



RESEARCH SOCIAL
PLATFORM ON MIGRATION

The criminalisation of solidarity in Europe



This project has received funding from the European Union's Horizon 2020
research and innovation program under the grant agreement 770730

INTRODUCTION

What is the “criminalisation of solidarity”?

“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. In particular, people helping migrants, including lifeguards, journalists, priests, volunteers and NGOs, have been portrayed and investigated as criminals.

How is solidarity being conflated with crime?

EU and national laws define the crime of migrant smuggling so vaguely that any assistance to migrants can in principle be criminalised. At the EU level, the Facilitation Directive defines the ‘intentional assistance’ to asylum-seekers or migrants without regular documentation as a crime of facilitation of irregular migration.

People helping migrants can be accused of facilitating irregular migration even if they do so for humanitarian purposes or seek unjust profit. Such a broad criminal definition captures many legitimate and moral actions, some of them even constituting states’ human rights obligations. Existing exemptions are extremely narrow and have proved to be ineffective in preventing the risk of criminalisation across the EU.

How did the situation escalate?

After the major arrivals of migrants and refugees in 2015-2016, the EU failed to create a fair mechanism to share responsibility over the management of asylum seekers. This left many EU Member States in the external border regions overwhelmed with migration procedures and increasingly unwilling to meet their human rights obligations towards migrants.

Volunteers, civil society organisations, local communities and churches stepped in across Europe to fill the gaps in search and rescue missions, reception and provision of basic services. Yet populist leaders branded their actions as a ‘pull factor’ for new arrivals, which resulted in individuals and civil society organisations being intimidated, harassed and charged with facilitating irregular migration across the EU. Eventually, this led to lengthy criminal cases and prosecutions, the majority of which ended with acquittals.

However, even when acquitted, people still experienced high individual costs related to the trials. In addition, in several cases, public prosecutors appealed acquittal decisions. At the same time, such trials produce broader chilling effects as more people refrain from helping migrants because they fear being criminalised. Refugees and migrants paid the highest price: their lives were lost when search and rescue ships were seized, they experienced inhuman and degrading treatment in Libyan camps, and also in the EU’s reception centres (hotspots).

Who can be accused of facilitating irregular migration?

Crime of Facilitation of Entry & Transit, Article 1.1(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;”

- NGO or merchant ships conducting search and rescue operations
- NGOs and volunteers in the border zones providing food, shelter, showers, medical assistance, access to justice, etc.
- Individuals giving a lift or providing shelter
- Smuggled migrants (including family members and friends) helping each other
- Journalists and filmmakers, making a story about the situation in border/transit zones
- Taxi, Uber, other shared car services, bus drivers

Crime of Facilitation of Residence, Article 1.1.(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.”

- Landlords, people renting their houses through Airbnb, etc.
- Shelters and other service providers that take small fees/donations for their services
- Lawyers
- Doctors
- Mayors who receive EU funding to promote integration of migrants

What can EU policy-makers do?



Establish an EU-wide mechanism to enforce the rule of law. It should hold EU institutions and national governments accountable for violations under international human rights and humanitarian law in the context of migration management and border controls.



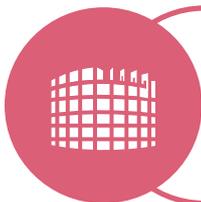
Develop guidelines **to respect, protect and promote human rights defenders** in the EU and international waters, in line with the UN Human Rights Defenders Declaration. "Watchdog" civil society actors and activists are essential to ensure respect of EU values and ensure democratic accountability.



Narrow the definition of crime of "migrant smuggling" in the EU Facilitation Directive. The criminalisation should only occur when there is "unjust enrichment", for instance in cases of human trafficking.



Oblige EU Member States **to exempt human rights defenders and humanitarian actors from prosecution** in the Facilitators Package and related guidelines. This exemption should be broad as to cover NGOs, volunteers, and activists that are saving lives, providing assistance, access to justice, monitoring and denouncing human rights violations and upholding human dignity.



European Parliament should launch an inquiry into the criminalisation of solidarity, to monitor practices of judicial harassment against humanitarian actors, including through fair trial violations and repeated appeals against acquittal rulings.



Extend the EU Fundamental Rights Agency's ongoing monitoring of civil society space beyond search and rescue NGOs to include the wider modes of policing humanitarianism. Such monitoring should be coupled with an independent monitoring led by civil society.



Strengthen civil society across the EU via dedicated EU funding, in particular by channeling more resources towards the European Values Instrument and its Strategic Litigation Fund.

Map with cases

171 individuals criminalized in 13 European countries*

Fredrik ÖNNEVALL, Sweden

Fredrik Önnvall is one of three journalists working for the public broadcasting service SVT, who were arrested and charged with facilitating illegal entry after helping a 15-year-old Syrian boy. The three had helped a Syrian boy to enter Sweden from Greece during the filming of a TV documentary. All three were found guilty in February 2017 and given suspended sentences as well as 75 hours' community service.

