

**Policy paper**

# **Criminalisation of Solidarity in the EU - What should be done to stop it?**

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## 1) Introduction

In the past years, the growing trend of criminalization of migration within the European Union is led by the political rhetoric that portrays migrants as a source of social disorder and criminality. The falsely constructed climate of fear opened the space for the Member States to implement restrictive policies that heavily rely on the widespread use of criminal law. The European Union's response to migration throughout years shifted into the sphere of internal security and sustained the process of securitization of migration.<sup>1</sup> Consequently, the European Union's migration policy started fostering radical political strategies which "aimed at excluding particular categories of people by reifying them as a danger."<sup>2</sup> Thus, the growing trend of criminalization of migration does not come as a surprise, *a contrario*, it is the product of conditioned distribution of rights on the basis of cultural, racial and socioeconomic criteria.<sup>3</sup>

In the midst of the humanitarian crisis that started in 2015, civil society organizations, activists and citizens expressed their solidarity with refugees and other migrants who were and still are searching for safety. Their acts of solidarity included conducting maritime search and rescue operations, distribution of food and clothes, housing and transportation, together with medical treatments. While the Member States in the name of protection of cultural homogeneity were adopting measures that restricted access to the system of international protection, civil society organizations and citizens stood in the defence of the right to seek asylum, human treatment and protection of human dignity. The broad conceptualization of criminalization of migration led to the criminalization of those who assist refugees and other migrants. Hostile environment and portrayal of civil society organizations, citizens as well as institutions who assist refugees and other migrants as actors who undermine the national sovereignty spurred implementation of administrative and punitive sanctions, as well as adoption of legislations that, *inter alia*, restrict the scope of the work of civil society organizations and institutions and implement austerity measures.

In light of a rising number of persons being prosecuted for showing solidarity towards migrants, this paper will look into the phenomenon of criminalization of solidarity and its conceptualization within and outside of the formal process of criminalization through de-legitimization, disciplinary measures, and intimidation. In order to understand the reach of this phenomena, it is necessary to look into the nexus between security and migration that is enshrined within the legal framework of the European Union and current political structures. What this paper strives to show is that current deterrence policy implemented by the European Union and its Member States contravenes with the commitment to the protection of human rights, human dignity, and the rule of law.

1 Huysmans, J. (2000). The European Union and the Securitization of Migration, *Journal of Common Market Studies*, Vol. 38, No. 5pp. 751–777. Available at: <https://onlinelibrary.wiley.com/doi/epdf/10.1111/1468-5965.00263>

2 Ibid. pp. 771.

3 Ibid. pp.771.

## 2) Political and Legal Trends

Criminalization of solidarity describes state actions and attempts to prevent and stop individuals, groups, initiatives, institutions and other actors from actions that support, help or assist people who are in need, but lack of proper papers, using criminal and immigration laws.<sup>4</sup> The actions such as providing legal information, buying a sandwich or water or taking someone to the doctor, as well as saving someone from freezing, drowning or dying usually would be considered as a basic and expected human reactions or solidarity, but in the recent period have become risky, criminal and unwanted.

First registered cases of criminalizing acts of solidarity towards migrants were recorded at the beginning of 2000s, but the number of cases and the severity of penalties have raised sharply in the recent period. According to Fekete research<sup>5</sup>, at the beginning of the 2000s the cases of persecution on the grounds of slandering public officials responsible for repressive practices or decisions as well as penalizing protests against deportation or detention were recorded in the UK, Ireland, Belgium, Austria, France, Italy and Greece. Recently, the persecution of people acting in solidarity with migrants has been observed widely across the European Union<sup>6</sup>. Compared to early cases, recent proceedings before the courts involve criminalization of sea rescues, providing medical assistance or meeting basic human needs such as food, water or shelter. Between 2015 and 2019, according to ReSOMA research, at least 158 individuals have been involved in 49 of such cases for offering humanitarian assistance to migrants and refugees across 11 European countries.<sup>7</sup> Although more cases are registered in countries where (far) right parties are in power, the lack of unanimous, strong and unequivocal response from the relevant EU institutions is still worrisome.

