIK: "Why are there two categories of refugees and helpers?"] *Oko.press* (29 March 2022); Memesita, *'Criticism of church asylum verdict against religious sister'* (6 June 2021); Emma Wallis, *'Greece: Migrant accused of smuggling sentenced to 146 years in prison' InfoMigrants* (14 May 2021); Paul Myers, *'French judges clear farmer who offered humanitarian solidarity to migrants' RFI* (31 March 2021).

detained for helping people crossing borders irregularly between Belarus and Poland between August and November 2021.[12] Those detained include EU nationals as well as migrants and their family members, many of whom had residence permits in Belgium, Germany and Poland. Many are likely to have been motivated by humanitarian reasons, including helping family members. In another example, a total of 972 people were convicted in Switzerland in 2018 on grounds of facilitation of irregular entry or stay.[13] The vast majority, **almost 900 people, acted out of solidarity or family reasons.**[14]

These numbers are likely to only represent a very minimal percentage of the people who are criminalised in the EU for solidarity towards migrants. On the one hand, our media monitoring has no claim of comprehensiveness, as some news may not be detected by our alert system. On the other hand, the majority of the cases are likely to go unreported because of fears that media attention could further endanger the relations with the authorities and limit access to border areas or reception centres; to preserve volunteers' right to private life and not to put them and their families at risk; or because some human right defenders might prefer not to speak out while trials are ongoing. Many cases of harassment which do not amount to criminal prosecution might also not be picked up by the media.[15] **The criminalisation of human rights defenders who are migrants themselves is even more underreported** because of the particularly vulnerable situation of individuals who might risk deportation, pushbacks, arbitrary detention and loss of status as well as harsh financial, social and economic consequences.

A range of elements contribute to creating a **"hostile environment"** for those engaged in humanitarian action and solidarity efforts towards migrants in the EU:

- The **"criminalisation of migration"** itself leads to migrants being treated as criminals and even viewed as a threat to national security.[16] It follows then that those who seek to assist them can also be perceived and labelled as engaging in "illicit" activity and causing harm to society. Negative attitudes towards migrants greatly influence how official policies and practices are shaped. The legal and policy framework appears in many cases to be underpinned by xenophobic narratives and a lack of implementation of human rights obligations.

- In many EU Member States, there are **administrative and criminal laws** which constrain and prosecute civil society actors providing humanitarian assistance to migrants or denouncing human rights abuses.

- Limitations to freedom of expression, assembly and association contribute to a **shrinking civic space** which can make it very challenging for human rights defenders to respond to judicial and other forms of harassments. When civic space is eroded, this further undermines civic dialogue, transparency and accountability.

12 Grupa Granica, *Kryzys humanitarny napograniczu polsko-białoruskim* [Humanitarian crisis on Polish-Belurusian border] (2021), p.19.

13 *Swiss Federal Act on Foreign Nationals and Integration Act of 16 December 2005,* (Status as of 1 April 2020) Article 116.

14 Humanrights.ch, *'Die Kriminalisierung von Menschenrechtsverteidiger*innen':* In only 32 cases were smugglers or people who had enriched themselves from the misery of refugees and migrants actually on trial. In addition, 58 judgments were made in connection with illegal gainful employment.

15 See, for instance, *GISTI* (2019), which lists several different reasons for which people have faced charges under administrative law, such as depositing waste on the street or violations of the town planning code, and which were not reported in the media.

16 For examples on how the legal and policy framework can criminalise migrants and ;lead to discrimination, see: Platform for International Cooperation on Undocumented Migrants (PICUM), *'How do the new EU regulations on interoperability lead to discriminatory policing?'* (2020); European Commission, *Proposal amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders.* Article 25 of which provides for a general framework applicable to the reintroduction of internal border controls based on a perceived threat that may lead to unilateral reintroduction of border controls at internal borders and circumstances under which internal border controls can be prolonged.

- Additionally, a **lack of independent human rights monitoring** contributes to impunity following attacks on human rights defenders and increases the risk of human rights violations.

- Finally, **decisions on resource allocation** further minimise the space for civil society and their capacity to engage and to respond.

Nevertheless, despite all these challenges, human rights defenders continue to make valiant efforts to assist migrants and to demonstrate solidarity with migrants in vulnerable situations. Their resilience, persistence and resistance is demonstrated by the actions they have taken in the face of intimidation, harassment and violence, which they have often confronted alone on the frontline at EU borders and in communities across Europe.

In order to support them, the EU has a range of avenues for engagement through which it can strengthen protection of migrants' rights as well as address the key elements of the "hostile environment" outlined above. While many of these developments, such as proposed legislative changes to the EU Facilitation Directive, are goals to be achieved in the longer term, there are other actions that the EU can take in the short-term to nurture and support an enabling environment for those working for solidarity and justice within the EU.

## THIS REPORT PROPOSES FIVE OVERARCHING RECOMMENDATIONS FOR EU ACTION:

- **Prevent the criminalisation of humanitarian assistance**
- **Cultivate the civic space and better protect human rights defenders**
- **Adequately fund humanitarian assistance and human rights monitoring**
- **Promote and advance a more balanced EU migration policy in line with European values**
- **Strengthen human rights monitoring and solidify the evidence base on criminalisation of migration and solidarity**

**Specific recommended actions under this framework are provided below in Section 5 of this report.**

# INTRODUCTION

Acting in solidarity with migrants in the EU has been difficult for years. Back in 2003, PICUM's *Book of Solidarity*[17] highlighted "the alarming tendency to criminalise assistance to undocumented migrants." Subsequent research[18] has shown that the criminalisation of humanitarian assistance and solidarity is on the rise across Europe.

This report builds on recent research[19] that documents patterns of criminalisation of solidarity across Europe and aims to raise awareness of the importance and complexity of this issue as well as the impact of such measures on human rights defenders, migrants and our societies. It also examines how the criminalisation of solidarity often has a disproportionate impact and serious life-changing consequences for human rights defenders who are migrants themselves.

The report is informed by desk research, media monitoring and interviews with 15 human rights defenders in 10 EU member states,[20] which provide an update on trends, case studies and select jurisprudence. Statistics are provided on the number of cases of criminalisation in the EU, from January 2021 to March 2022.

In addition to raising awareness of this phenomenon by sharing the case studies of those directly affected, the report also offers an analysis outlining the key elements that constitute a "hostile environment" for human rights defenders working for the rights of migrants. The brief analysis shines a spotlight not only on the challenges that human rights defenders face, but also on the defiance and persistence that they demonstrate in continuing to provide humanitarian assistance, to carry out human rights monitoring and to advocate for the rights of migrants and each other. This analysis then informs the framework for recommendations for EU action at the end of the report.

Criminalisation of solidarity with migrants remains a widespread phenomenon in the EU. The ReSOMA project research found that at least 171 individuals were criminalised in 13 EU Member States between 2015 and 2019, on charges of facilitation of irregular entry, transit or stay.[21] Between January 2021 and March 2022, at least 89 people were criminalised in the EU, according to media monitoring of different national news.[22] Out of them, 18 people faced new charges, while the other 71 were ongoing cases from previous years. Four of them are migrants themselves. For 71 people, the trial is still ongoing, 3 people were convicted and 15 acquitted. People have been

17 PICUM, *Book of Solidarity, Volume 1* (2003).

18 Amnesty International, *Punishing Compassion: Solidarity on Trial in Fortress Europe* (March 2020); Vincent Vallies, *'Europe: Open Season on Solidarity: A Study on the Patterns of Criminalisation of Solidarity through the Voices of Migrants'* Rights Defenders (International Federation for Human Rights and World Organisation against Torture, 2021); Caritas Europa, *'The "Criminalisation" of Solidarity Towards Migrants'* (20 June 2019); PICUM, *'Help is No Crime: Are EU Policies Moving in the Right Direction? Criminalisation of solidarity under the EU Pact on Migration and Asylum'* (2021).

19 ibid.

20 See List of Interviews in annex.

21 ReSOMA, *'The criminalisation of solidarity in Europe'*.

22 See Annex 3.

criminalised for actions including: providing food, shelter, medical assistance, transportation and other humanitarian aid for people who crossed the border and were in dire conditions; assisting with asylum applications; rescuing migrants at sea.

In the vast majority of the cases (88%), human rights defenders were charged with facilitation of entry, transit or stay or migrant smuggling (depending on how the crime is defined in the national legislation).[23] In 28% of these cases, in addition to the offense of smuggling, people were also accused of money laundering, espionage and membership of a criminal organisation.[24] Other charges used to criminalise human right defenders include: disturbing the peace;[25] conspiracy, abuse of office, fraud, extortion, embezzlement and abetting irregular immigration;[26] being in emergency zone (i.e., at the Lithuanian and Polish borders with Belarus);[27] illegally obtaining state secrets;[28] hijacking a vessel and engaging in an act of terrorism;[29] resistance and violence against a warship;[30] complicity in trafficking of human beings.[31]

It is also notable that the criminalisation of solidarity has continued, and in certain cases even soared (see section 1.2), during periods in which many countries adopted restrictions due to the COVID-19 pandemic, and during which volunteers were risking their personal safety and health to go in the street and help others.

However, these numbers are likely to only represent a very minimal percentage of the people who are criminalised in the EU for solidarity towards migrants. As already noted in the 2018 update of the report *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants*,[32] there is a widespread absence of statistical and official data concerning those who are being accused, charged or convicted for smuggling and related offences. Many cases of criminalisation are likely to go unreported because of fears that media attention could further endanger the relations with the authorities and limit access to border areas or reception centres; to preserve volunteers' right to private life and not to put them and their families at risk; or because some human right defenders might prefer not to speak out while trials are ongoing. In addition, our media monitoring has no claim of comprehensiveness, as some news may

23 Weronika Strzyżyńska, 'Poland detains activists accused of smuggling migrants over Belarus border' The Guardian (25 March 2022); Iuventa, 'Italian prosecutor presses charges against the Iuventa crew' (4 March 2021); 'Un juez italiano archiva la investigación contra ONG por tráfico de migrantes' swissinfo.ch (28 January 2022); Bartosz Rumieńczyk, 'Aktywistka przesłuchana w kajdankach. KIK: „Dlaczego są dwie kategorie uchodźców i pomagających?' [Activist interviewed in handcuffs. KIK: "Why are there two categories of refugees and helpers?"] Oko.press (29 March 2022); Memesita, 'Criticism of church asylum verdict against religious sister' (6 June 2021); Emma Wallis,
'Greece: Migrant accused of smuggling sentenced to 146 years in prison' InfoMigrants (14 May 2021); Paul Myers, 'French judges clear farmer who offered humanitarian solidarity to migrants' RFI (31 March 2021).

24 Tala Michel Issa, *Greece to put Syrian swimmer, aid workers who helped migrants on trial for espionage* (18 November 2021).

25 Joanna Plucinska, *'Locals helping migrants on Poland-Belarus border fear backlash'* (15 November 2021).

26 Deutsche Welle, *'Migrant-friendly Italian ex-mayor sentenced to 13 years in prison'* (1 October 2021).

27 European Council on Refugees and Exiles (ECRE), *'EU Eastern Borders: Belarus and Poland Enact Brutal Violence and Block Aid Workers, Lithuania Lifts State of Emergency'* (14 January 2022).

28 Associated Press, *'Greece: Norwegian photographer held on spy charge released'* (21 March 2022).

29 Sertan Sanderson, *'Calls to release three young asylum seekers in Malta grow, as EU countries face criticism for jailing migrants'* Info Migrants (26 October 2021).

30 Huffington Post, *'No trial for Carola Rackete, "her duty to bring migrants to port"'* (19 May 2021).

31 Solidarity is not a crime, *'Communiqué 26 Mai Verdicts Procès de la Solidarité et de la migration en appel'* (26 May 2021).

32 Carrera et al., *'Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update'* (European Parliament December 2018)

not be detected by our alert system. Many cases of harassment which do not amount to criminal prosecution might also not be picked up by the media.[33] The criminalisation of human rights defenders who are migrants themselves is even more underreported because of the particularly vulnerable situation of individuals who might risk deportation, pushbacks, arbitrary detention and loss of status as well as harsh financial, social and economic consequences.

Some estimates, collected at national level, can give an idea of the likely real magnitude of this phenomenon. According to a report from the Polish organisation Grupa Granica, nearly 330 people were detained for helping people crossing borders irregularly between Belarus and Poland between August and November 2021.[34] Those detained include EU nationals as well as migrants and their family members, many of whom had residence permits in Belgium, Germany and Poland. Many are likely to have been motivated by humanitarian reasons, including helping family members. In another comparable example, a total of 972 people were convicted in Switzerland in 2018 for violating Article 116 of the Federal Act on Foreign Nationals and Integration.[35] However, from these convictions, the vast majority, almost 900 people, acted out of solidarity or family reasons.[36]

With regards to criminalisation of humanitarian action along the EU's sea borders, the Fundamental Rights Agency of the EU (FRA) has been monitoring the situation of NGO boats involved in **search and rescue (SAR) in the Mediterranean** and legal proceedings against them since 2018.[37] In its latest reporting from December 2021, FRA reports that 59 proceedings were initiated since 2016 by Germany, Greece, Italy, Malta, the Netherlands and Spain. In 2021, nine new legal case were opened.[38]

33 See, for instance, GISTI (2019), which lists several different reasons for which people have faced charges under administrative law, such as depositing waste on the street or violations of the town planning code, and which were not reported in the media.

34 Grupa Granica, *Kryzys humanitarny napograniczu polsko-białoruskim* [Humanitarian crisis on Polish-Belurusian border] (2021), p.19.

35 *Swiss Federal Act on Foreign Nationals and Integration Act of 16 December 2005* (Status as of 1 April 2020).

36 Humanrights.ch, 'Die Kriminalisierung von Menschenrechtsverteidiger*innen'; In only 32 cases were smugglers or people who had enriched themselves from the misery of refugees and migrants actually on trial. In addition, 58 judgments were made in connection with illegal gainful employment.

37 FRA, *'December 2021 Update – Search and Rescue (SAR) operations in the Mediterranean and fundamental rights'* (2021).

38 ibid.

