

ReSOMA

RESEARCH SOCIAL
PLATFORM ON MIGRATION
AND ASYLUM

NATIONAL
STAKEHOLDER
REPORT

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MIGRATION

Strategic litigation of criminalisation cases

September **2019**



National Stakeholder Reports aim to inquire the **stakeholders' response to the evolving EU policy agenda** and **assess the unmet needs** in EU Member states. They also offer a key opportunity to bring the recently ReSOMA briefs and outputs on each topic to the attention of the relevant actors at national level. As such, the reports play a key role in linking the current EU policy agenda with the debate and recent developments on migration, asylum and integration within Member states.

In the second year of ReSOMA, the consultations underpinning the reports were conducted via the ReSOMA online platform in order to mobilise the community of experts (the "Expert Database") through thread discussions.

Download this document and learn more about the Research Social Platform on Migration and Asylum at: www.resoma.eu

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National Stakeholder Report

In what ways could strategic litigation help overcome the increasing criminalisation of individuals and NGOs supporting migrants?

By Peter Scholten & Zeynep Kaşlı

The ReSOMA [Final Synthetic Report](#) on the crackdown on NGOs and volunteers helping refugees and other migrants highlight that:

- The vagueness and legal uncertainty stemming from the EU Facilitators Package has been a factor enabling misguided prosecutions of civil society across the EU.
- A quantitative overview shows that from 2015 to April 2019 there were at least 49 cases where 158 individuals were accused on the grounds of facilitation of entry and/or stay in 11 countries.
- Approaches to be further explored in order to advocate and litigate include EU citizens' right to good administration; the EU's obligation to respect, protect and promote the work of human rights defenders; the EU's obligation to secure humanitarian space within the EU; and the EU's obligation to preserve and promote fundamental rights and to ensure the EU citizens' right to good administration.

In ReSOMA [expert interview](#) with Frances Webber, Dr Ioannis Kalpouzos, Noemi Magugliani and Dr Valentina Azarova, the absence of a humanitarian exception in the Facilitation Directive is repeatedly mentioned as a serious concern that needs to be urgently addressed by policy makers and legislators. ReSOMA [Policy Option Brief](#) adds further options, such as:

- changing the Facilitators' package and introducing a financial or other material gain requirement
- ensuring the better monitoring of its implementation
- including through independent observatory as well as oversight of the EU's founding values via Rule of Law mechanism.

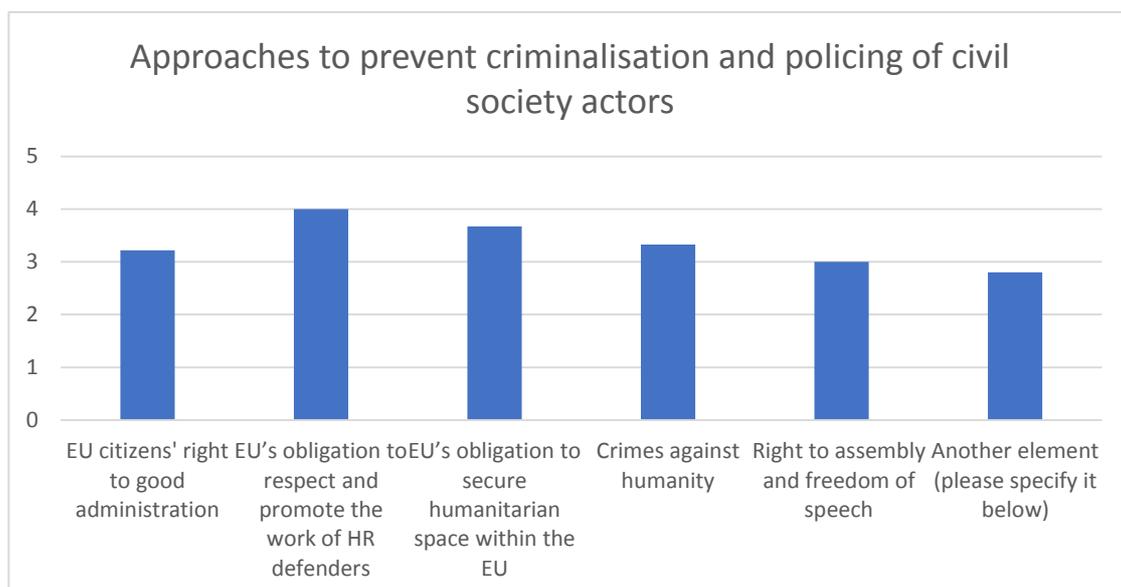
This report summarizes the online discussions via the ReSOMA web portal and survey conducted via the SurveyMonkey platform. The questions for both the online discussion and the survey have been developed based on the needs and specifications of the ReSOMA stakeholder partners and were launched over the course of late June and early July. During that time, experts, who are already registered to the ReSOMA Expert Database, received invitation e-mail to take part in both the online discussions and the surveys. Further promotion was carried out from the ReSOMA twitter account. As a privacy measure, survey responses cannot be matched with Expert Database Profiles whereas the comments posted on the platform match with the name and the institution of each commentator.