High number of persons prosecuted for assisting refugees and other migrants correlates with the shift in political rhetoric which altered the acts of “helping”, “solidarity”, and “assistance” into “smuggling” as well as “saving lives”, “providing food and shelter” or “access to asylum procedures” to “the facilitation of unauthorized entry, transit and residence”. Consequently, these basic human acts were transformed into something illegal and punishable, into crimes in certain circumstances. This terminological shift and the focus on prevention of irregular migration aligns with the European Union’s general approach towards the unified migration policy that associates

4 Duarte, M. (2019). The Ethical Consequences of Criminalizing Solidarity in the EU, *Theoria*, pp.2.

5 Fekete, L. (2009). Europe: crimes of solidarity, *Race and Class*, Institute of Race Relations Vol. 50(4): pp. 83–97.

6 Fekete, L., F. Webber and Edmond-Pettitt, A. (2017). *Humanitarianism: the unacceptable face of solidarity*, Institute of Race Relations, London. Available at: [http://s3-eu-west2.amazonaws.com/wpmedia.outlandish.com/irr/2017/11/10092853/Humanitarianism\\_the\\_unacceptable\\_Face\\_of\\_solidarity.pdf](http://s3-eu-west2.amazonaws.com/wpmedia.outlandish.com/irr/2017/11/10092853/Humanitarianism_the_unacceptable_Face_of_solidarity.pdf).

FRA (2014). *Criminalisation of migrants in an irregular situation and of persons engaging with them*. Available at: [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2014-criminalisation-of-migrants-1\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2014-criminalisation-of-migrants-1_en.pdf).

Chinedu Okafor, O. (2019). Report of the Independent Expert on human rights and international solidarity. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/108/84/PDF/G1910884.pdf?OpenElement>

7 Vosyliūtė, L. and Conte, C. (2019). ReSOMA Final Synthetic Report Crackdown on NGOs and volunteers helping refugees and other migrants. Available at: <http://www.resoma.eu/node/194>

external migration with the threat to internal security.

With the primary goal of combating migrant smuggling, in 2002 the EU implemented the so-called Facilitators Package that includes the Facilitation Directive and its following Framework Decision which stipulate definitions of the facilitation of unauthorised entry, transit and residence. According to Article 1 of the Facilitation Directive:

*Each Member State shall adopt appropriate sanctions on: (a) any person who intentionally assists a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens; (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.<sup>8</sup>*

Article 2 of the same Directive states that the Member States might not impose restrictions on acts defined in Article 1 if such are done with the aim of providing humanitarian assistance. More precisely:

*Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.<sup>9</sup>*

Broadly defined facilitation of irregular entry, transit or residence within the Facilitation Directive raises the issue of legal uncertainty. Bearing in mind standards set within the ambits of international law, the grounds for the criminalization of assistance to persons whose status has not yet been regularised do not correspond with the standards set within the UN Protocol against the smuggling (further in the text ‘the UN Protocol’). Article 3 of the UN Protocol prescribes that:

*“Smuggling of migrants” shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.<sup>10</sup>*

*Travaux Préparatoires* of the UN Protocol shows that the condition of financial and other material benefit was made due to righteous recognition of the importance of humanitarian assistance. The intention of the UN Protocol was not to criminalize family members, religious groups or non-governmental organizations, but to target criminal groups who exploit migrants for their financial

8 Council of the European Union. (2002). COUNCIL DIRECTIVE 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, Article 1.

9 Ibid. Article 2.

10 United Nations. (2000). PROTOCOL AGAINST THE SMUGGLING OF MIGRANTS BY LAND, SEA AND AIR, SUPPLEMENTING THE UNITED NATIONS CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME, Article 3.

benefit. By comparing standards set within the UN Protocol and the Facilitation Directive there are obvious inconsistencies. The vagueness of the Facilitation Directive and its exclusion of the financial and other material benefit from the provision that defines the act of smuggling opens the door for widespread use of criminal law. Defining the acts of solidarity as “the facilitation of unauthorized entry, transit and residence” and treating them as a harsh violation of criminal law, can have an impact on discourse and public perceptions regarding migrants as those not worthy of help or compassion and the conflation of irregular migration and criminal activity. Distorted role of the criminal law turned it into “a tool to force people to accept a situation in which they must advance a specific political agenda with which they do not even agree” instead of being a tool for the protection of society against deviant behavior.<sup>11</sup> In addition, the advisory nature of the Facilitation Directive’s provision that leaves it up to the Member States to decide whether they will have a humanitarian clause within their national legal framework proves that the legal framework of the EU fails to provide sufficient safeguards to persons who express solidarity towards refugees and other migrants.