# 1. THE "HOSTILE ENVIRONMENT" TARGETING **HUMAN RIGHTS DEFENDERS ENGAGED IN SOLIDARITY EFFORTS**

This report aims not only to capture cases studies where human rights defenders are formally prosecuted for assisting migrants and showing solidarity, but also to demonstrate with select illustrations how other elements can contribute to a "hostile environment," which undermines respect for fundamental human rights.[39] One of the most important factors in creating a hostile environment for solidarity is the criminalisation of migration itself. This leads to the criminalisation of solidarity including the conflation of humanitarian assistance with the crime of smuggling. The subsections below examine these challenges as well as the shrinking of civic space across Europe, attacks on human rights defenders, the risks brought about by a lack of independent human rights monitoring and constraints on funding and resources.

## 1.1 CRIMINALISATION OF **MIGRATION, IRREGULAR ENTRY AND STAY**

> **"[C]riminalizing irregular migrants for the offence of being in a country without adequate documentation makes all migrants, regardless of immigration status, vulnerable to potential racist or xenophobic acts. Societies quickly distort the particular situations of migrants, and associate them with criminality, including organized crime, drug trafficking, robbery or even terrorism."**
>
> Report of the UN Special Rapporteur on the human rights of migrants (A/65/222 August 2010)[40]

According to a 2014 FRA study, in 16 of the 27 EU member states, people who enter or stay irregularly, or both, can be sentenced with imprisonment and / or a fine. In another nine EU member states, at least one of these circumstances is still punishable with a fine, which can however, in certain circumstances, lead to a custodial sentence as well. In only two member states irregular

39 This approach follows the one taken in the 2018 update of the Fit for purpose? Study - Carrera et al., *Fit for Purpose? The Facilitation Directive and the Criminalisation of Humanitarian Assistance to Irregular Migrants*, PE 536.490 (European Parliament 2016), which was commissioned by the European Parliament and uses the notion of 'policing humanitarianism' to describe not only cases of formal prosecution and sentencing in criminal justice procedures, but also the wider dynamics that contribute to a hostile environment such as intimidation and harassment.

40 UN General Assembly, *'Report of the Special Rapporteur on the human rights of migrants'* UN Doc A/65/222 (3 August 2010).

entry or stay are not criminalised.[41]

Over the past few years, migrants who cross borders irregularly have also been increasingly charged with smuggling-related offences, as further analysed below in section 2 of this report. The use of immigration control and anti-smuggling measures to criminalise migrants who cross borders irregularly goes against the provision of the UN Protocol against Smuggling of Migrants that migrants shall not become liable to criminal prosecution for the fact of having been the object of smuggling as well as article 31 of the Refugee Convention that prohibits States from imposing penalties on refugees on account of their entry or presence in their territory without authorisation.[42]

In addition, an increasing number of EU policies contribute to conflate migration and national security issues. For instance, the new interoperability regulations[43] create three new centralised databases which will store the personal and biometric data of every non-EU citizen who comes to Europe - to work, study, seek asylum, etc. The aim of these databases is, allegedly, to improve the EU's response to irregular migration and serious crimes like terrorism. The conflation of these two policy outputs is based on the discriminatory and unfounded idea that migration and criminal justice are closely related and imply that serious crimes are only committed by foreigners.[44]

In 2018, the Commission's proposal to amend the 2008 Return Directive[45], which regulates return procedures in the EU, included a provision which would allow member states to detain undocumented people when they "pose a risk to public policy, public security or national security", in complete disregard of the judicial safeguards which should otherwise apply in these circumstances. In practice, such a provision would create two different channels to detain people who could constitute a risk to national security: one under criminal law, with all the safeguards this entails; and one under administrative law, with little to no judicial overview, which would only apply to undocumented people.

In yet another case, another recent legislative proposal, the revision of the Schengen Borders Code[46], went even a step further, suggesting to include "large scale" irregular migration in the definition of what constitutes a "serious threat" which would justify the reintroduction of internal border controls within the Schengen Area.

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41 Irregular stay is punished with a fine in Austria, Bulgaria, the Czech Republic, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, Spain and Sweden; and with a fine and/or imprisonment in Belgium, Croatia, Cyprus, Denmark, Estonia, Germany, Ireland, Luxembourg, the Netherlands. In Austria, the Czech Republic, Hungary, Italy, the Netherlands, Poland, Slovakia and Slovenia, irregular entry is punished with a fine, while in Belgium, Bulgaria, Croatia, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Romania and Sweden it is punished with imprisonment and/or a fine. Only two countries, Portugal and Malta, did not criminalise either irregular entry or stay. See EU FRA, *'Criminalisation of migrants in an irregular situation and of persons engaging with them'* (2014).

42 Article 5 on criminal liability of migrants, UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (adopted 15 November 2000, entered into force 29 September 2003) 2225 UNTS 209.

43 Regulation (EU) 2019/817 of the European Parliament and of the Council of 20 May 2019 on establishing a framework for interoperability between EU information systems in the field of borders and visa and amending Regulations (EC) No 767/2008, (EU) 2016/399, (EU) 2017/2226, (EU) 2018/1240, (EU) 2018/1726 and (EU) 2018/1861 of the European Parliament and of the Council and Council Decisions 2004/512/EC and 2008/633/JHA

44 Platform for International Cooperation on Undocumented Migrants (PICUM), 'How do the new EU regulations on interoperability lead to discriminatory policing?' (2020);

45 Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on common standards and procedures in Member States for returning illegally staying third-country nationals (recast) A contribution from the European Commission to the Leaders' meeting in Salzburg on 19-20 September 2018 2018/0329 (COD) (12 September 2018)

46 Proposal for a Regulation of the European Parliament and the Council amending Regulation (EU) 2016/399 on a Union Code on the rules governing the movement of persons across borders art. 25.

To illustrate this problem with one example, HumanRights360 has documented a generalised practice in Greece of judicial authorities to convict newcomers with the offense of illegal entry.[47] HumanRights360 has identified that judicial authorities tend to convict newcomers for illegal entry with disproportionately heavy penalties, of up two years of prison, often without even the possibility of suspension. In violation of article 31 of the Refugee Convention, such convictions often result in the imprisonment of asylum seekers, who have officially registered requests, or verbal declarations of will, for international protection.

## CRIMINALISATION OF UNDOCUMENTED ACTIVISTS IN BRUSSELS DURING DEMONSTRATIONS


Undocumented activists in Belgium have been organising collectively and through various groups for many years.[48] In 2021, campaigns,[49] calls[50] and occupations focusing on the need for regularisation mechanisms in Belgium to be more accessible and fair were ramped up, in the face of severe and increased precarity and exploitation of undocumented people and frontline workers due to the COVID pandemic. In particular, undocumented residents and a broad range of civil society have been calling for clear and stable regularisation criteria, as well as for the re-instatement of an independent commission to hear people as part of the application procedure.[51]

During demonstrations in 2021, undocumented activists suffered police abuses, including the excessive use of violence and tear gas, and arbitrary arrests. Because of their undocumented status, they were particularly at risk of arrest, detention and deportation. Sixty-six people were arrested by the police during two demonstrations in April 2021, including for "identity checks", while trying to reach the location of the occupation.[52]

47 HumanRights 360, *Defending human rights in times of border militarization* (2020).

48 La Coordination des Sans-Papiers de Belgique.

49 La Coordination des Sans-Papiers de Belgique et Sans-Papiers TV, '*We are Belgium too*'.

50 Par Mieke Van Laer and Marie-Pierre De Buisseret, '*Lettre ouverte à Madame Wilmès: La régularisation du séjour des sans-papiers n'apporte que des avantages*' Le Soir (1 May 2020).

51 FRA, '*Right to Good Administration*'.

52 '*62 arrestations en marge d'une manifestation pour la régularisation des sans-papiers à Arts-Loi*', bx1.be (27 April 2021); '*Manifestation pour les sans-papiers à Bruxelles: 62 arrestations administratives*' RTBF ( 27 April 2021); '*Manifestation de sans-papiers à Bruxelles: 4 arrestations administratives*' (16 April 2021); Civic Space Watch, *Activizenship #6: Civic Space Watch Report 2021: Stories of Hope in Dark Times* (2021) p. 14.

# RACIST DEMONSTRATIONS AND ATTACKS AGAINST MIGRANT AND REFUGEE COMMUNITY IN CHLORAKA, CYPRUS

Serious incidents of violent attacks, hate speech and harassment of Syrian refugees and asylum seekers took place in Chloraka, Cyprus during a protest organised by the extreme right on 7th January 2022.[53] In response, KISA filed a report to the Attorney General and the Chief of the Police against the leader of the local council for hate speech and inciting attacks and violence, as well as against members of the police who were present for complicity and neglect of duty.

Mr Doros Polykarpou, who was Executive Director of KISA, was present at the protest because he knew that protestors came to intimidate and harrass the migrants and refugees. Protestors even used explosions at end of the demonstration and threatened to return with guns. The police were present but did nothing to intervene or to deescalate the situation. Mr Polykarpou took photos and videos of the event and then went to the police station to report hate speech and other violations of the law. Afterwards, he himself was accused of violating the personal data law because he took photos and videos of the protestors. This case is still ongoing and, at the moment of the publication of this report, it was still unknown whether any judicial action will be undertaken as a consequence of these events.

**PICUM'S #WORDSMATTER INITIATIVE[54]**

PICUM raises awareness of the impact of discriminatory language and promotes accurate language in reference to undocumented migrants through its 'Words Matter' initiative. The initiative is carried out jointly with its network partners. The key tool is a pocket-sized leaflet which provides reasons why not to use the term 'illegal migrant', a lexicon with translations of 'undocumented migrant' and/or 'irregular migrant' in all EU and UN languages and an overview of key institutions who have already committed to accurate terminology in reference to undocumented migrants.

53 KISA, 'Solidarity and respect of human rights: the solution to the situation in Chloraka' (8 January 2022); KISA, 'KISA condemns the racist, violent and hate speech attacks against the Syrian refugees in Chloraka' (12 January 2022); KISA, 'Backing racists and persecution of activists by the Cyprus Police' (16 January 2022); KISA, 'Refugees in Paphos faced with racism and pogroms' (21 January 2022).

54 PICUM, #WordsMatter Initiative


## 1.2 LEGAL AND POLICY PROVISIONS THAT **CRIMINALISE HUMANITARIAN ASSISTANCE AND SOLIDARITY**

A diverse range of legal provisions is being used to criminalise humanitarian assistance to migrants and acts of solidarity across Europe. The most widely applied are the anti-smuggling provisions transposed into national laws[55] in line with the provisions of the EU Facilitation Directive. The Facilitators' Package (comprising Facilitation Directive 2002/90 and Framework Decision 2002/946) is the main EU legislative instrument that defines the criminal offence of facilitation of unauthorised entry, transit or residence and sets out the related criminal sanctions. The Facilitation Directive[56] leaves it up to the EU Member States whether to exempt or to criminalise civil society organisations (CSOs) and individuals who provide assistance to migrants who entered or transited a country irregularly. While EU Member States can introduce a voluntary "humanitarian exemption" in such provisions, most Member States have failed to do so (see box below).

55 FRA, *EU Member States' legislation on irregular entry and stay, as well as facilitation of irregular entry and stay* (2014). This chart contains both administrative and criminal law provisions.

56 *Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence*, Article 1 para. 2.

# IS THE "HUMANITARIAN EXEMPTION" WORKING IN PRACTICE TO PROTECT HUMAN RIGHTS DEFENDERS?

The European Commission has reported that only eight Member States (Belgium, Croatia, Finland, France, Greece, Italy, Malta and Spain) have introduced a voluntary "humanitarian exemption" clause into legislation.[57] However, even in these countries, this clause is not always applied in practice.

For example, while Belgian legislation includes a humanitarian clause in article 77 of the law concerning foreigners, which defines the facilitation of irregular entry or stay and sets a sentence of up to one year of imprisonment and a fine,[58] this is an older provision that predated the adoption of the EU Facilitation Directive. When the EU Facilitation Directive was transposed in 2005, article 77 bis was added to the law, defining the crime of facilitation of irregular entry, transit of stay when there is a direct or indirect financial benefit, and setting a prison sentence up to five years and a fine. However, the humanitarian exemption which applies with regard to article 77 was not extended to article 77 bis. In practice, it is now unclear how these two articles co-exist. In the high-profile cases in October 2017,[59] it was article 77 bis that was applied to prosecute those who hosted and assisted migrants in Brussels.

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57 European Commission, Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence 2020/C 323/01. Belgium, Greece, Spain, Finland, France, Croatia, Italy and Malta in the REFIT Evaluation of the EU legal framework against facilitation of unauthorised entry, transit and residence cit., p. 15, as well as Article L622-4 of the French Code on Foreigners, as amended by law n°2018-778 of 10 September 2018, and Article 43, Para 2, Item 2 of Croatia's Law on Foreigners, as adopted in 2017.

58 Law of 15 December 1980 on access to the territory, residence, establishment and removal of foreigners: Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers: Dispositions pénales Art. 77. Quiconque aide sciemment ou tente d'aider une personne non ressortissante d'un Etat membre de l'Union européenne à pénétrer ou à séjourner sur le territoire d'un Etat membre de l'Union européenne ou d'un Etat partie à une convention internationale relative au franchissement des frontières extérieures et liant la Belgique ou à transiter par le territoire d'un tel Etat, en violation de la législation de cet Etat, soit dans les faits qui ont préparé l'entrée, le transit ou le séjour, ou qui les ont facilités, soit dans les faits qui les ont consommés, sera puni d'un emprisonnement de huit jours à un an et d'une amende de mille sept cents euros à six mille euros ou d'une de ces peines seulement.
L'alinéa 1er ne s'applique pas si l'aide est offerte pour des raisons principalement humanitaires.
Art. 77bis Constitue l'infraction de trafic des êtres humains, le fait de contribuer, de quelque manière que ce soit, soit directement, soit par un intermédiaire, à permettre l'entrée, le transit ou le séjour d'une personne non ressortissante d'un Etat membre de l'Union européenne sur ou par le territoire d'un tel Etat ou d'un Etat partie à une convention internationale relative au franchissement des frontières extérieures et liant la Belgique, en violation de la législation de cet Etat, en vue d'obtenir, directement ou indirectement, un avantage patrimonial.
L'infraction prévue à l'alinéa 1er sera punie d'un emprisonnement d'un an à cinq ans et d'une amende de cinq cents euros à cinquante mille euros.
La tentative de commettre l'infraction visée à l'alinéa 1er sera punie d'un emprisonnement d'un an à trois ans et d'une amende de cent euros à dix mille euros.
L'amende sera appliquée autant de fois qu'il y a de victimes.