Summary reports include only the names of the organizations as the comments reflect the views of affiliated institutions.

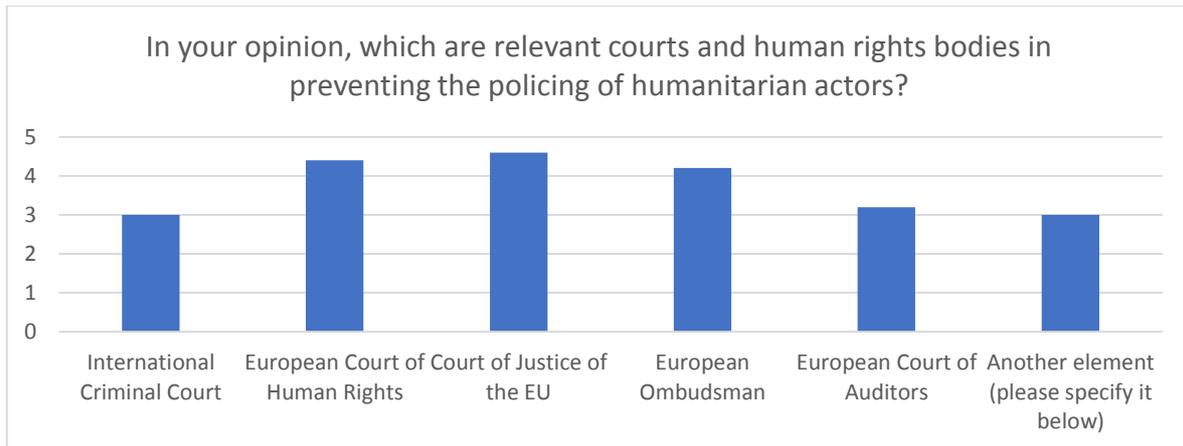
During the online discussions, the respondents were asked to provide input on the following topics: **lessons learned** in defense cases at national level in which civil society has been accused for migrant smuggling at national courts and **new venues and approaches** to use for strategic litigation to highlight responsibilities of both national and EU agencies for criminalization and policing of civil society actors. It is hard to make strong inferences due to low response rates with the survey results (N=9) and one input from ECRE.

While no feedback is provided regarding specific lessons learned in defense cases, such as the legal grounds on which national courts eventually acquitted or convicted volunteers/NGOs, in their initial comment ECRE commentator asks whether there could be some drawbacks of investing in strategic litigation and depending on courts to defend civil society and the rights of those on the move especially hostile political environments, risks of too much focus on litigation to turn into "capture of the judiciary." This is an intriguing question and requires further feedback from civil society and researchers.

In the survey respondents were asked to rate a number of approaches in terms of their relevance to preventing criminalization and policing of civil society actors by the EU institutions and agencies. As the chart below shows, respondents mainly believe that among the possible answers, the EU's obligation to respect, protect and promote the work of human rights defenders is the most important one, followed by the EU's obligation to secure humanitarian space within the EU, crimes against humanity and EU citizens' right to good administration. Interestingly the right to assembly and freedom of speech is considered less relevant and similarly "fundamental elements" is specified as another element. The chart below presents the weighted average of answers given to each factor on a 5-point scale (N=9).



Regarding the relevance of international, regional and EU courts and human rights bodies in preventing the policing of humanitarian actors, respondents believe that the most important body for the prevention of the policing of humanitarian actors is the Court of Justice of the EU, followed by the European Court of Human Rights. The International Criminal Court appears to be less crucial yet equally crucial as the “UN Special Procedures,” another element specified. The chart below presents the weighted average of answers given to each factor on a 5-point scale.



The responses, therefore, show that the EU's obligations to respect and promote the work of human rights defenders is seen as key to prevent criminalization and policing of civil society actors, and the CJEU and ECtHR are the most relevant bodies to address such cases.

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ReSOMA - Research Social Platform on Migration and Asylum

is a project funded under the Horizon 2020 Programme that aims at creating a platform for regular collaboration and exchange between Europe's well-developed networks of migration researchers, stakeholders and practitioners to foster evidence-based policymaking. Being a Coordination and Support Action (CSA), ReSOMA is meant to communicate directly with policy makers by providing ready-to-use evidence on policy, policy perceptions and policy options on migration, asylum and integration gathered among researchers, stakeholders and practitioners.

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