Many experts gave an overview of how the purpose of the 2002 Facilitation Directive has been developed over time. From the ultimate aim to fight illegal migration, trafficking, smuggling and those who profit from it, Facilitators Package has become the main tool for violation of human rights of refugees and other migrants in order to stop and control migration. The priority to stem unwilling migration movements to the EU seems important enough to justify breaches of other EU principles and values. Several international human rights norms such as the right to life, right to liberty and the security of the person, right to freedom of expression, right to a fair hearing, right to adequate housing, and the right to food and to an adequate standard of living are violated by criminalizing humanitarian aid or solidarity.<sup>12</sup> Criminalization of solidarity represents a flagrant disregard for the human rights obligations and EU’s legislation. Moreover, understood as a product of criminalization of migration, the criminalization of solidarity shows that the Member States of the EU rely on the conditioned distribution of rights on the basis of cultural, racial and socioeconomic criteria.

The criminalization or suppression of humanitarian assistance provided to refugees and other migrants is a political decision. Both scientific, as well as legal arguments, go against such a solution. Although this could be considered as a recent practice, the consequences of such decisions could be seen and measured. Policies and practices which fail to distinguish between human smuggling and humanitarian assistance, are affecting all EU citizens, as many of them fear that helping another human being will lead them to court and, potentially, to prison. A deterrent effect that fear of sanction, together with “collective indifference”<sup>13</sup> has been proven by several studies. Once people are afraid to provide water or give a lift to the doctor to a human being in need, then (il)legality of status will become irrelevant. Consequently, implementation of laws which criminalize humanitarian assistance threatens the values of solidarity and human rights and

11 Duarte, M. (2019). The Ethical Consequences of Criminalizing Solidarity in the EU, *Theoria*, pp.6.

12 Chinedu Okafor, O. (2019). Report of the Independent Expert on human rights and international solidarity. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/108/84/PDF/G1910884.pdf?OpenElement>

13 Basaran, T. (2015). The saved and the drowned: Governing indifference in the name of security”, *Security Dialogue*, Vol. 6, No. 3, 2015.

destroys social capital.

National laws that ban solidarity actions violate the rule of law and international customary norms such as the principle of *non-refoulement*. These laws shrink the space of the civil society activities and *prima facie* violate the right to freedom of expression when humanitarians who participate in or support street protests in solidarity with refugees and other migrants are prosecuted or intimidated, or when those who campaign on behalf or speak in support of them are threatened to be prosecuted or deported; or when persons who participate in protests on board aircraft in solidarity with irregular migrants about to be deported are prosecuted or suppressed. A rising number of humanitarians and human rights defenders who are facing prosecution can be understood as a failure of the Member States to implement standards set within the United Nations Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (further in the text; Declaration on human rights defenders). Article 12 of the Declaration obliges states to implement all necessary measures in order to protect human rights defenders, whether they ought to be individuals, or associations, from any form of *de jure* or *de facto* pressures or discrimination.<sup>14</sup> Special Rapporteur on the human rights defenders reminded that “the Declaration imposes independent obligations on States to adopt appropriate administrative and legal frameworks to support the defence of human rights and to educate State officials and the public at large about their rights. As has been noted in many of the country entries, State officials are increasingly critical of human rights defenders.”<sup>15</sup> This critical approach towards human rights defenders by state officials is particularly problematic, given that “defenders are portrayed as disconnected elites, dishonest or uninformed troublemakers, and foreign agents.”<sup>16</sup>