59 Centre for European Policy Studies, Webinar: *'Criminalisation of Solidarity: How to protect the right to help migrants and refugees?'* (14 May 2020); Research Social Platform on Migration and Asylum (ReSOMA), *The Criminalisation of Solidarity in Europe* (2020). Caritas Europa, *'The "Criminalisation" of Solidarity Towards Migrants'* (20 June 2019); Vincent Vallies, *Europe: Open Season on Solidarity: A Study on the Patterns of Criminalisation of Solidarity through the Voices of Migrants' Rights Defenders* (International Federation for Human Rights and World Organisation against Torture 2021); See also related box on pre-trail detention of accused migrant below in section 2 below.

Additionally, while article 77 bis requires the suspect to pursue a financial advantage for an act to constitute smuggling, it allows for such advantage to be either direct or indirect. As a result, migrants have been convicted of smuggling even when no monetary exchange was proven, with courts finding that one's goal of securing one's own personal irregular border crossing constitutes indirect financial advantage.[60] This leads to the situation where a migrant, who organises with other migrants to help each other to cross for free, may be convicted of smuggling; while in the same circumstances, if they could have afforded to pay someone else to arrange the travel for them, they would not have been convicted.

Another problematic aspect in this regard is that an individual may also be prosecuted as an accomplice, even if they have not committed all the elements of the crimes. This means that, although article 77 bis requires people to seek a direct or indirect financial benefit, as far as one person acted in order to receive such benefit, other people risk being prosecuted as accomplices even if they had acted for humanitarian purposes.

Similarly, in comparison with other countries, Croatia is sometimes highlighted as a positive example because it has humanitarian exemption clauses in its law.[61] However, while the Croatian law[62] includes a humanitarian exemption provision, the humanitarian grounds are not clearly defined. This means that the decision of whether to apply it is left to the discretion of the judge. However, the case law shows that the judges have often adopted narrow interpretation of the humanitarian exemption and that CSOs and individuals are still criminalised for their work in solidarity with migrants.[63]

In 2020, the European Commission issued *Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence*.[64] While the adoption of this guidance is a positive step, some important shortcomings limit the impact of the guidance in preventing criminalisation of solidarity. In particular, the text of the guidance invites Member States not to criminalise acts that are "mandated by law". However, as also flagged by civil society organisations,[65] referring to "acts mandated by law" has very different meaning

60 See analysis in Christelle Macq, "Droit pénal et lutte contre les migrations irrégulières", published in 2022 in the collection "Les dossiers de la Revue de Droit Pénal et de Criminologie." Pages 112-115 explain the Belgian courts' interpretation of what constitutes financial advantage.

61 For example, on page 5 of the Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence.

62 Article 53 of the Croatian *Law concerning Foreigners*.

63 See for example the case of Dragan Umičević.

64 European Commission, *Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence 2020/C 323/01*

65 Red Cross EU Office, *Position Paper: Protecting the humanitarian space to access and support migrants* (3 March 2021); PICUM, '*More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations'* (14 October 2020).

from acts "permitted by law." Activities such as providing food, shelter and information risk being excluded, in particular if they are not carried out by an organisation that is "mandated" to carry out such activities. The almost exclusive focus on search and rescue in the guidance also risks leaving out activities on the territory and activities that are not directly life-saving.

This approach was further reiterated by the European Commission's Renewed Action Plan Against Migrant Smuggling (2021-2025) [66], which clarifies that acts which are "mandated by law" should never be criminalised. However, the Action Plan further states that a different set of rules applies to what the Plan calls "humanitarian acts not mandated by law". With regard to these acts, Member States are merely "invited" to make use of the possibility to amend their national legislations to exempt them from criminalisation.[67]

In the Action Plan Against Migrant Smuggling (2021-2025), the European Commission committed to monitoring the implementation of the Facilitation Directive and reporting on the implementation of the Facilitators Package and the 2020 Guidance, in 2023. If the evaluation will show that it is necessary, the Commission will propose a revision of the legal framework.

> The criminalisation of people helping migrants as a result of the fight against irregular entry is not new and the potential serious consequences of the EU Facilitators' Package were already raised as concerns before its adoption. As highlighted in the Fit for Purpose report (2018 update), the European Parliament made objections to the Facilitators' Package from the very beginning.[68] Notably, the Parliament's propositions, which date back to 2000, addressed the lack of safeguards for victims of smuggling, people providing humanitarian assistance and service providers.

The use of administrative and criminal law to constrain humanitarian assistance and to prosecute human rights defenders, already documented in earlier reports,[69] was confirmed as an ongoing and serious challenge by those interviewed. In particular, it was noted that in many cases, human rights defenders have been charged with the aggravating circumstance, or separate charge, of being part of an organised criminal network. For instance, over the past decade Italy has been using emergency anti-mafia powers to criminalise migrants taking the helm of boats in distress in the Mediterranean Sea.[70] The introduction of this aggravating circumstance or separate charge

66 European Commission, *A renewed EU action plan against migrant smuggling (2021-2025)* - COM(2021) 591(29 September 2021); European Commission, *EU Action Plan against migrant smuggling (2015 – 2020)* COM(2015) 285 final (27 May 2015).

67 PICUM, '*The New EU Action Plan against Migrant Smuggling is Failing Migrants*' (7 October 2021).

68 Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J., and Sánchez, G., *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update*, PE 608.838 (European Parliament, 2018). p 53: "In 2000, following the presentation of the initiative by the French government with a view to adopting EU legislation on migrant smuggling, the European Parliament, which only had consultative powers, proposed several amendments for the consideration of the European Council. Its propositions exposed the many gaps in the framing of the legislation, namely the lack of safeguards for victims of smuggling, people providing humanitarian assistance and service providers; legal uncertainty; as well as a strong focus on punishment and deterrence as a solution to the detriment of a more holistic approach to curbing irregular migration."

69 See bibliography.

70 ARCI Porco Rosso and Alarm Phone, *From Sea to Prison: The Criminalization of Boat Drivers in Italy* (15 October 2021).

is used as an instrument to allow the prosecutor to be able to use a wider variety of investigation tools such as wire-tapping and longer pre-trial detention.

In addition to anti-smuggling provisions, governments are also using other administrative and criminal law provisions to hinder humanitarian assistance and solidarity. For example, national security arguments and anti-terrorism legislation have also been used to criminalise those involved in humanitarian assistance and acts of solidarity. When national security clauses are applied, it is frequent that lawyers, as well as the accused themselves, are denied access to important documents, which seriously hinders their right to defence. In addition, the penalties for such offences may also result in the migrants concerned having their residence or international protection status revoked.

## THE EL HIBLU 3 CASE

In January 2022, Amnesty International reported that more than 82,000 people were intercepted at sea and returned to Libya in the last five years.[71] As widely documented, migrants returned to Libya face arbitrary detention, deplorable conditions and extreme abuse.[72] It was in this context, in March 2019, when the migrants on board the El Hiblu realised that the ship's captain was attempting to illegally push them back to Libya, that they began to panic, refusing to be returned. Three African teenagers (now known as "El Hiblu 3"), who acted to deescalate the situation and interpreted between the crew and other migrants on the ship, were later accused by the Maltese authorities of high-jacking the ship. They were arrested upon arrival in Malta and detained for seven months. Now before a Maltese court, the "El Hiblu 3" face serious charges of terrorism and could, if convicted, spend many years - up to lifetime - in prison. Amnesty International, the Free El Hiblu 3 Campaign[73] and newly founded Freedom Commission[74] are among the many human rights defenders that continue to call for the charges against the three youths to be dropped.

Finally, many governments introduced restrictions during the COVID pandemic as measures to protect public health. Those interviewed for this report also raised concerns about such measures being used to limit access to migrants in vulnerable situations, to shrink the civic space and to criminalise humanitarian assistance. Such measures were viewed as being unduly restrictive or disproportionate.

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71 Amnesty International, '*Libya/EU: Conditions remain 'hellish' as EU marks 5 years of cooperation agreements*' (31 January 2022) .

72 Human Rights Watch, *No Escape from Hell EU Policies Contribute to Abuse of Migrants in Libya* (21 January 2019); Human Rights Watch, *'Libya: Nightmarish Detention for Migrants, Asylum Seekers'* (21 January 2019); UN News, *'UN report documents horrors faced by thousands held in arbitrary detention in Libya'* (10 April 2018); OHCHR, *'UN report details scale and horror of detention in Libya'* (10 April 2018); OHCHR, Abuse Behind Bars: Arbitrary and unlawful detention in Libya (April 2018); Ian Urbina, *'The Secretive Prisons That Keep Migrants Out of Europe'* The New Yorker (28 November 2021); UN Refugee Agency (UNHCR), *'Thousands of refugees and migrants suffer extreme rights abuses on journeys to Africa's Mediterranean coast, new UNHCR/MMC report shows'* (29 July 2020).

73 https://elhiblu3.info/

74 The ElHiblu3 Freedom Commission; Amnesty International, 'Malta: Amnesty delegation to attend El Hiblu 3 hearing as third anniversary of arrest approaches' (1 February 2022).

With regards to access, COVID measures resulted in restrictions on both access to territory and to the asylum procedure as well as to reception and accommodation centres for asylum seekers and migrants. Government responses to the COVID pandemic have exposed migrants to increased risk of immigration detention[75] and, in practice, meant that in some EU Member States reception centres were turned into de facto detention centres.[76] Moreover, NGOs' access to detention centres was also limited, which hindered their service provision and their monitoring role. In Hungary, public health grounds were used as an excuse to further restrict access to territory and to the asylum system. In Croatia, since March 2020 national civil society organistions providing critical services no longer have access to reception centres for asylum seekers.

In some national contexts, curfews were introduced that impacted the delivery of humanitarian assistance and resulted in financial penalties for those who were not authorised to be out after the curfew. For instance, in France, the organisation Utopia 56 was not placed on the list of organisations allowed out during curfew and, therefore, incurred many fines. Eventually, they had to stop distribution of humanitarian assistance during that time. In March 2021, a team of observers in Calais was fined two times during the same morning for non-compliance with confinement regulations. During the same month, 40 other intimidation attempts were registered, including 11 arbitrary identity checks and 10 encirclements by law officers.[77] Additionally, in many national contexts across the EU, COVID measures also meant limitations on freedom of assembly.[78]

75 UN Special Rapporteur on the human rights of migrants, Report on the impact of COVID-19 on the human rights of migrants (30 July 2021) A/76/257; United Nations, 'Policy Brief: COVID-19 and People on the Move' (June 2020).

76 Global Detention Project, 'Cyprus Country Profile' (25 January 2021); Global Detention Project, 'COVID-19 Global Immigration Detention Platform'; Global Detention Project, 'The Impact of COVID-19 on the Human Rights of Migrants: Submission to the Special Rapporteur on the Human Rights of Migrants' (June 2021).

77 Human Rights Observers in Calais, Monthly Report of observations of evictions (March 2021)

78 FRA, 'The coronavirus pandemic and fundamental rights: A year in review' (June 2021); European Parliament Policy Department for Citizens' Rights and Constitutional Affairs, 'The Impact of Covid-19 Measures on Democracy, the Rule of Law and Fundamental Rights in the EU' (23 April 2020).

## COVID RESTRICTIONS LIMITING HUMANITARIAN ASSISTANCE AND USED TO HARASS AID WORKERS

From March 2020 - January 2022 there were strict periods of lockdown on the island of Lesvos, Greece, which meant that freedom of movement was very limited. Although the lockdown regulations granted the possibility to leave one's house by providing documentation that one was on the move for the purpose of helping someone, CSOs assisting migrants were frequently fined by the authorities for breaking the lockdown. It was also reported that passports would sometimes be confiscated as a way to ensure payment of fines and to prevent the individual concerned from travelling.

In one case, a humanitarian activist interviewed reported being arrested because of going out during the lockdown to assist migrants and, therefore, breaking the COVID rules. The arrest process not only resulted in an administrative fine of 300 Euros, but also included forced undressing, a physical search and an intense 5-hour interrogation.

## 1.3 THE SHRINKING CIVIC SPACE AND **ATTACKS ON HUMAN RIGHTS DEFENDERS**

The recent LIBE Committee report[79] on the shrinking space for civil society in Europe recognised that:

> "in some Member States, restrictions have been imposed with the deliberate aim of limiting civic space and are accompanied by legal, administrative and fiscal harassment, criminalisation and negative rhetoric aimed at stigmatising and delegitimising CSOs and draining their capacity to carry out their legitimate work."

In this regard, it was also stressed that CSOs and human rights defenders providing assistance to migrants and asylum seekers and those involved in search and rescue operations are particularly exposed to such attacks.

79 European Parliament, Committee on Civil Liberties, Justice and Home Affair, Report on the shrinking space for civil society in Europe (2021/2103(INI)) Rapporteur: Anna Júlia Donáth.

# THE CASE OF KISA IN CYPRUS

The defamation, persecution and prosecution of the civil society organisation KISA and its leadership have been going on for many years.[80]

In December 2020, the Cypriot Minister of Interior removed KISA, and many other CSOs, from the Register of Associations. This decision has been viewed by several human rights organisation as the "latest move in a long campaign to discredit and silence independent voices in Cyprus, in particular KISA, and ultimately attack the foundations of democratic pluralism." [81] In a letter to the Minister of Interior of Cyprus, the Council of Europe Commissioner for Human Rights Dunja Mijatović suggested that this action might be in violation of the principles of necessity and proportionality and international standards.[82] Several UN special procedures further considered the deregistration of KISA "very troubling" and potentially in violation of Articles 19 and 22 of the International Covenant on Civil and Political Rights.[83]

Despite these actions and international calls for solidarity with KISA84, in June 2021 KISA's recourse against the decision of the General Registrar was rejected. With this decision, the court considered that the Ministry of Interior had the right to deregister an NGO which has been active in the fields of migration and human rights for 23 years, simply because it did not inform the Registrar of Associations on time that its constitution was compatible with the Associations and Institutions Law (104(I)/2017).[85] As a consequence, KISA's bank accounts have been frozen since February 2022, leaving the organisation unable to pay costs related to salaries, rent, ongoing activities and other expenses, and to receive any funding from ongoing projects and other sources. This case is now pending before the Supreme Court in Cyprus.