→ Status: **convicted**

Pierre MANNONI, France

Pierre Mannoni, a French teacher, was arrested in 2016 for giving a lift in his car to three Eritrean women, including a child, who were injured after walking for 10 hours through the Roya valley in winter time. The first-instance judge acquitted Pierre, ruling that he had helped the women to "protect their dignity".

The prosecutor appealed and Pierre was later sentenced to two months in prison by the Aix-en-Provence Court of Appeal. In December 2018, the Court of Cassation finally quashed the sentence and ordered a new appeal hearing. In January 2020, Pierre was tried before the Lyon Court of Appeal for the fourth time. If found guilty, he would risk five years of imprisonment.

→ Status: **pending**

Dragan UMIČEVIĆ, Croatia

Croatian volunteer with the organization Are You Syrious? and retired army officer Dragan Umičević was charged with aiding irregular entry because he had helped a family cross the Croatian-Serbian border without papers. In early September 2018, Dragan was sentenced for "unwitting negligence" and fined around 8,000€.

The organisation Are You Syrious? appealed the decision in October 2018.

→ Status: **pending**

Anouk VAN GESTEL, Belgium

Belgian journalist Anouk Van Gestel was accused of human smuggling for hosting asylum seekers in her apartment. Anouk was one of hundreds of Belgian citizens who opened their doors to migrants who camped in the Maximillian Park in Brussels. In October 2017, the police searched Anouk's apartment and confiscated her electronic devices. At the time, Anouk was hosting an unaccompanied Sudanese child. She was accused of migrant smuggling aggravated with participation in an organised criminal group, merely because she discussed with a colleague about how to help the boy to get international protection in the UK. The court finally acquitted Anouk accepting that she acted out of solidarity. The acquittal has however been appealed by the prosecutor.

→ Status: **pending**

Carola RACKETE, Italy

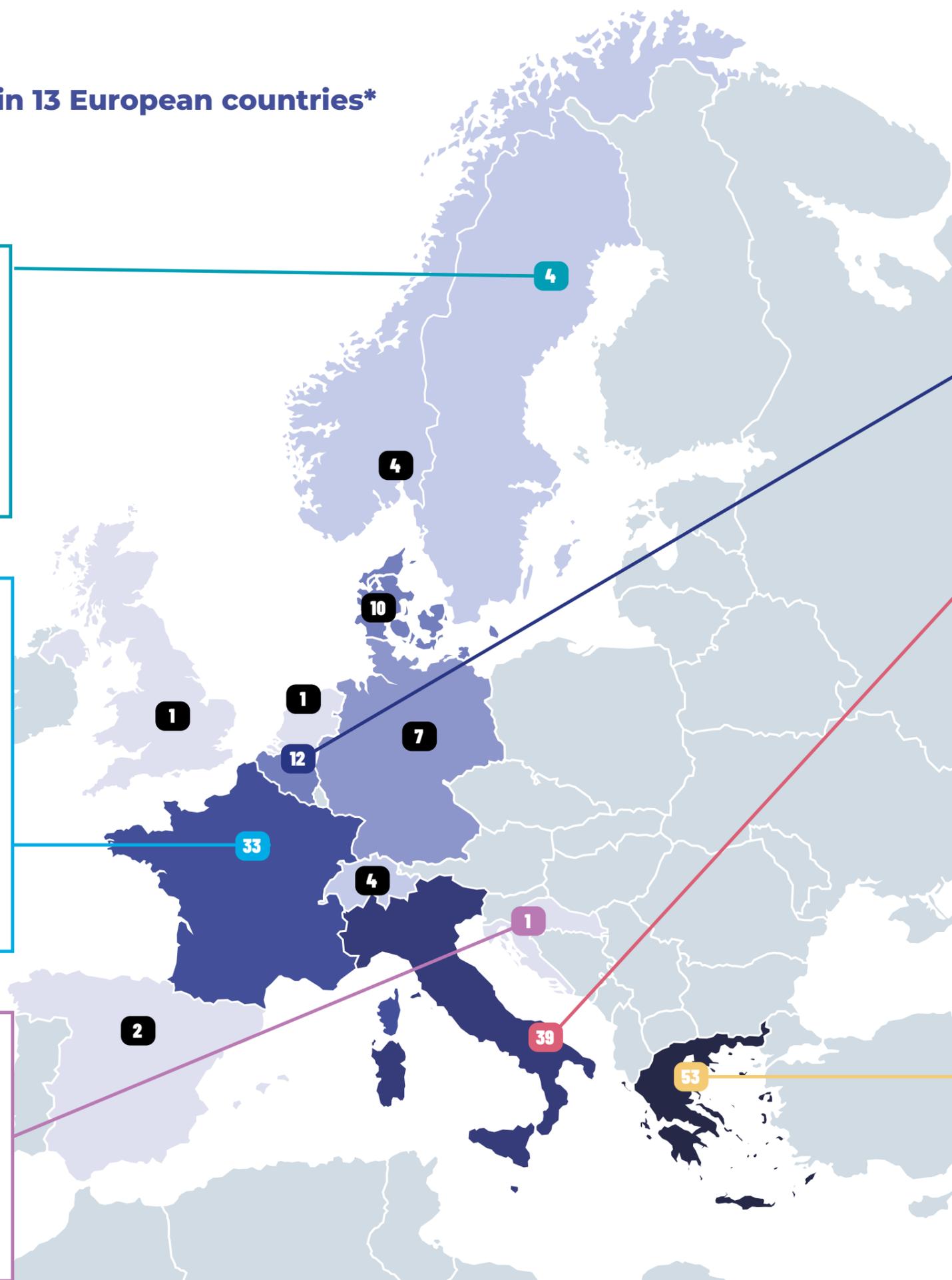
Carola Rackete, captain of the Dutch Sea-Watch 3 rescue ship, was arrested and questioned by Italian prosecutors in Agrigento on 29 June 2019 for allegedly aiding the irregular entry of migrants following the disembarkation of 40 people her crew saved at sea, and for disobedience towards a military vessel. Carola was released three days later following a first-instance judge's ruling that she shouldn't have been arrested because she was helping other people. The prosecutors appealed the case, but in February 2020, the Italian Court of Cassation confirmed her acquittal. If convicted, Carola would have faced up to 15 years in prison.