Measures suppressing external migration together with laws that aim to deter persons who assist refugees and other migrants undermine the respect of relevant international conventions. Nevertheless the trend of implementing restrictive laws is growing. The European Migration Network (EMN) report<sup>17</sup> done in 2017 proves the Member States lack of recognition of humanitarian assistance within national legal frameworks. Only 4 out of 21 Member States responded positively to the question whether their national legislation explicitly prescribes the exclusion of punishment for facilitation, if the assistance was committed only for humanitarian reasons, in line with the Facilitation Directive. Still, Belgium, Finland and UK responded that their national legislations do not explicitly describe the acts that are not punishable. France was exemption responding that if the assistance did not give rise to any direct or indirect remuneration and was in form of legal advice, catering, accommodation or medical care in order to ensure dignified and decent living conditions for the alien, then will not be punishable.<sup>18</sup> Paradoxically

14 United Nations. (1999). Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms”, Article 12.

15 Mr. Michel Forst United Nations Special Rapporteur on the Situation of Human Rights Defenders.(2018). WORLD REPORT ON THE SITUATION OF HUMAN RIGHTS DEFENDERS”, pp. 8.

16 Ibid.

17 European Migration Network. (2017). EMN Ad-Hoc Query on Ad-Hoc Query on exemption of humanitarian assistance from criminalisation. pp. 5-6. Available at: [https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1135\\_hr\\_ad-hoc\\_query\\_on\\_exemption\\_of\\_humanitarian\\_assistance\\_from\\_criminalisation.pdf](https://ec.europa.eu/home-affairs/sites/homeaffairs/files/2017.1135_hr_ad-hoc_query_on_exemption_of_humanitarian_assistance_from_criminalisation.pdf)

18 Ibid.



enough, there are several cases of prosecution of individuals in France who did not want to be silent observers of the brutal policy of border control.<sup>19</sup> Prosecution of persons who provide assistance despite implementation of the humanitarian clause shows that the notion of solidarity, in the eyes of the state, cannot overturn far-reaching interpretation of laws that define smuggling.

The fact is, migration cannot be stopped and in the absence of safe and legal routes, in order to reach a safe destination, people are pushed to more risky and perilous journeys. Migration policies are developed on both Member State and EU level. Increased detention, harassment, and legal proceedings against persons who provide assistance show the outreach of laws that stand in conflict with international human rights norms. Additionally, even independent institutions and cities were affected by some of these measures due to assisting refugees and other migrants within their scope of work. The notion of solidarity that is negatively politicized together with the widespread use of criminal law arose legal uncertainty that stranded migrants and persons who assist them. A growing number of individuals prosecuted for assisting refugees and other migrants prove that current deterrence policy implemented by the European Union and its Member States contravenes with the commitment of the protection of human rights, human dignity, and the rule of law.

### **3) How is it done?**

The phenomenon of criminalization of solidarity towards migrants conceptualizes within and outside of the formal process through de-legitimization, disciplinary measures, and intimidation.<sup>20</sup> In the recent research Carrera et. al. point out that criminalization of solidarity that happens outside its formal process relies on several factors; “vague legal concept of ‘migrant smuggling’ as a crime, political & operational priority on ‘migrant smuggling’ – as a migration management tool, xenophobia & anti-migrant sentiments and rule of law challenges.”<sup>21</sup> Indeed, looking into the cases of prosecution of persons who offered assistance to refugees and other migrants, it is obvious that their criminalization is a result of prior mentioned factors.

#### **Formal Criminalisation of Solidarity**

Formal criminalization is grounded on the feeling of suspicion towards organisations who provide assistance to refugees and other migrants through a narrative that seeks to equalise humanitarian and solidarity activities with smuggling. This misconception leads to the adoption of laws that vaguely define the crime of migrant smuggling and open the space for far-reaching interpretation

19 Aude de Coustin. (2018). Criminalisation of Solidarity in France: A General Overview, pp.9. Available at: <https://www.borderline-europe.de/sites/default/files/readingtips/Criminalisation%20of%20Solidarity%20in%20France.pdf>

20 Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update, Bruxelles: PETI Committee of the European Parliament, pp.23.