In another ongoing case, which began on 2nd August 2019, Doros Polykarpou, who was Executive Director of KISA, was arrested and pros-

80 KISA, 'Report of attacks, defamation, persecution and prosecution of KISA and its leadership' (2022).

81 PICUM, 'Organisations across Europe call on Cypriot government to reinstate equality champion KISA' (19 February 2021).

82 Dunja Mijatović, Commissioner for Human Rights and Council of Europe, 'Letter to Mr. Nicos Nouris, Minister of Interior of Cyprus' (10 March 2021).

83 UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, UNSpecial Rapporteur on the promotion and protection of the right to freedom of opinion and expression, UN Special Rapporteur on the situation of human rights defenders, UN Special Rapporteur on the human rights of migrants and UN Special Rapporteur on trafficking in persons, especially women and children, '*Communication to the Cyprus Government regarding the deteriorating environment for civil society organizations in Cyprus*' (AL CYP 1/2021) (31 March 2021).

84 PICUM, 'Organisations across Europe call on Cypriot government to reinstate equality champion KISA' (19 February 2021). Amnesty International, 'Cyprus: Halt the dissolution of leading anti-racism organisation' (2 March 2021).

85 KISA, 'KISA after the rejection of its appeal by the Administrative Court' (30 June 2021).

ecuted[86] with the charges of "obstructing police work and resisting arrest" for providing support to a young person harassed by the police. This happened outside of KISA's previous premises, where Doros Polykarpou, along with other KISA staff and many neighbours, approached a young person who was being shouted at and harassed by the police. Mr Polykarpou informed the youth that he could call his parents and offered his assistance. This was viewed as interference by the police officer, who ordered Mr Polykarpou to leave. When Mr Polykarpou pointed out that it was his right to remain at the scene, the police officer proceeded to call other police officers to handcuff and arrest him. Mr. Polykarpou was then charged with "obstructing police work and resisting arrest." The case is still pending in court. This case has gone before the Independent Authority for the Investigation of Allegations and Complaints Against the Police,, which investigates alleged abuse of power and ill treatment by a specific officer. The case is still pending awaiting the decision of the independent authority.

The practice of criminalising individuals reporting cases of police mistreatment has been identified as a pattern in Cyprus, where the police routinely react to any allegations of police abuse by accusing the victim of having attacked the police. When this happens, two parallel cases are then opened: one against the victim of police abuse, and one against the police officer. The courts normally prioritise the case of abuse against police, while the victim will likely have to wait at least two years for their case to be examined by the court. This puts pressure on the victim to withdraw their complaint. In order to address this problem, KISA is advocating for the Attorney General to be in charge of deciding which case goes first, in order to avoid undue pressure being placed on people filing complaints against the police.

Human rights defenders engaged in humanitarian assistance are often subjected to intimidation and harassment by the authorities and the media as well as private individuals. Too often, the authorities fail to provide them with adequate protection from these attacks. For instance, Iasonas Apostolopoulos, an activist and Rescue Coordinator on board the Mare Jonio rescue ship, has been the victim of threats by Greek neo-Nazi groups for months, because of his rescue work at sea and his active role denouncing pushbacks in the Aegean Sea. In January 2022, in a further attempt to intimidate him, his personal details were published online and shared by accounts linked to the Greek neo-fascist right.[87]

86 KISA, 'Abuse of power and vindictiveness by a member of the police force through the illegal arrest of KISA's Executive Director' (2 August 2019).

87 MEDITERRANEA Saving Humans, 'Letter to the Greek Ambassador on the threats against Iasonas Apostolopoulos' (19 January 2022).

## FRANCE: HARASSMENT AND INTIMIDATION OF VOLUNTEERS PROVIDING HUMANITARIAN ASSISTANCE

In France, the authorities have been routinely targeting human right defenders to deter assistance to migrants. This is particularly the case in in Northern France, where the volunteers of organisations such as Utopia 56 have been facing routine identity checks and other forms of police harassment in order to obstruct their humanitarian work. These forms of harassment have been particularly frequent near the beaches, where the police look for migrants trying to cross the Channel to the United Kingdom. Those engaged in humanitarian assistance are often subjected to identity checks as well as car searches. One Utopia 56 volunteer, who was arrested in April 2020 after filming police gassing a migrant during a camp eviction, spent nine hours in police custody, and eventually was charged for singing in the jail cell.[88] With legal assistance, the volunteer was able to contest the case in court. After a lengthy legal process that lasted almost two years, the court ruled in favour of the volunteer and found that this was abusive treatment from the police.

## JUDICIAL HARASSMENT OF PRO-TRANSPARENCY ACTIVISTS AND MIGRANTS' RIGHTS DEFENDERS

In autumn 2020, the European Border and Coast Guard Agency (Frontex) launched legal proceedings to recover €23,700 in legal fees after winning an EU general court case against pro-transparency activists Luisa Izuzquiza and Arne Semsrott. [89] The campaigners had sought access to the name, flag and type of each vessel deployed by Frontex in the central Mediterranean. Frontex had refused their request citing security issues, and was supported by a ruling from the Court of Justice of the European Union (CJEU) in November 2019. In November 2020, other freedom of information requests filed by Izuzquiza and Semsrott revealed the role of Frontex and the Greek government in the illegal pushback of migrants in Greece.[90]

88 BFM.TV, 'Jugée pour avoir chanté Brassen et "Bella Ciao" en garde à vue, une militante pro-migrants relaxée' (2 December 2021).

89 Nikolaj Nielsen, 'Frontex hits activist pair with €24,000 legal bill' *EUobserver* (27 February 2020).

90 Nikolaj Nielsen, 'Revealed: Official Greek order to illegally pushback migrants' *EUobserver* (18 November 2020)

In the context of the 2019 budget discharge, the European Parliament called on Frontex to withdraw its demand for the legal fees from transparency activists Luisa Izuzquiza and Arne Semsrott, underlying its potential chilling effect on civil society.[91] In April 2021, the European Court of Justice stated that Frontex's legal bill of €23,700 had been excessive, and reduced it to €10,520.[92]

Despite these calls, Frontex continued to seek payment from the transparency activists. In addition, Frontex has also asked the legal costs of a case brought by the organisation Front-LEX before the CJEU to be covered by the applicants, who are an unaccompanied child and a former asylum seeker who now has refugee status.[93]

Measures taken to shrink civic space and to criminalise migrants and human rights defenders have a serious "chilling effect" on civil society and citizen engagement. Some human rights defenders admit to becoming less outspoken after threats of retaliation or because they fear the possible repercussions for publicly criticising the authorities. By engaging to assist migrants at the borders of Europe, they often risk being charged with serious criminal charges for espionage, smuggling and human trafficking. They may be named and attacked in the local media as information is leaked concerning possible investigations against them, which may or may not materialise into criminal cases. For some, the pressure results in negative psychological impacts manifested in burn-out and anxiety attacks. They worry about the uncertainty of what would happen if they were placed in pre-trial detention and how their situation may affect their family members. Additionally, some are concerned that allegations and criminal charges may affect their ability to continue their career as, for example, they may lose their license to practice as a medical professional if convicted of an offence.

***"Criminalisation creates fear – people are afraid that it is illegal to help a migrant."*** --- Utopia 56

91 ibid.

92 'EU General Court reduces the legal costs claimed by Frontex against transparency activists' Access Info (19 April 2021)

93 Statewatch, 'EU: Frontex asks court to reject human rights case, seeks legal costs from asylum seekers' (5 January 2022).

There are also concerns that Strategic Lawsuits against Public Participation (SLAPPs) are being used to chill free speech by silencing those who speak out about corruption, abusive practices, violations of EU law and fundamental rights.[94] As was noted in a recent EP resolution, "SLAPPs have a direct and detrimental impact on democratic participation, societal resilience and dialogue and run counter to the values enshrined in Article 2 TEU."[95] On 27 April 2022, the Commission presented a proposal for a Directive on strategic lawsuits against public participation (SLAPP).[96] SLAPPS are used to intimidate and to harass human rights defenders, to discourage any further civic engagement and to deplete their financial resources. Such fabricated legal procedures can occupy those concerned for years and divert energy and resources away from important humanitarian and human rights work. In particular, the use of SLAPPs can be very damaging in national contexts where judicial harassment[97] is rife due to politicisation of and lack of independence of the judiciary.

## 1.4 LACK OF INDEPENDENT **HUMAN RIGHTS MONITORING AND BARRIERS TO ACCESS**

The proper functioning and resourcing of National Human Rights Institutions (NHRIs) is a crucial safeguard for human rights defenders. Their work increases transparency and accountability, for example, by reporting on the human rights situation in public reports or to national parliaments. In some national contexts, NHRIs can step in not only to document human rights violations and measures that have a chilling effect on civil society, but also to take complaints and to seek redress for victims before national courts. When fully independent and properly resourced, their awareness raising work and watchdog role contributes to preventing the criminalisation of human rights defenders and violations of human rights.

However, serious concerns were raised by many of those interviewed regarding the lack of functioning NHRIs in some countries. In some cases, NHRIs and ombuds institutions exist, but are not meeting the standards set out in the Paris Principles.[98] It was also pointed out by human rights defenders that in certain countries National Preventive Mechanisms (NPM) under the *UN Optional Protocol to the Convention Against Torture* are also institutionally weak and/or hindered in their human rights monitoring work. NPMs often play a crucial role, not only in monitoring respect for the fundamental rights of migrants (e.g. in immigration detention[99] and forced removal procedures), but also in promoting transparency and a constructive dialogue with the authorities. Their work can make an important contribution to nurturing a healthy civic space and to preventing

94 Judit Bayer, Petra Bárd, Lina Vosyliute and Ngo Chun Luk, 'Strategic Lawsuits Against Public Participation (SLAPP) in the European Union: A Comparative Study' (June 2021).

95 European Parliament, Resolution of 11 November 2021 on strengthening democracy and media freedom and pluralism in the EU: the undue use of actions under civil and criminal law to silence journalists, NGOs and civil society (2021/2036(INI)).

96 European Commission (27 April 2022) Commission tackles abusive lawsuits against journalists and human rights defenders 'SLAPPs'

97 Front Line Defenders, #JudicialHarassment.

98 UN General Assembly, UNGA Resolution 48/134 Paris Principles (20 December 1993).

99 UNHCR, Association for the Prevention of Torture and the International Detention Coalition, Monitoring Immigration Detention: Practical Manual (2014).

attacks on human rights defenders. In addition, NPMs can help to establish joint human rights monitoring strategies and to facilitate access for CSOs to restricted settings such as detention and border zones.

Independent human rights monitoring is especially important in restrictive settings such as detention and border zones. In recent years, temporary emergency measures and accelerated border procedures created new challenges for human rights defenders seeking to assist migrants in vulnerable situations.
This is certainly the case with recent developments along the EU and Belarusian borders.

In summer 2021, Belarus started allowing migrants to enter and to cross its territory, pushing them to the borders of EU countries such as Lithuania and Poland, in retaliation for targeted economic sanctions introduced by the EU in June 2021.[100] In response to this, Poland and Lithuania pushed back thousands of people to Belarus. Tens of thousands of people have been prevented entry since the onset of the crisis.[101] Several people died, freezing to death.[102] The Council of Europe[103], UNHCR[104], IOM, UNICEF and OHCHR[105] and a number of and CSOs[106] condemned push-backs on the Belarusian border, calling on the border authorities to respect international law.

In September 2021, Poland declared the border with Belarus, as well as the three kilometres next to it, a restricted zone, prohibiting access to aid workers and journalists from entering the area.[107] Lithuania followed in November 2021, declaring a state of emergency for five kilometres from the border region, and limiting access to journalist and aid workers without a special permit.[108] These measures severely impacted the possibility to provide much needed humanitarian support to people stuck at borders, and to monitor the human rights situation.

100 ibid.

101 Deutsche Welle, 'Poland illegally pushed Afghan migrants back into Belarus: Amnesty' (29 September 2021); Grupa Granica, *Kryzys humanitarny na pograniczu polsko-białoruskim* (1 December 2021) p.18.

102 Deutsche Welle, 'Poland says another migrant found dead near Belarus border' (8 December 2021).

103 European Council on Refugees and Exiles (ECRE), '*EU Eastern Borders: EU Negotiates Returns as Belarus Calls for Humanitarian Corridor, Polish Pushbacks and Access Ban Put Rights at Risk, Locals Saving Migrant Lives Face Reprisals*' (19 November 2021).

104 UNHCR, 'UNHCR urges States to end stalemate at Belarus-EU border and avoid further loss of life' (22 October 2021).

105 UN News, '*Uphold safety, human rights on Belarus-Poland border, UN agencies urge*' (9 November 2021).

106 Amnesty International UK, 'Poland: 17 Afghans violently pushed back to Belarus by authorities at border' (20 October 2021); SOLIDAR, 'Poland, Latvia, Lithuania and the EU – stop push backs at the Belarus border!', (18 October 2021); Human Rights Watch, 'Belarus/Poland: Abuse, Pushbacks at Border' (24 November 2021).

107 'Restricted zone on Polish border to remain in place' *InfoMigrants* (24 February 2022).

108 Jurga Bakaitė, 'Lithuania's state of emergency – who can enter the border regions?' LRT English (19 November 2021).

# LITHUANIA: RESTRICTIONS TO THE BORDER ZONE AND CRIMINALISATION OF HUMANITARIAN ASSISTANCE

In response to the urgent humanitarian situation at the border described above, the Sienos Grupė was founded in November 2021 in Lithuania to bring together volunteers to provide assistance in the border region. Since the beginning of the crisis, the authorities made public statements on the radio alleging that the Sienos Grupė's volunteers at the border were hiding migrants, thus creating a climate of suspicion towards them. The authorities also announced at the end of 2021 that a pre-trial investigation into smuggling at the border had been initiated. On 8th February 2022, the founder of Sienos Grupė was invited by the head of the pre-trial division in the town of Varėna to show up for a meeting and interview. She was presented with charges including smuggling of migrants over the border as well as smuggling and hiding of undocumented migrants in Lithuania. These are offences which could lead to imprisonment up to 10 years.[109] These allegations appear to be based on a situation in which the Sienos Grupė assisted four people from Pakistan, who were stranded in the forest just before Christmas 2021.