→ Status: **acquitted**

Seán BINDER & Sarah MARDINI, Greece

Seán Binder and Sarah Mardini, two young volunteers from the organisation Emergency Response Centre International, were arrested by the Greek police in Lesbos, in February 2018. They had taken part in search and rescue operations at sea helping asylum seekers within European waters. Their ongoing prosecution is the largest case of criminalisation of solidarity in Europe, as the investigation has involved a total 37 people, with 24 now being prosecuted and five in pretrial detention. They have been charged with several felonies, including espionage, assisting human-smuggling networks, membership of a criminal organisation, and money laundering. If found guilty, both could face 25 years in prison.

→ Status: **pending**



* As of December 2019

Crackdown on NGOs and volunteers who assisted refugees and migrants

In 2019, the [ReSOMA research platform](#) investigated cases where people were criminalised for their solidarity towards migrants in Europe. The research relied on existing studies on the criminalisation of humanitarian assistance in Europe that examine cases of individuals prosecuted under anti-smuggling and immigration laws in the EU Members States.

As of December 2019, Resoma research found that:



CHARGES

44

cases based on the crimes of **Facilitation of entry or transit**

10

cases based on the crimes of **Facilitation of residence**

6

cases based on **multiple grounds**

In **5 CASES**, the crimes of facilitation were aggravated by the simultaneous accusation of:

- Money laundering**
- Membership of a criminal organisation**
- Espionage**
- Improper use of documentation**

Challenging the 'criminalisation of solidarity'

Lawyers and advocates can address the following institutions to seek justice and remedies for people who have been criminalised.



United Nations

- **Human Rights Committee** can order retrials to remedy miscarriages of justice in cases of convictions, and when there are grave violations of fair trials guarantees.
- **Working Group on Arbitrary Detention** can investigate whether pre-trial detention was necessary and proportionate.
- **Special Rapporteur on Human Rights Defenders** can receive complaints on the issue of judicial harrasment of anyone prosecuted for their human rights activities.
- **Special Rapporteur on Migrants** can report on the criminalisation of solidarity, including through field visits.



Council of Europe

- **European Court of Human Rights** can issue emergency measures to release people from unnecessary or disproportionate pre-trial detention; the Court can also assess whether the prosecution was in line with fair trial guarantees and whether other rights have been violated, such as privacy, family life, freedom of association and assembly.



European Union

- **Court of Justice of the EU** can assess whether national laws are in line with EU law and legal principles, such as fundamental rights, legal certainty, proportionality, fairness, solidarity and non-discrimination. The Court can invalidate conflicting laws or decisions.
- **European Parliament's Petitions Committee** can document fundamental rights violations caused by the vagueness of EU laws and hear human rights defenders; the Committee can also carry out field visits to investigate the situation.
- **European Parliament** can set up an inquiry committee (with 1/4 of all EP votes), which can investigate cases of judicial harrasment and call for more serious democrtatic accountability of national politicians and prosecutors.

ReSOMA

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AND ASYLUM

ReSOMA is the European research platform on migration, asylum and integration policies. Funded under the EU Horizon 2020 Programme, ReSOMA aims at connecting existing European networks of migration researchers, stakeholders and practitioners to foster evidence-based policy-making.

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