21 Ibid.

of the law. Consequently, the authorities directly target organizations and individuals who provide assistance, under the premise of disabling smuggling networks. What might be perceived as the effort from the state to stop criminal activities, in fact, represents suppression and prosecution of organizations and individuals who stand in defence of basic human rights which have been systematically denied to migrant population trying to reach safety in Europe.<sup>22</sup>

There are numerous examples of formal criminalisation of solidarity throughout the European Union. Many individuals and organized groups, as well as religious communities were accused, prosecuted or suppressed on the basis of assisting the entry of irregular migrants into a country, transporting them to a border or within a country. Also, providing the necessities of life to irregular migrants, renting accommodation or providing housing or sanctuary to irregular migrants, have become punishable acts.

In 2017, Haydée Sabéran, a journalist for Libération and Mariam Guerey, a volunteer with Secours Catholique, were arrested in Calais by riot police together with seven minors who they drove to take a shower at the association Secours Catholique (Catholic Relief). During the control, the police officers communicated to their superior via radio. The arrest of the minors, the employee of Secours Catholique and the journalist was therefore validated by the hierarchy. All these people were taken to the brigade dealing with the repression of the activities of the “smugglers”, but upon arrival at the police station, the possible custody turned into a free hearing, and everyone was released.<sup>23</sup>

The couple Lisbeth Zornig Andersen and Mikael Rauno Lindholm were convicted in March 2016 of aiding, harbouring and transporting people without valid documents, with the verdict confirmed and fines increased on appeal. They were accused of violating immigration laws after taking a Syrian refugee family in their home, giving them a hot drink, driving them to the railway station and buying them tickets to Sweden.<sup>24</sup>

In 2018, Dragan Umičević, volunteer of the Croatian non-governmental organization *Are You Serious?* was found guilty of “unconscious negligence” and fined with 60 000 kunas (8066 EUR or almost ten average monthly salaries in Croatia), because in the eyes of the court, he unconsciously facilitated the illegal entry of a refugee family to the Croatian territory. Dragan approached the police control near the Croatian border and drew their attention to the frightened and lost family of refugees in a field near Strošinci, already on Croatian soil. A few days later Dragan faced charges for the facilitation of illegal entry, although he at no point had direct communication with the family. The indictment against Dragan showed that the Croatian Ministry of Interior wanted not only to punish him but to also disable the work of the organization *Are You*

22 Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update, Bruxelles: PETI Committee of the European Parliament, pp.23.

23 Newsletter *Passeurs d'hospitalités – English* ~ *Exiles in Calais and at the British border*. Available at: <https://passeursdhospitalitesenglish.wordpress.com/2017/02/16/calais-journalist-haydee-saberan-secours-catholique-employee-and-seven-minors-arrested-in-front-of-the-showers/>

24 Fekete L. (2018). Migrants, borders and the criminalisation of solidarity in the EU, *Race and Class* 59 (4).



*Syrious?*<sup>25</sup>

On March 2018, at an altitude of 1,900 metres on the Col de Montgenèvre, a French mountain guide Benoît Duclos rescued a pregnant Nigerian woman and her family. In order to save their lives, Duclos used his car to drive them to the hospital, but he was stopped by the French gendarmerie and accused of facilitating the illegal entry of migrants. He was facing 5 years in jail because he saved the woman along with her husband and children while crossing the French-Italian border.<sup>26</sup>

While there is no affirmative duty under international law to rescue people who are in distress on land, the duty to rescue any person in distress at sea is well established under general international law. Nevertheless, recent cases of criminalization of organizations who conduct humanitarian search and rescue missions, *Iuventa 10* and *Proactiva Open Arms* attracted attention and have had an enormous impact in raising awareness on what is happening on the Mediterranean Sea. What is even more worrisome is that the practice of criminalizing organizations and individuals who save migrants from drowning was recorded in 2004 and it is still ongoing.<sup>27</sup>

## Disciplining

For the purpose of formal criminalization, authorities rely on the vaguely defined crime of migrant smuggling. In the case of disciplining, on the other hand, the state relies on sanctioning those actors who provide food, information, medical assistance, or the ones who advocate for the rights of refugees and other migrants. What is distinctive about this form of criminalization of solidarity is that it coincides with disproportionate measures with the aim of deterring organizations and individuals whose activities are focused on the suppression of discriminatory laws and policies.<sup>28</sup>

Advocating for the rights of people on the move as well as publicly expressed disagreement to injustice, to many extents, has become risky and perilous. The cases of disciplining those who participate in or support street protests, or who campaign on behalf of or speak in support of irregular migrants as well as those who participate in or support protests on board aircraft in solidarity with irregular migrants about to be deported, are reported in many EU countries.