The authorities interrogated the founder and asked them to fill in the necessary documents, specify certain data and to provide the names of all of the activists involved in Sienos Grupė's activities. All the people included on the list were then summoned for a police interview on 21st March 2022. All of them were accompanied by a lawyer and were given "special witness" status. In late April 2022, the Kaunas Regional Prosecutor's Office terminated the pre-trial investigation launched by the border guards in December into the assistance of four migrants from Pakistan who entered Lithuania from Belarus, after it was established that no act with signs of a crime or misdemeanour had been committed.

109 Article 292, Lietuvos Respublikos baudžiamasis kodeksas (Žin., 2000, Nr. 89-2741).

## CRIMINALISATION OF SOLIDARITY AT THE POLISH-BELARUSIAN BORDER IN MARCH 2022

Ten days after the Russian invasion of Ukraine, the Belarusian authorities forcibly evicted migrants sleeping in a makeshift camp in Bruzgi, Belarus.[110] As a result, hundreds of people have been attempting to cross the Polish-Belarussian border, being forced to choose between entering Poland or conflict-ridden Ukraine.[111] While more and more people attempt crossing, activists providing support to people in situation of vulnerability have been increasingly victim of prosecution and arrests.

In the last week of March 2022 alone, a total of 13 activists providing life-saving support to migrants freezing at the borders were arrested in Poland, where they face up to eight years of prison for facilitation of irregular migration. [112] All of them, except one Italian national, have been subsequently released, while the trial against them is pending.[113]

At the same time, many other activists are helping out with food and transportation at the Ukrainian-Polish borders, receiving national and international praise. While these actions have been rightly celebrated, the parallel criminalisation of activists helping out at the Polish-Belarusian borders have led many organisations to call out on the double standards as well as the racist biases of the current approach to migration.[114]

At the same time as many human rights violations are taking place at EU borders, human rights defenders are also very actively monitoring the treatment of migrants in communities across the EU including the precarious living conditions in which many migrants find themselves. In this regard, it is important to underline that the right to housing is recognised as a basic human right in a wide range of international and regional legal instruments. Nonetheless, undocumented migrants across the EU are relegated to the margins of the private housing market through their economic and social conditions. Many undocumented migrants and their families are housed in unsanitary, overcrowded, poor conditions at exploitative prices. Forced evictions of undocumented people are frequent.

110 Lorenzo Tondo, 'Fears grow of new crisis as refugees in Belarus driven into Ukraine' *The Guardian* (14 March 2022).

111 Marion MacGregor, 'More migrants trying to reach Poland from Belarus' *InfoMigrants* (23 March 2022).

112 The 13 people are international and Polish activists from different groups including Grupa Granica and Catholic Intelligentsia Club (KIK). See more at: Marion MacGregor, 'More migrants trying to reach Poland from Belarus' *InfoMigrants* (23 March 2022); Weronika Strzyżyńska, 'Poland detains activists accused of smuggling migrants over Belarus border' *The Guardian* (25 March 2022); Bartosz Rumieńczyk, 'Sąd nie zgodził się na areszt dla aktywistów, którzy ratowali życie rodzinie z dziećmi' [The court refused to arrest activists who saved the lives of a family with children] Oko.press (25 March 2022).

113 ibid.

114 PICUM, 'The EU'S Migration and Anti-Racism Policies: Are We Ready For a Racism-Free Europe?' (18 March 2021); Daniel Howden, 'Europe has rediscovered compassion for refugees – but only if they're white' *The Guardian* (20 March 2022).

As documented by Human Rights Watch, migrants in encampments around Calais, France have regularly been subjected to degrading treatment including repeated mass eviction operations, near-daily police harassment, and restrictions on provision of and access to humanitarian assistance.[115] While migrants at risk of eviction or living in make-shift camps are particularly at risk of serious fundamental rights violations, homelessness and violence, CSOs supporting them have been regularly hindered in their work.

## FRANCE: RESTRICTIONS ON CIVIL SOCIETY ORGANISATIONS DURING MASS EVICTION OPERATIONS

The authorities in Northern France (Calais and Grande-Synthe) have used decrees to keep civil society actors outside the perimeter when eviction operations are taking place. Human rights defenders report that such measures are used to ensure that there are no witnesses and no testimonies. Despite this, civil society organisations have continued looking for ways to monitor such operations. They aim to assist the migrants who are being evicted and, in particular, to ensure that everyone affected is able to access shelter. In particular, they reported that during evictions, there are often difficulties caused by lack of interpretation or lack of suitable accommodation for those being evicted. Moreover, migrants who try to temporarily return to the place of the eviction to get their phones, bags or other belongings are often denied the right to do so by the police.

Civil society monitoring and service-provision activities during evictions in Northern France have been hindered in many ways, including through warnings to stay outside of the perimeter and through intimidation acts such as identity checks, taking pictures of photo IDs and filming civil society actors during evictions.

115 Human Rights Watch, 'France: Degrading Treatment of Migrants Around Calais' (7 October 2021); Human Rights Watch, *Enforced Misery: The Degrading Treatment of Migrant Children and Adults in Northern France* (7 October 2021).

# 1.5 CONSTRAINTS ON **FUNDING AND RESOURCES**

CSOs require adequate funding in order to provide services to migrants and refugees as well as to advocate for changes that will strengthen respect for fundamental rights in asylum and migration systems. Many organisations involved in humanitarian assistance and human rights monitoring face challenges securing funding for their work and some have reported having their funding negatively affected by politically motivated decisions.

Members of CSOs reported having difficulty accessing and raising funds both because of the thematic focus of their work (e.g. migration, gender, human rights monitoring and promoting transparency) as well as the nature and tactics of their work such as advocacy or legal assistance. In particular, one human rights defender remarked that a partner NGO, which provides free legal aid and independent legal representation to migrants at the appeal stage, had lost their government funding due to challenging government decisions too often.

A number of those interviewed for this report noted the struggles that migrant-led organisations face in their countries. According to the Migrant Integration Policy Index, which measures national policies to integrate migrants and to create opportunities for their participation in society, government support for migrants' political participation is the weakest area of integration policy.[116] This is also true of most EU Member States' national policies where only five Member States have been objectively assessed by MIPEX as having favourable policies in place.[117] This not only includes consultation with and participation of migrants in society, but also support for migrant-led organisations. Research supported by the European Programme on Integration and Migration also highlights such gaps, noting that spaces for migrant advocates to come together are limited and that they are frequently tokenised by mainstream CSOs and policymakers.[118] Furthermore, many funders provide support only for project implementation rather than core organisational costs, which are key to empowering migrants to organise and to carry out sustainable advocacy work.

**VOICIFY'S RECOMMENDATIONS TO IMPROVE PARTICIPATION OF YOUNG REFUGEES, EXILED, MIGRANTS, ASYLUM SEEKERS AND UNDOCUMENTED IN EUROPE**

Voicify[119] and its partners carried out in 2021 the first EU-wide consultation of migrant-led youth organisations identifying barriers to full, effective, constructive and inclusive political participation of Young Refugees, Exiled, Migrants, Asylum Seekers and Undocumented people (YREMASUD) and producing policy recommendations. In their report, Part of Europe,[120] they identify many challenges that such organisations face including the shrinking civic space, systemic racism, European supremacy and discrimination. To overcome

116 MIPEX, 'Political Participation'.

117 ibid.

118 European Programme on Integration and Migration, *Migrant-led Advocacy across Europe: Challenges and Opportunities* (October 2019).

119 Voicify.

120 Voicify, *Part of Europe* (December 2021).

these challenges, Voicify advocates for relevant authorities, institutions and civil society organisations to adopt policies aimed at ensuring equal administrative treatment, fostering access to funding and organisational development opportunities, and promoting more inclusive, representative, and democratic governance.

Migrant-led organisations should be recognised as an integral part of Europe and as equal partners, each with their own agency, and any cooperation should be done in dignified way and with equal power relations.

Additionally, some of the interviewees, who wish to remain anonymous, raised concerns about being particularly targeted by judicial or other forms of harassment because their organisations or partners receive funding (grants, crowdsourcing, donations, etc.) from abroad. This is because in some contexts (which included places all over Europe), authorities perceive migration control measures as strictly internal policies, and international funding to organisations working in this field can be seen as an undue interference.

**STRATEGIC LITIGATION TO CHALLENGE RESTRICTIONS ON CSOS RECEIVING SUPPORT FROM ABROAD**

In June 2017, the Hungarian parliament adopted a law mandating that all NGOs that receive more than 7.2 million forints (at the time around 23,000 Euro)[121] from abroad must register as "foreign-funded organisations." As reported by Human Rights Watch, while the purported aim of the law was to combat money laundering and protect national interests from foreign influence, it also "clearly served as another tactic to vilify, discredit, and obstruct the work of CSOs."[122] A month later, the European Commission initiated an infringement procedure against the Hungarian government.[123] When the Hungarian government's response was deemed unsatisfactory, the case was submitted to the Court of Justice of the European Union (CJEU).[124]

The CJEU ruled that the restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law. [125] It found that the restrictions imposed by Hungary on CSOs - which require registration, declaration and publication for certain categories of groups receiving funds from abroad - are "discriminatory and unjustified," on the grounds that they restrict the free movement of capital and unjustifiably impinge upon the fundamental rights to privacy, data protection and freedom of association.

As many CSOs engaging in humanitarian assistance have limited resources, they often rely on

121 Human Rights Watch, 'Hungary: Bill Seeks to Stifle Independent Groups' (12 June 2017).

122 ibid.

123 European Commission, 'Hungary: Commission launches infringement procedure for law on foreign-funded NGOs' (13 July 2017).

124 Hungarian Spectrum, 'The European Court of Justice rules in favour of the NGOS' (19 June 2020).

125 C-78/18 - Commission v Hungary (Transparency of associations).

volunteers and youth workers. As highlighted above, in some contexts, the fear of criminalisation has negatively impacted on the numbers of those willing to volunteer or to assist migrants in other ways.

The possibility to rely on the work of volunteers can also be affected by political decisions. When this opportunity is denied, this can seriously hinder the functioning of organisations which, because of their small size, have to rely on the work of volunteers. In one case, shared by interviewees, a CSO involved in humanitarian assistance was removed from the list of organisations eligible for the national civil service scheme, which funds and supports youth who choose to volunteer.

**SOLIDARITY ACROSS BORDERS – VOLUNTEERING AT THE FRONTLINES OF EUROPE**

The possibility to recruit international volunteers from across the EU has been very positive for civil society organisations which did not have access to national civil service schemes, often because of internal opposition from their national governments. This is the case, for instance, for many civil society organisations which are operational at EU borders. Programmes which allow young volunteers to take part in projects that benefit communities abroad could also be supported in the future by the European Commission through the European Solidarity Corps.

# 2. SPOTLIGHT ON THE EXPERIENCES OF **MIGRANT HUMAN RIGHTS DEFENDERS**

Migrants who act in solidarity with other migrants are disproportionally affected by criminalisation policies. Criminal proceedings, including when they end in acquittals, can have a life-long impact on migrant human rights defenders' possibility to live regularly in the EU. Because of their precarious administrative situation, they are at risk of losing their residence permit, and can face arrest, detention and deportation. A first instance conviction, or even simply proof of reasonable suspicion, can have the effect of excluding them from the right to apply for asylum[126] and from future applications for residence status. Even after an acquittal, migrants who have been accused of smuggling often have difficulties accessing asylum procedures, and they are often excluded from official reception centres.[127] Institutionalised racism means that migrants, or people with a migrant background, can face harsher consequences for the same circumstances or alleged offences, and receive discriminatory and unfavourable treatment during trial.

For many reasons, it is difficult to document cases of criminalisation of solidarity concerning migrants themselves. In certain cases, it has been possible for them to speak out, to contribute to human rights monitoring and to file complaints. In other cases, they admit to becoming less outspoken after threats of retaliation or because they fear the possible repercussions for publicly criticising the authorities. Migrants face greater risks if they speak out to denounce human right abuses and may be afraid of losing their residence status or compromising their application for international protection. The cases of some migrants have been difficult to document because they have been deported from the EU or pushed back in violation of international law. Migrants may also be more exposed to prosecution and risk of deportation when irregular entry and stay are criminal offences.

126 European Asylum Support Office (EASO), *Exclusion: Articles 12 and 17 Qualification Directive (2011/95/EU). A Judicial Analysis* (January 2016) p. 42.

127 Flavia Patane, Maarten P. Bolhuis, Joris van Wijk and Helena Kreiensiek, 'Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of Scafisti in Italy' (June 2020) Refugee Survey Quarterly, 39(2), 123-152.

## DETENTION AND MISTREATMENT OF MIGRANT HUMAN RIGHTS DEFENDER WHO WAS INVOLVED IN DOCUMENTING PUSHBACKS IN GREECE

An unaccompanied young person, who was live-streaming a pushback of migrants by the Greek authorities, was specifically targeted and imprisoned. He was subjected to seven months of administrative detention in a police station based on the suspicion of being a smuggler. During his stay in detention, he had serious medical issues that were not seen to while he was in detention. The youth was also wrongly registered as an adult and had no access to legal counsel.

As mentioned above, in recent years, there has been an increased tendency of EU Member States to use counter-smuggling legislation against migrants themselves. In Italy, more than 1,000 migrants have been criminalised in the last decade.[128] As reported by ARCI Porco Rosso and Alarm Phone, boat drivers are often identified on the basis of faulty photography and unreliable witnesses, and the trials against them characterised by several violations of procedural rights, such as lack of adequate defence and the impossibility to contact their families.[129] Even when boat drivers are acquitted, they face harsh social and economic consequences and do not receive any compensation for the time they spent in prison. This trend makes sea journeys even more dangerous, as migrants who would know how to steer boats in distress are now actively discouraged from intervening in situations of shipwrecks as this could condemn them to years of prison. Similar trends have also been analysed in Greece, where there has been a 100% increase in convictions for smuggling reported from 2016 (951 convictions) to 2019 (1,905 convictions).[130]

## CRIMINALISATION OF BOAT DRIVERS IN GREECE

On 13 May 2021, a 27-year-old Somali asylum seeker was sentenced to 146 years in prison on the island of Lesvos for migrant smuggling from Turkey to Greece. Other migrants defended him in the Greek court, say-

128 ARCI Porco Rosso and Alarm Phone, *From Sea to Prison: The Criminalization of Boat Drivers in Italy* (15 October 2021).

129 ibid.

130 Data from the Hellenic Ministry of Justice cited in: Valeria Hänsel, Rob Moloney, Dariusz Firla and Rûnbîr Serkepkanî, *Incarcerating the Marginalized: The Fight Against Alleged ›Smugglers‹ on the Greek Hotspot Islands* (November 2020).

ing he started steering their boat to save lives after a capsizing.[131] In April 2021, a Syrian man was sentenced in Greek court to 53 years in prison, accused of "facilitating illegal entry" and causing a shipwreck after Greek authorities accused him of having been at the helm of a boat that brought his family and as many as 40 people to safety. [132]

## PROMISING JURISPRUDENCE: MIGRANTS ARE NOT SMUGGLERS BUT ACTED IN SELF-DEFENCE

In December 2021, the highest court in Italy eventually acquitted two migrants who had been accused of facilitation of irregular migration, violence and forceful resistance to a public official for opposing being returned to Libya during a rescue operation. In a landmark decision, the court stated that these acts were justified as self-defence as the migrants had acted to save themselves and the other survivors from a serious threat to their lives.[133]A couple of months later, in February 2022, for the first time in Greece, the prosecutor followed the defence's argumentation in the trial against 23-year-old Syrian G.N. who was facing accusations for steering a boat in distress, and demanded their acquittal.[134] G.N. was facing a possible sentence of ten years in prison for having turned on the GPS on his phone when the boat got lost at sea.[135] In April 2021, the Appeal Court of Palermo (Italy) acquitted 14 migrants who had arrived in Italy in 2016, recognising that they had acted under threat and in a state of necessity.[136]

Migrants who engage in acts of solidarity often face harsher treatment during investigations, including lengthy pre-trial detention. Prolonged periods of pre-trial detention can lead to loss of jobs and rupture of housing contracts. Such measures can have long-term health, economic and social consequences for the individuals concerned. Furthermore, involvement in criminal proceedings can hinder an individual's participation in the asylum procedure, driving them into irregularity.[137]

131 Emma Wallis, 'Greece: Migrant accused of smuggling sentenced to 146 years in prison' *InfoMigrants* (14 May 2021).

132 ECRE, 'Greece: Scandalous Sentence for Young Refugee, Request to Commission, Legal Action Before ECtHR and Ombudsman Report on Pushbacks' (30 April 2021).

133 MEDITERRANEA Saving Humans, 'V0S Thalassa case: historic sentence by Italian high court' (17 December 202)

134 borderline-europe, <https://twitter.com/BorderlineEurop/status/1493292820320423950>; borderline-europe, 'Samos: 23 year-old Syrian faces 10 years imprisonment as 'boat driver' only for having turned his GPS on' (15 February 2022).

135 borderline-europe, https://twitter.com/BorderlineEurop/status/1493209991809048585; Antonio Fraschilla, 'In carcere due anni per traffico di esseri umani: in realtà erano solo dei migranti in cerca di una vita migliore' (5 April 2022).

136 Antonio Fraschilla, 'In carcere due anni per traffico di esseri umani: in realtà erano solo dei migranti in cerca di una vita migliore' (5 April 2022).

137 Flavia Patane, Maarten P. Bolhuis, Joris van Wijk and Helena Kreiensiek, 'Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of Scafisti in Italy' (June 2020) Refugee Survey Quarterly, 39(2), 123-152.

# BELGIUM: THE IMPACT OF PRE-TRIAL DETENTION AND LENGTHY TRIAL PROCESS

The Plateforme Citoyenne de Soutien aux Réfugiés was founded in Belgium in 2015. Following the arrival of many migrants and asylum seekers around that time, many were left to sleep rough in a park. To address this situation, private individuals joined forces to provide them with assistance and housing. In October 2017, four individuals hosting or assisting migrants were detained on suspicion of human trafficking. [138] This action was viewed by many as politically motivated. The accused faced up to ten years imprisonment for migrant smuggling. Although they were initially acquitted, this decision was appealed by the Prosecutor General. Finally, after more than four years of lengthy procedures and uncertainty, the acquittal was confirmed in May 2021.[139]

While two of the accused, who are Belgian citizens, were not subject to any pre-trial detention, one of the accused, a dual national, was detained for two months. The fourth accused individual, Walid, a non-EU citizen, was detained for eight months. Despite having lived in Belgium with a regular residence status since 2001, he was considered to be at risk of absconding and was therefore detained. [140] This treatment had a devastating and long-lasting impact on Walid who was quite isolated during this long process. He had not been connected to any movement of volunteers, but had simply hosted migrants in his home whom he had met in his community. While in pre-trial detention, he was evicted from his home and lost everything, including family photos, which were simply thrown out on the street.

*"They destroyed my life. I lost my apartment. I found out that the landlord emptied the apartment and threw away all my stuff. I had photos of my parents, souvenirs. My clothes I don't care, but the photos, when I think about them, I feel like crying."*[141] Walid, 42 years old.

Even though he eventually found a new home, he still struggles with depression. Despite the fact that he was eventually acquitted, the lengthy four-and-a-half-year trial process had irreversible negative impacts on his health and well-being.

138 Centre for European Policy Studies, Webinar: '*Criminalisation of Solidarity: How to protect the right to help migrants and refugees?*' (14 May 2020); Research Social Platform on Migration and Asylum (ReSOMA), *The Criminalisation of Solidarity in Europe* (2020).Caritas Europa, '*The "Criminalisation" of Solidarity Towards Migrants*' (20 June 2019); Vincent Vallies, *Europe: Open Season on Solidarity: A Study on the Patterns of Criminalisation of Solidarity through the Voices of Migrants' Rights Defenders* (International Federation for Human Rights and World Organisation against Torture 2021).

139 *Europe: Open Season on Solidarity: A Study on the Patterns of Criminalisation of Solidarity through the Voices of Migrants' Rights Defenders*.

140 Interview with Robin Bronlet, Lawyer, Progress Lawyers Network (19 January 2022).

141 https://www.levif.be/belgique/proces-des-hebergeurs-je-suis-en-prison-depuis-huit-mois-pour-rien/

The consequences for migrants engaged in acts of solidarity can be life-changing. For some, their activism has meant the loss of their international protection status, deportation or the need to seek protection again. In certain countries, such as Hungary, there has been a noted increase in revocation of international protection status by the authorities and withdrawal of residence permits based on national security reasons, concerning not only beneficiaries of international protection but also third-country nationals otherwise residing regularly.[142] As the underlying data substantiating the national security threat is classified, the basis for such a decision is not disclosed. This is an area for further research across EU Member States, in particular, because those concerned are placed at risk of fundamental rights violations such as *refoulement* or interference with their right to private life.

## CROATIA: THE CASE OF TAJANA TADIĆ AND HER PARTNER, OMER ESSA MAHDI, WHOSE REFUGEE STATUS WAS REVOKED

Tajana Tadić is a former programme manager with Are You Syrious, a human rights organisation created in 2015 in Croatia that assists migrants on the Balkan route. Are You Syrious provides migrants with psycho-social support, runs integration programs for children and adults, and monitors and denounces pushbacks and other illegal practices by the authorities. Are You Syrious is part of the Border Violence Monitoring Network.

Ms Tadić's partner, Omer Essa Mahdi, is an Iraqi citizen who arrived in Croatia on 26 April 2017 and was granted refugee status on 7 September 2018. The pair met at Are You Syrious during his asylum application process. The Ministry of Interior initially revoked Mr Mahdi's refugee status on 11 May 2020 on allegations that he "represents a danger to the national security and public order of the Republic of Croatia" and that he had misrepresented his sectarian affiliation and the potential danger he would face in Iraq. Neither he nor his attorney have been given access to the part of his file which has been classified as "secret," after the Ministry of Interior objected to their requests.

Mr Mahdi claims that the revocation of his status and threat of deportation to Iraq is a retaliation against him because of his refusal to accept the Croatian Security and Intelligence Agency's offer to become their informant with the task of disclosing information about other refugees,

142 Hungarian Helsinki Committee, 'Country Report: Withdrawal of protection status' (ECRE Asylum Information Database 15 April 2021).

as well as against the activist engagement of his partner Tajana Tadić.[143] This example shows the lack of a safe and enabling environment for migrant rights defenders in Croatia, who face judicial harassment and stigmatisation for their legitimate human rights activities.

On 12 January 2021, the Administrative Court of Croatia dismissed the appeal against the revocation of refugee status, ignoring the entire body of evidence provided by Mr. Mahdi and his lawyer, which included five expert opinions and official documents to support his claims. Furthermore, Mr Mahdi was instructed to voluntarily leave the European Economic Area within 30 days of the day on which the decision would be enforceable or he would be forcibly removed. He filed a request to have the 30-day period extended, as he appealed the case at the High Administrative Court and his presence might have been necessary at the court hearings. However, he did not receive an answer from the Sector for Border Police. Fearing deportation to Iraq, he had no choice but to leave Croatia while his partner remained in the country.

Mr Mahdi subsequently applied for international protection in Germany, but the authorities there sought to return him to Croatia under the Dublin procedure. After initially declining a Dublin request from the German authorities in October 2021, claiming that Mr Mahdi is a threat to national security, the Croatian authorities eventually accepted the request to return him on 24th December 2021. He is currently appealing this Dublin decision before the Administrative Court in Germany, in particular, because his return to Croatia could mean refoulement to Iraq where he would likely face torture, inhumane and degrading treatment.

*"We fought for truth and justice. I for Madina, Omar for himself, and others who might end up in his situation. We knocked on every door, but even the institutions whose mandate was to protect us did nothing. For Omar this meant the loss of another home, a life that we started to build together. And now, exile. Strangely compelling to think and write about but terrible to experience."*

Tajana Tadić

International volunteers and humanitarian workers from other European countries have also reported facing racism, islamophobia, harassment, threats and violence. For example, humanitarian workers who are visibly Muslim, reported encountering racism and harassment.

143 'Država protiv Omera,' Novosti: *Tjednik za racionalnu manjinu #1144 (19 November 2021).*

## CASE OF FRONTEX INTERPRETER WHO WAS DEPORTED FROM GREECE TO TURKEY

In September 2021, an interpreter who has a residence permit in Italy and who was working for the EU border agency Frontex, was assaulted and then forced across the border into Turkey alongside many other migrants.[144] The Greek border guards indicated that they had mistaken him for an asylum seeker. The Greek Ombudsman has launched an investigation of this complaint, which it received from the Frontex Complaint Mechanism.[145]

# 3. ILLUSTRATIONS OF SOLIDARITY AND **THE RESILIENCE OF MIGRANTS AND HUMAN RIGHTS DEFENDERS**

Despite the risks and penalties that they often face, many human rights defenders across Europe remain committed and engaged in efforts to provide humanitarian assistance as well as to prevent and to report on fundamental rights violations. They support each other in many different ways responding strategically and creatively to the challenges they encounter in the "hostile environment" as described above in Section 3.

## SOLIDARITY

With regards to the criminalisation of migration, **cities across Europe** have demonstrated solidarity with undocumented persons and taken practical steps to facilitate their access to ser-

144 Matina Stevis-Gridneff, *'E.U. Interpreter Says Greece Expelled Him to Turkey in Migrant Roundup' New York Times (1 December 2021); Natasha Mellersh, 'Frontex interpreter illegally deported to Turkey' InfoMigrants* (2 December 2021).

145 Greek Ombudsman, *'Greek Ombudsman launches investigation of complaint about illegal pushback of Frontex interpreter from Greece to Turkey, after receiving the complaint from the EU agency'* (1 December 2021).

vices and to allow them to exercise their rights in their local community.[146] For example, cities[147] have come together within the 'City Initiative on Migrants with Irregular Status in Europe' coordinated by the Centre on Migration, Policy and Society at the University of Oxford to exchange and to document good practices. This initiative led to the publication of guidance for municipalities[148], which addresses specific areas of service provision including: immigration counselling and support for voluntary returns; accommodation support; access to justice and protection for victims of crime; healthcare; and educational services. The guidance also showcases local practices that aim to reduce the barriers undocumented migrants commonly encounter when accessing services.

As highlighted in some of the case studies above, human rights defenders have also been fighting human rights violations against migrants such as pushbacks[149] and the criminalisation of solidarity in **courts across Europe**. In another notable case,[150] the Court of Justice of the European Union issued a landmark ruling in November 2021, which held that a number of elements of Hungary's "Stop Soros" laws violate EU law and must be rescinded. This includes provisions which restrict asylum seekers' access to and communication with lawyers and other human rights defenders, and provisions which restrict the access of lawyers and human rights defenders to Hungary's border areas.[151] This followed clear concerns raised in UNHCR's earlier observations on the legislative amendments.[152] Furthermore, the International Service for Human Rights and the Legal-Informational Centre for NGOs (Slovenia) submitted observations[153] to the Court pointing out how the legislation violated the rights of fundamental rights of both human rights defenders and asylum seekers.

When faced with **shrinking civic space and attacks**, human rights defenders have rallied to assist each other and to protect the civic space. For example, CSOs in Hungary have been confronted with a shrinking civic space over recent years. *Civilizáció*, the Civilization Coalition,[154] was established as a joint campaign of 34 Hungarian civil society organisations in 2017 to enable civil society organisations to support one another and to work for a liveable Hungary, where the conservation of nature, the protection of the disadvantaged and the care of communities is the common cause. The common purpose of the cooperating civil society organisations is:

- to strengthen the image, constituency and social support of civil society, and the civic activism

- to increase the level of social solidarity, to seek for new forms of it and to stand up for civic activists and CSOs

146 Centre on Migration, Policy and Society at the University of Oxford, '*City Initiative on Migrants with Irregular Status in Europe'.*

147 Athens, Barcelona, Frankfurt, Ghent, Gothenburg, Lisbon, Oslo, Stockholm and Utrecht. Helsinki and Zurich

148 Nicola Delvino and Sarah Spencer, *Migrants with Irregular Status in Europe: Guidance for Municipalities* (University of Oxford Centre on Migration, Policy and Society March 2019).