25 Statewatch.org. (2018). Statewatch News Online: Croatia: Criminalising solidarity: Are You Syrious? statement on politically motivated, unjust guilty verdict for our volunteer. Available at:

<https://www.statewatch.org/news/2018/sep/croatia-ays-case.htm>

26 Brioschi, F. (2018). From the Sea to the Mountains: The Increasing Criminalization of Solidarity. Liberties.

Available at: <https://www.liberties.eu/en/news/from-the-sea-to-the-mountains-other-crimes-of-solidarity/14768>

27 The case of a *Cap Anamur* ship, belonging to a German humanitarian non-governmental organization, carrying 37 African refugees saved while trying to reach Italy from Libya, is recorded in 2004. The captain and first officer of the ship and the director of the NGO were detained by the authorities on charges of aiding irregular migration immediately after it was forced to dock owing to distress on board.

Not just organized groups were criminalized for saving lives, but the individuals as well. The case of two Tunisian fishing boats who had rescued 44 migrants in distress, detained upon their boats arriving in port, happened in 2007. Although they were acquitted after five years, the fishermen were tried on charges of human smuggling, under the heads of “facilitation of unauthorized entry,” and “aggravating circumstances for organized crime”. See more at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G19/108/84/PDF/G1910884.pdf?OpenElement>

28 Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update, Bruxelles: PETI Committee of the European Parliament, pp.23.

One of the most known cases happened in Sweden, in 2018, when Elin Ersson, a Swedish student live-streamed her protest against the deportation of an Afghan asylum seeker on Facebook. She attempted to prevent a flight from Göteborg since the Afghan asylum seeker was on-board. After Elin refused to take her seat, several other passengers joined her protest and the asylum seeker was removed from the plane. She avoided a prison sentence at the Gothenburg district court, where she was sentenced to a fine of 3,000 Swedish krona.<sup>29</sup>

In 2006 in Britain, two members of the Glasgow Unity Centre were charged with a breach of the peace because they joined a community protest against a dawn raid on a Turkish family in the Cardonald area. As the prosecution on three occasions had failed to hand over to the defence copies of the dawn raid video by the Home Office Immigration Enforcement Team, a judge eventually threw the case out of court.<sup>30</sup>

Somewhat more subtle disciplining measures are often put against the citizens who live around borderline area, which is the case with the local population living on the borders with Bosnia and Herzegovina. The local population fears giving food, and water to refugees and migrants because of the police officers who threatened them with disciplinary measures.

### **Intimidation and harassment**

Intimidation and harassment of organizations perpetuate through oftentimes public threats made by politicians, officials or authorities. The level of intimidation and harassment is highly dependent on the political climate, and its discretion accordingly changes. Although this concept of criminalization of solidarity does not lead to fines or the fear of prosecution, it has the power to systematically disable the work of individuals and organizations who provide assistance to refugees and other migrants. Adding to its systematic nature, intimidation and harassment can manifest on several different levels; individual, organizational and societal.<sup>31</sup>

In some cases, human rights defenders were accused of defamation because they had voiced concern and drawn attention to abuses committed by the police, in other words, because they were doing their job. Cases of intimidation are reported by humanitarian lawyers who provide legal advice to irregular migrants as well as by cities that provide sanctuary to irregular migrants.

In Croatia, the Ombudswoman as an independent institution *inter alia* in charge of the National Preventive Mechanism has been disabled to do the work or to implement acts from its mandate

29 Crouch, D. (2019). Swedish student fined for anti-deportation protest that went viral. The Guardian. Available at: <https://www.theguardian.com/world/2019/feb/18/swedish-student-elin-ersson-fined-after-broadcasting-plane-protest-against-asylum-seeker-deportation>

30 Fekete, L. (2009). Europe: crimes of solidarity, Race and Class, Institute of Race Relations Vol. 50(4): 83–97.

31 Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update, Bruxelles: PETI Committee of the European Parliament, pp.23.

after several of her public statements and published reports on violations of human rights of refugees and other migrants by the Croatian police. She asked for independent investigations of alleged accusations for physical violence, push backs, collective expulsions and non-*refoulement* principle at the Croatian borders. In addition, she shed light on the case of the death of a 6-year-old Afghan girl on the Croatian- Serbian border in November 2016.