149 See for example: GLAN, www.glanlaw.org/aegean-push-backs

150 Case C-821/19 Commission v Hungary.

151 See also analysis at: https://ishr.ch/wp-content/uploads/2022/02/Update-note-on-case-C-821_19.pdf

152 UNHCR, *UNHCR Observations on the Legislative Amendments Adopted in Hungary in June & July 2018, 6 November 2018.*

153 The International Service for Human Rights and Legal-Informational Centre for NGOs, Observations relating to Case C-821/19 Commission v Hungary in support of the application submitted by the European Commission lodged on 8 November 2019.

154 The Civilization Coalition.

- to share knowledge and skills with each other and with other CSOs in order to make civil participation, organizing and advocacy more effective and strengthen the civil sector

- to take action against the shrinking civil space and actively work in order to increase the opportunities of democratic participation and the diversity of civil society.

Notably, CSOs in the coalition have supported each other by offering pro bono legal advice or representation. They have also coordinated their advocacy efforts and approaches to national and European monitoring bodies.

## INDEPENDENT MONITORING

With regards to carrying out independent human rights monitoring, there are several examples of human rights defenders shining a light on the darkest areas along EU borders that were highlighted by those interviewed for this report.

For example, the Aegean Boat Report[155] monitors and reports on issues related to people movement in the Aegean Sea, providing detailed, correct and neutral information on arrivals, reporting on instances of pushbacks by coast guards and other uniformed state employees and campaigning to ensure that these practices are stamped out.

The Border Violence Monitoring Network (BVMN)[156] is an independent network of CSOs mainly based in the Balkan regions and in Greece, who also monitor human rights violations at the external borders of the EU and advocate to stop violence against people on the move. The Network has developed a common framework for the recording of testimonials and building evidence which, after going through a process of fact-checking, is published on its website. BVMN publishes monthly reports covering pushbacks along the Greek and Balkan route. The testimonials and the reports serve as a basis for the Network's advocacy effort at the European level.

Forensic Architecture,[157] a research agency, based at Goldsmiths, University of London, investigates human rights violations including violence committed by States, police forces, militaries, and corporations. Their investigations employ cutting-edge techniques in spatial and architectural analysis, open-source investigation, digital modelling, and immersive technologies, as well as documentary research, situated interviews, and academic collaboration. Findings from their investigations have been presented in national and international courtrooms, parliamentary inquiries, international media, as well as in citizen's tribunals and community assemblies.

155 Aegean Boat Report.

156 The Border Violence Monitoring Network.

157 Forensic Architecture.

# FUNDING

Finally, human rights defenders have been creative with fundraising efforts to address **constraints on funding and resources**. CSOs assisting migrants and engaged in humanitarian assistance often face serious funding gaps, especially when access to funding is further jeopardised by defamation campaigns or when they have to cover legal and other expenses to defend themselves from legal and other forms of harassments. Yet, there are also many generous examples of fundraising efforts in solidarity, both small and large across Europe, to support both individuals and organisations who face criminalisation. For example, crowdfunding to support humanitarian work has been successful at the national level in several countries. For example, in Croatia, in less than 24 hours, 247 people donated more than 60,000 kuna (€8,000) to help Are You Syrious volunteer activist Dragan Umičević pay the fine he received for helping a family from Afghanistan to cross the border into Croatia in 2018.

At the European level, the Stiftungsfonds Zivile Seenotrettung (Search and Rescue Foundation) was founded in September 2019 after a crowdfunding campaign by German celebrities Jan Böhmermann and Klaas Heufer-Umlauf raised over one million euros to support the legal defence of Carola Rackete following her arrest during a Sea-Watch 3 rescue operation.[158] This kind of crowdfunding to secure high-quality legal representation is important because search and rescue operations have been particularly targeted and encumbered by criminalisation. The success of this crowdfunding campaign has also allowed the foundation to support other related efforts and to provide grants to organisations and projects that work for safer, regular routes and oppose the criminalisation of migration.

158 Emma Wallis, 'Fund-raising appeals for Sea-Watch captain Carola Rackete top 1.3 million euros' (2 July 2019).

# CONCLUSION

This report provides an overview of the phenomenon of criminalisation of solidarity by highlighting the main trends, providing updated figures and identifying the different elements that lead to a "hostile environment" for migrant rights defenders.

Through in-depth qualitative interviews with 15 human rights defenders in 10 EU member states, media monitoring, and desk research, this report shows that the criminalisation of migrants and people working in solidarity with them is constantly on the rise. Between January 2021 and March 2022, at least 89 people were criminalised in the EU.[159] However, this number is likely to be only "the tip of the iceberg", as some cases might have not been detected through the media monitoring, or they could go unreported because of fears of retaliation. The criminalisation of human rights defenders who are migrants themselves is even more underreported because of the particularly vulnerable situation of individuals who might risk deportation, pushbacks, arbitrary detention and loss of status as well as harsh financial, social and economic consequences.

The report identifies five main elements which contribute to creating a "hostile environment" towards migrants' rights defenders: the **"criminalisation of migration"** as well as negative attitudes towards migrants and xenophobic narratives; **administrative and criminal laws** which constrain and prosecute civil society actors providing humanitarian assistance to migrants or denouncing human rights abuses; limitations to freedom of expression, assembly and association, which contribute to a **shrinking civic space;** a **lack of independent human rights monitoring**; and **decisions on resource allocation**.

Migrants who act in solidarity with other migrants are disproportionally affected by the "hostile environment" described in this report. Criminal proceedings, including when they end in acquittals, can have a life-long impact on migrant human rights defenders' possibility to live regularly in the EU. Because of their precarious administrative situation, they are at risk of losing their residence permit, and can face arrest, detention and deportation. Institutionalised racism means that migrants, or people with a migrant background, can face harsher consequences for the same circumstances or alleged offences, and receive discriminatory and unfavourable treatment during trial.

Yet, despite the increasingly hostile environment, many migrants and human rights defenders continue to demonstrate solidarity, to provide humanitarian assistance and to fight for justice and accountability. Their resilience is exemplified in their ongoing day-to-day work, and by their creative responses to criminalisation and harassment, which often involve coalition-building, reaching out for support from their communities, and strategic litigation.

The next section includes recommendations on what the European Union can do to support their work, and to protect migrants and people acting in solidarity with them from criminalisation and harassment.

159 See Annex 3.

# POLICY
# RECOMMENDATIONS TO EU ACTORS

These recommendations aim to address the five elements of the "hostile environment" identified and explored through interviews with human rights defenders for this report

# 1. PREVENT THE CRIMINALISATION OF HUMANITARIAN ASSISTANCE

### *1.1 RECOGNISE AND PROMOTE HUMANITARIAN ASSISTANCE*

EU actors should publicly acknowledge and support the solidarity demonstrated by and the humanitarian assistance provided by CSOs, volunteers, individuals and migrants themselves.

The European Parliament could organise an exchange of views on the fundamental role of civil society in the defence of human rights, expressly including the role of human rights defenders who are migrants themselves, and adopt a resolution recognising the importance and legitimacy of their work and the right to defend human rights in the territory of the EU and at its external borders.

### *1.2 ENSURE THAT EU POLICIES AND LEGISLATION DO NOT CONTRIBUTE TO THE CRIMINALISATION OF HUMANITARIAN ASSISTANCE*

The EU Facilitation Directive should be revised in order to clearly differentiate between the criminal act of smuggling and acts of humanitarian assistance or solidarity.

- Migrant smuggling should be clearly defined as requiring unjust enrichment, in line with the UN Migrant Smuggling Protocol (which refers to "financial or other material benefit") and to prevent the criminalisation of landlords, taxi drivers and provision of other services to undocumented people. The legislation should explicitly exclude normal interactions and transactions without undue financial profit. This is necessary to ensure that normal transactions with undocumented migrants (e.g. renting a flat) are not criminalised.

- The "humanitarian exemption" clause should be made mandatory for the Member States and concern facilitation of entry, transit and stay.

- The scope of humanitarian action should include activities carried out both at sea and on land, and not be exclusively linked with the state of necessity.

# 2. CULTIVATE CIVIC SPACE AND BETTER PROTECT HUMAN RIGHTS DEFENDERS

## *2.1 CREATE A CONDUCIVE ENVIRONMENT FOR WATCHDOG CSOs AND OTHER HUMAN RIGHTS DEFENDERS*

The EU and Member States should promote and create a conducive environment for humanitarian assistance and solidarity towards migrants.
To follow up on the recent LIBE report[160] on the shrinking space of civil society in Europe, the Commission should adopt a coherent and structured policy to ensure that civic space in Member States does not deteriorate further. Measures suggested should include, but not be limited to:

- the creation of a "European civic space index". As highlighted by EU FRA in an earlier report, the methodology of the European Commi sion's 'CSO Meter[161]' applied in Eastern Partnership countries could be adapted for this purpose;
- the systematic addition of a dedicated civic space chapter to the Commission's annual Rule of Law Report;
- the adoption of a comprehensive civil society strategy.[162]

## *2.2 DEVELOP GUIDELINES FOR THE RESPECT OF FUNDAMENTAL RIGHTS OF HUMAN RIGHTS DEFENDERS WITHIN THE EU*

The European Parliament should request the European Commission, in consultation with the Fundamental Rights Agency and civil society, to develop guidelines for the respect of fundamental rights of human rights defenders. This would be a necessary step to ensure coherence between the EU external commitments, as exemplified by the EU Guidelines on Human Rights Defenders[163] and its internal policies. These guidelines could draw from the UN Declaration on human rights defenders[164] and the OSCE Guidelines on the Protection of Human Rights Defenders[165].

160 European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Report on the shrinking space for civil society in Europe (2021/2103(INI)) Rapporteur: Anna Júlia Donáth (22 February 2022).

161 Please see more details at: *The CSO Meter* supports regular and consistent monitoring of the environment in which civil society organisation (CSOs) operate in the Eastern Partnership countries. It consists of a set of standards and indicators in 10 different areas to measure both law and practice. It is based on international standards and best practices. The CSO Meter is split in two main parts: Fundamental rights and freedoms that are essential for the existence of civil society: (1) freedom of association, (2) equal treatment, (3) access to funding, (4) freedom of peaceful assembly, (5) right to participation in decision-making, (6) freedom of expression, (7) right to privacy and (8) state duty to protect. Necessary conditions that ensure additional support for the development of civil society (though their existence without fundamental rights and freedoms is not sufficient to ensure an enabling environment), including: (1) state support and (2) state-CSO cooperation.

162 *Report on the shrinking space for civil society in Europe (2021/2103(INI))* "As called for by Members of the European Parliament such a comprehensive civil society strategy should address: common minimum legal and administrative standards; a statute of European cross-border associations and non-profit organisations; focal points between European institutions and civil society; consistent access to policy debates and agenda-setting at EU level; access to monitoring of Union policies and implementation of the Union budget; and expanding flexible access to Union funding."

163 EU External Action, *EU Guidelines on Human Rights Defenders* (21 June 2016).

164 UN General Assembly, *Resolution A/RES/53/144 adopting the Declaration on human rights defenders* (1998)

165 Organization for Security and Cooperation in Europe (OSCE), *Guidelines on the Protection of Human Rights Defenders* (10 June 2014).

## *2.3 DEVELOP LEGAL AND POLICY TOOLS TO PROTECT HUMAN RIGHTS DEFENDERS FROM RETALIATION*

Article 15 of the Treaty on the Functioning of the EU recognises civil society's role in the EU's good governance. Watchdog CSOs and other human rights defenders routinely denounce malpractices such as corruption or mismanagement of EU funds as well as violations of fundamental rights. In performing this role, civil society actors should be protected against reprisals and retaliation. The European Commission could issue a proposal for a Directive protecting human rights defenders from retaliation.

The European institutions should ensure that the proposed Directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation")[166] offers effective protection to CSOs and human rights defenders against legal and judicial harassment.

166 European Commission, Proposal for a Directive of the European Parliament and of the Council on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation") 2022/0117 (COD)

## *2.4 INVOKE INFRINGEMENT PROCEEDINGS WHEN THERE IS A BREACH OF EU LAW*

The European Commission should continue to bring infringement proceedings when there is a breach of EU law and the rights associated with the Charter of Fundamental Rights, also considering the use of expedited procedures and interim measures when there is a risk of irreparable damage.

The European Commission should invoke infringements against the Member States that are abusing criminal law provisions to prosecute humanitarian actors and migrants themselves.

# 3. ADEQUATELY FUND HUMANITARIAN ASSISTANCE AND HUMAN RIGHTS MONITORING

EU institutions and Member States should ensure that the legal and policy environment is conducive to the possibility of CSOs having access to diverse pools of resources and that they face no undue obstacles when accessing funding from domestic or foreign sources. The financial support should cover the full range of civil society activities, including advocacy, community engagement and civil society development. Beyond project funding, infrastructure core funding and multiannual funding cycles would strengthen the civil society sector and ensure the sustainability of civil society's human rights work.

### *3.1 ENSURE ADEQUATE FUNDING FOR HUMANITARIAN ASSISTANCE AND FOR ACTIONS PROMOTING EU VALUES*

The EU should broaden and facilitate direct access to EU funding for civil society under the *EU Multiannual Financial Framework for 2021-27*, including for humanitarian assistance provided to migrants and for actions promoting EU values and the rule of law.

An increased portion of the Asylum Migration, Integration Fund's budget should be directly disbursed to CSOs, in particular in national contexts where evidence shows that human rights defenders have been excluded from accessing national-level funding or defunded. Administrative requirements of EU funding should be simplified to ensure that smaller CSOs and migrant-led organisations are able to access funding, including core funding. A percentage of the Asylum Migration, Integration Fund should be dedicated to supporting migrant-led organisations.

The European Commission should dedicate funding and issue a call for proposals for CSOs, which are involved in assisting migrants through humanitarian action including migrant-led organisations, in order to facilitate the placement of young volunteers with such organisations through the European Solidarity Corps.

### *3.2 DEDICATE FUNDING FOR STRATEGIC LITIGATION IN SUPPORT OF HUMAN RIGHTS DEFENDERS*

The EU should dedicate funding to strategic litigation at both national and regional levels in support of human rights defenders in Europe, with specific support to civil society in EU Member States where human rights defenders have been criminalised for providing humanitarian assistance and engaging in acts of solidarity.