Another example of intimidation and harassment can be tracked in Croatia, where the Centre for Peace Studies, who has been warning about restrictions to access to asylum and continuous violent push-backs conducted by the Croatian police for the last three years, experience severe intimidation by the Ministry of Interior. After escorting refugees to police stations for the purpose of applying for international protection, employees and volunteers testified receiving threats from police officers about the initiation of legal proceedings against them and against the organisation. In the time of a press conference where the Centre for Peace Studies together with *Are You Syrious?* and lawyers were supposed to address the misconduct of Croatian police, they were all called to attend a police interview right at the time of a press conference. The culmination of harassment and intimidation happened when the Minister of Internal Affairs publicly stated that CPS smuggles migrants from Serbia, and gives them money, phones, and directions on how to enter Croatia. The Minister publicly accused the CPS of conduct of illegal activities without due process, which turned out to be completely unfounded and blatant defamation of the CPS' work.

This short overview of different conceptualization of criminalization of solidarity shows the magnitude of consequences which organisations and individuals have to face while trying to protect the human rights of refugees and other migrants. It also shows the severity of the deterrence policy of the Member States of the European Union, which goes against several established international human rights law norms that prohibit or at least severely constrain both the criminalization of humanitarian assistance to irregular migrants and refugees such as the Protocol against the Smuggling of Migrants by Land, Sea and Air, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

#### 4) Recommendations

After analysing the current situation, and addressing the legal issues that arise from the implementation of the Facilitators Package and the phenomena of criminalization of solidarity, the most important question needs to be answered - what should be done to stop the criminalization of solidarity?

- The law of the European Union should be in compliance with international law. Facilitators' Package should include the criteria of “financial gain or other material benefit” to differentiate between criminal acts of smuggling and acts of humanitarian assistance or acts of solidarity.
- Facilitator’s Package should be amended in the spirit of legal clarity and certainty. Facilitators’ Package should have a clause that would oblige the Member States to exempt humanitarian assistance and acts of solidarity from criminal prosecution.
- In order to prevent the criminalisation of solidarity, institutions of the EU should define humanitarian assistance in accordance with the standards set within the European Fundamental Rights Charter and high moral standards. This definition should acknowledge the importance of the work done by civil society organizations and institutions on a national level.
- European Union should support individuals and civil society organizations who have been prosecuted because of helping refugees and other migrants, (*inter alia*) through funds allocated for legal support for those prosecuted.
- Through the funds of the Rights and Values Programme of the EU, the EU should financially support civil society organizations that conduct independent and effective watchdog operations regarding the violent and unlawful expulsions, surveillance of the borders, and other human rights violations of refugees and other migrants.
- European Union should protect civil society organizations that conduct search and rescue operations, and it should initiate again its own search and rescue operations.
- The institution of the European Ombudsperson should be more prominently used to secure that EU institutions do not criminalize those supporting refugees and other migrants and that the EU’s institutions and bodies guarantee fundamental rights in their work in accordance with the Charter of Fundamental Rights.
- The European Union should invoke infringement procedures against the Member States who criminalise organisations who are in solidarity with refugees and migrants, even when this criminalisation is not formal.
- An end to all activities that criminalize solidarity and prevent access to information and disable the civil society in supporting and assisting people on the move. Help and support

for people who were forced to leave their homes, as well as any other human beings, is a legal and moral obligation and the very foundation of a healthy society. The ongoing marginalization and spread of fear contribute to the development of xenophobia and the reduction of the solidarity capacity of the society.

- European Union should develop and implement adequate protection of the whistle-blowers such as police officers should be granted for those who decide to speak publicly about human rights violations on the borders but within certain Member States, too.