The EU should ensure that funding is available to CSOs and individuals who are being investigated and prosecuted for engaging in acts of solidarity and providing humanitarian assistance to migrants.

### *3.3 EXPAND AND INVEST IN THE PROTECTDEFENDERS.EU PLATFORM TO COVER EU MEMBER STATES IN ORDER TO ALLOW REPORTING AND ALERTS AS WELL AS TO ENABLE TIMELY SUPPORT TO VICTIMS*

The EU should implement the EU FRA opinion[167] and build on the example of the existing external EU human rights defenders mechanism protect-defenders.eu, by providing appropriate financial support for the creation and maintenance of a similar monitoring mechanism in the EU, allowing CSOs and human rights defenders to report attacks, register alerts, map trends and provide timely and targeted support to victims.

### *3.4 ALLOCATE FUNDING TO INDEPENDENT MONITORING BY CIVIL SOCIETY ORGANISATIONS*

Through the funds of the European CERV programme, the EU should financially support CSOs and watchdogs that conduct independent monitoring of pushbacks and other human rights violations committed against migrants as well as monitoring of judicial and other forms of harassment against human rights defenders defending migrants' rights.

The budget for the European CERV programme for 2021-2027 should be significantly increased to address the challenges outlined above and, in particular, to support watchdog activities and defend human rights.

167 See Fundamental Rights Agency, Opinion 5 - Ensuring a safe space free from harassment and attacks (23 September 2021)

# 4. PROMOTE AND ADVANCE EU MIGRATION POLICY IN LINE WITH EUROPEAN VALUES

### *4.1 ADOPT A POSITIVE NARRATIVE ON MIGRATION AND TAKE CONCRETE ACTIONS TO COMBAT RACISM, INTOLERANCE AND XENOPHOBIA*

The European Commission should uphold its commitments under the *EU Anti-racism Action Plan 2020-2025*,[168] and take measures to address and combat structural and institutional discrimination. This should include adopting measures which ensure the equal protection of human rights defenders, independent of their residence status, ethnicity or country of origin.

Explicit references to the *EU Anti-racism Action Plan 2020-2025* should be integrated in different EU instruments on migration and protection of civic space.

The EU Fundamental Rights Agency should support Member States in developing and monitoring integration policies that include activities tackling discrimination and hate crime, including measures to combat racism, intolerance, xenophobia and hate speech.

### *4.2 MOVE TOWARDS A MORE BALANCED EU MIGRATION POLICY AND TAKE ACTION TO DECRIMINALISE MIGRATION*

All legislative amendments to the CEAS instruments and the Pact on Migration and Asylum should ensure fundamental rights compatibility. In particular, respect for the principle of *non-refoulement*, the principle of non-penalisation for irregular entry, the principle of human dignity, the right to an effective remedy, the prohibition of arbitrary deprivation of liberty, and the right to asylum should be ensured.

EU migration policies should be adopted and implemented that include safe and regular pathways to Europe, including resettlement schemes, complementary pathways such as humanitarian visas and work permit schemes, and labour migration schemes grounded in the decent work principles and across skills levels.

In the next EU Action Plan against Migrant Smuggling (2025-2029), the European Commission should expand the scope of regular pathways and ensure that anti-smuggling legislation is not used against migrant themselves as well as people acting in solidarity with them.

168 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, A Union of Equality: EU Anti-racism Action Plan 2020-2025 (18 September 2020) COM(2020) 565 final.

# 5. STRENGTHEN INDEPENDENT HUMAN RIGHTS MONITORING ANDSOLIDIFY THE EVIDENCE BASE

## *5.1 MONITOR THE TREATMENT OF HUMAN RIGHTS DEFENDERS ENGAGED IN HUMANITARIAN ASSISTANCE AND ACTS OF SOLIDARITY*

The EU should monitor all immigration and organised crime legislation and policy for its impact on the rights of migrants and human rights defenders. This should be done through the collection of an evidence base from an intersectional approach[169] by a broad range of stakeholders, including migrant communities. The monitoring should not only include cases which end with convictions but also all cases of ongoing criminal investigations including those which end in acquittals, as well as other forms of harassment and targeting of human rights defenders of mi grants.[170]

In particular:

- The European Parliament could set up a parliamentary inquiry to gather evidence and to hear the testimonies of human rights defenders who have been the targets of harassment and whose acts of solidarity have been criminalised, as well as to investigate whether such cases were driven by political agendas.

- In 2023, in the context of the evaluation of the Facilitation Package and the *Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence*[171], the European Commission should collect and publish statistics on the number of people charged with facilitation of irregular entry, transit and stay in the EU per year, including how many cases ended in acquittals or convictions, disaggregated by age, gender, country of origin and residence status.

- As pointed out by EU FRA[172], the European Commission should include reference to attacks against human rights defenders in its reporting under the *Framework Decision on combating certain forms and expressions of racism and xenophobia*,[173] when monitoring

169 Gabriella Sanchez, 'Beyond the matrix of oppression: Reframing human smuggling through instersectionality-informed approaches' (2017) Vol 21, Issue 1 Theoretical Criminology 46.

170 See also: European Parliament, Resolution of 5 July 2018 on guidelines for Member States to prevent humanitarian assistance from being criminalised (2018/2769(RSP)) "6. Calls on Member States to transpose the humanitarian assistance exemption provided for in the Facilitation Directive and to put in place adequate systems to monitor the enforcement and effective practical application of the Facilitators Package, by collecting and recording annually information about the number of people arrested for facilitation at the border and inland, the number of judicial proceedings initiated, the number of convictions, along with information on how sentences are determined, and reasons for discontinuing an investigation."

171 As committed to in A renewed EU action plan against migrant smuggling (2021-2025) COM(2021) 591 final.
"The Commission will also step up its monitoring of the implementation of the *acquis* to ensure that appropriate, effective and dissuasive criminal sanctions are in place while avoiding risks of criminalisation of those who provide humanitarian assistance to migrants in distress. The Commission will take close contact with Member States' national authorities, to collect information about the implementation of the Facilitators package and – where appropriate, in case of breaches of EU law – launch infringement procedures. The Commission intends to report on the implementation of the Facilitators package, including on the implementation of the 2020 guidance, in 2023. If necessary, the Commission will propose to revise the legal framework to ensure that the EU is equipped to implement the policy framework created by this EU action plan to respond to the constantly evolving challenges in this area."

172 See Fundamental Rights Agency, Opinion 5 - Ensuring a safe space free from harassment and attacks (23 September 2021)

173 Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law.

and assessing EU rules and tools to protect the rights of victims of crime, and when revising EU provisions on combating hate speech and hate crime. Additionally, the European Commission should also pay particular attention to the treatment of migrants when reporting under this Framework Decision.

### *5.2 STRENGTHEN INDEPENDENT HUMAN RIGHTS MONITORING, PARTICULARLY AT BORDERS*

Member States should establish and strengthen independent monitoring mechanisms to investigate allegations of fundamental rights violations at borders, including attacks against human rights defenders and migrants. CSOs and international organisations should be allowed to participate in the fundamental rights monitoring at borders, including by providing information and monitoring that effective steps are taken towards accountability.

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Vallies V*, Europe: Open Season on Solidarity: A Study on the Patterns of Criminalisation of Solidarity through the Voices of Migrants' Rights Defenders* (International Federation for Human Rights and World Organisation against Torture 2021).
Vosyliūtė L and C Conte, '*Crackdown on NGOs assisting refugees and other migrants', ReSOMA Discussion Brief* (July 2018).

# ANNEX 1: **LIST OF INTERVIEWS**

NB: All of cases in the report are up-to-date as of the date of the interview indicated in the table below.

| **Country** | **Name and organisation** | **Date** |
|---|---|---|
| Belgium | Robin Bronlet<br>Progress Lawyers Network | 19 January 2022 |
| Belgium | Spokesperson*<br>USPR | 2 March 2022 |
| Croatia | Ana Ćuća<br>Centre for Peace Studies | 18 January 2022 |
| Cyprus | Doros Polykarpou<br>KISA | 23 February 2022 |
| Czech Republic | Civil society representative* | 11 February 2022 |
| France | Charlotte Kwantes and colleague*<br>Utopia 56 | 17 January 2022 |
| Greece | Josoor International Solidarity<br><br>Two other members of the Border Violence Monitoring Network in Greece*<br><br>Humanitarian worker* | 21 February 2022<br><br>21 February 2022<br><br>23 March 2022 |
| Hungary | Civil society representative* | 11 February 2022 |
| Lithuania | Two volunteers from Sienos Grupė* | 3 February 2022 |
| Malta | Neil Falzon aditus foundation | 7 February 2022 |

* These interviewees asked to remain anonymous.

# ANNEX 2: **GUIDING QUESTIONS FOR INTERVIEWS**

### BACKGROUND MATERIALS

List of materials reviewed before the interview.

### LEGAL AND POLICY FRAMEWORK

- Are there measures in administrative law that constrain the work of human rights defenders who aim to assist migrants and refugees?
- Are there measures in criminal law that constrain the work of human rights defenders who aim to assist migrants and refugees?
- Can you say how often these measures are applied? What kind of penalties?
- Are there other policies or practices that create/contribute to a "hostile environment"?

### GENERAL TRENDS AND RECENT DEVELOPMENTS

- How has the situation developed over the past two years (since 2020)?
- Has the legal and policy environment become more hostile to migrants/refugees and human rights defenders? How?
- Are there any positive developments in this field?
- What has been the impact of COVID measures?

### MAIN CHALLENGES / SYSTEMIC ISSUES / HOSTILE ENVIRONMENT

- What are the main external obstacles you (and your partners) face that prevent you from implementing your work / from assisting migrants?
- In addition to those mentioned re: legal and policy framework, what other obstacles do you encounter in practice?
- How would you define a "hostile environment" in your national context? What are the key features?
- Are there new challenges such as the use of new technologies for surveillance; use of private security companies in humanitarian action; lack of accountability mechanisms?

### EFFECTIVE TACTICS/ACTIONS TO RESIST

- Which tactics/actions have been effective in addressing some of the challenges that you face?
- E.g. community organising, awareness raising/training, strategic litigation, strategic partnerships with National Preventive Mechanism or National Human Rights Institutions, pressure from external monitoring bodies…

### SPOTLIGHT ON SPECIFIC CASES

- Are there on-going cases or new cases?
- Are there any cases in which the "duty to assist" (e.g. that one should help a person in distress) was relevant and, for example, raised as a defence against criminal charges?
- Significant and recent court rulings /jurisprudence?

### CASES INVOLVING/TARGETING MIGRANTS

- Are you aware of any cases in which migrants themselves were harassed, investigated and/or prosecuted based on migrant smuggling charges and / or for acting in solidarity with other migrants?

### IMPACT OF MEASURES ON ORGANISATIONS AND INDIVIDUALS

- What have been the consequences for NGOs and individuals targeted with criminalisation?
- Are the consequences for migrants more severe or disproportionate?
- Are most cases that are investigated also prosecuted?

### STATISTICS

- Is there any government authority that provides statistics on such investigations and prosecutions in your country?
- Do you have any statistics from other sources – within your organisation or from media tracking?

### ROLE OF EU ACTORS

- In your view, what role has the European Union (or specific EU actors/agencies) played in related developments in your national context?
- How would you like to see the EU engaged in your national context? (e.g. funding, monitoring, training, guidance…)

### RECOMMENDATIONS

- Has your organisation formulated any recommendations to address this situation? At the national level? Or EU level? In the short term? Or in the longer term?
- Or are there any recommendations that you would like to share from your personal perspective?

# ANNEX 3: **MEDIA MONITORING OF CASES OF CRIMINALISATION (JANUARY 2021-MARCH 2022)**


Alarabia News (18 November) Greece to put Syrian swimmer, aid workers who helped migrants on trial for espionage

AP (21 March 2022) Greece: Norwegian photographer held on spy charge released.

Delfi (22 September 2021) https://www.delfi.lt/news/daily/lithuania/prieglobsti-afganistanieciams-suteikusi-lietuve-desto-kraupias-detales-jie-nesidrovejo-rodyti-fiziniu-suzalojimu-elektrosoko-zymiu.d?id=88246571

ECRE (14 January 2022). EU Eastern Borders: Belarus and Poland Enact Brutal Violence and Block Aid Workers, Lithuania Lifts State of Emergency

Frontline Defenders (30 November 2021) Investigation against migrant rights defenders Lorena Fornasir and Gian Andrea Franchi closed

Huffpost (May 19 2021) No trial for Carola Rackete, "her duty to bring migrants to port".

Info Migrants (1 October 2021). Migrant-friendly Italian ex-mayor sentenced to 13 years in prison.

Info Migrants (14 May 2021). Greece: Migrant accused of smuggling sentenced to 146 years in prison

Info Migrants (23 March 2022) More migrants trying to reach Poland from Belarus

Info Migrants (26 October 2021) Calls to release three young asylum seekers in Malta grow, as EU countries face criticism for jailing migrants.

Iuventa (4 March 2021). Italian prosecutor presses charges against the Iuventa crew:

Memesita (6 June 2021). Criticism of church asylum verdict against religious sister

NFP (1 November 2021) Polish activists found with Iraqis in car charged with aiding illegal crossings over Belarus border

Oko.press (29 March 2022). Aktywistka przesłuchana w kajdankach. KIK: „Dlaczego są dwie kategorie uchodźców i pomagających?" [Activist interviewed in handcuffs. KIK: "Why are there two categories of refugees and helpers?"]

Reuters (15 November 2021). Locals helping migrants on Poland-Belarus border fear backlash.

RFi (31 March 2021). French judges clear farmer who offered humanitarian solidarity to migrants

Solidarity is not a crime, COMMUNIQUÉ 26 Mai Verdicts Procès de la Solidarité et de la migration en appel.

Swi (28 January 2022). Un juez italiano archiva la investigación contra ONG por tráfico de migrantes:

The Guardian (24 June 2021) Greek police arrest Dutch journalist for helping Afghan asylum seeker

The Guardian (25 March 2022). Poland detains activists accused of smuggling migrants over Belarus border.:

The Local FR (10 September 2021). French court acquits activists accused of helping migrants cross Alps

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