The Observatory
for the Protection
of Human Rights Defenders

EUROPE: OPEN SEASON ON SOLIDARITY

A study on the patterns of criminalisation of solidarity through the voices of migrants'rights defenders

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fidh

OMCT
SOS-Torture Network

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LIST OF ACRONYMS

ACNUR	United Nations High Commissioner for Refugees
ECRI	European Commission against Racism and Intolerance
CEAR	Spanish Commission for Refugees
CERD	Committee on the Elimination of Racial Discrimination
CESSEDA	Code for Entry and Residence of Foreigners and Right to Asylum
CIRÉ	Coordination and Initiatives for Refugees and Foreigners
CNCDH	National Consultative Committee on Human Rights
FIDH	International Federation for Human Rights
Frontex	European Border and Coast Guard Agency
GMG	Global Migration Group
LEI	Swiss Federal Law on Foreign Nationals and Integration
OIDDH	Office for Democratic Institutions and Human Rights
OIM	International Organisation for Migration
OIDD	Office for Democratic Institutions and Human Rights of the OSCE
OMCT	World Organisation Against Torture
OSCE	Organisation for Security and Co-operation in Europe
ONU	United Nations
PIC	Slovenian Legal-Informational Centre
TJUE	Court of Justice of the European Union
TUE	Treaty on European Union
UE	European Union
UNODC	United Nations Office on Drugs and Crime

Index

EXECUTIVE SUMMARY

In recent years, attacks on human rights organisations and activists working to defend migrants' rights have increased dramatically in Europe. Migration policies have been developed with a focus on curbing and deterring migration, while, at the same time, the Mediterranean Sea has become "the largest migrant graveyard" in the world, with more than 40,000 people drowning between January 2014 and the end of 2020.

The irregular administrative status held by many people arriving to the European continent should not deprive them of their rights or their humanity. However, as described in the report, the actions of European States show that the prevailing trend is to disregard their international obligations and repeatedly violate the rights of the most vulnerable migrants. This behaviour has also extended to activists and organisations working to ensure migrants' human rights are guaranteed.

Using numerous official, press, and civil society sources, as well as information gathered from more than 20 interviews with activists and organisations defending migrants' rights from 11 European countries,[1] this report describes and analyses the strategies European States and institutions are using to attack humanitarian and solidarity acts. Adopting an approach that is close to the reality experienced on the ground, the report features the life stories of individuals and histories of organisations who have been persecuted in Europe for defending the rights of migrants.

Three patterns lead to the criminalisation of solidarity

The report identifies three key patterns that mark the actions of European countries and favour the criminalisation of solidarity: a) the creation of a hostile environment around migration; b) the use of ad-

1. Belgium, Cyprus, France, Germany, Greece, Hungary, Italy, Slovenia, Spain, Switzerland, and Turkey.

ministrative law to impede human rights defence work; and finally, c) the use of criminal law to silence their voices.

The starting point of the criminalisation of solidarity is the widespread use, by European authorities, political leaders, and the media, of a narrative about migrants posing a threat to security that we need to be protected from. The use of warlike vocabulary and imagery, referring to the "invasion" of migrants, for example, has managed to spread hate speech towards these people and instil fear in a large percentage of the population. For example, recent OSCE reports show that hate crimes, especially those motivated by racism and xenophobia, increased by more than 20% in all European countries between 2016 and 2019.

The demonisation of migrants is the first step to attacking those who defend their rights or show solidarity. In many cases, hate speech has escalated to acts of physical violence with a deep, racial bias. Many organisations and activists in Greece, Spain, and France are constantly receiving xenophobic comments, insults, and threats. This situation, which seeks to discourage individuals and organisations from their daily work supporting migrants' rights, also has a significant psychological impact on defenders. Some organisations have been affected by campaigns of harassment, defamation, and public accusations of such magnitude that, in countries such as Cyprus, Hungary, and Turkey, they have been shut down or banned.

In turn, European States have implemented a second hindering strategy whereby, through the use of various administrative pretexts, they have hampered or directly prevented many organisations from carrying out their work. These administrative actions have taken different forms: the imposition of onerous and complex requirements for official registration to allow them to operate, special taxes, limitations on access to financial funding, or excessive demands in terms of transparency and communication with the authorities, among others. In some cases, such as in Turkey and Greece, defenders have been directly blocked from entering migrant camps.

The report highlights how many States have prevented social organisations and activists from carrying out sea or land rescue work for migrants in danger by imposing abusive fines, paralyzing search and rescue operations on civilian vessels, or preventing them from entering safe harbours under threats of criminalisation.

Third, many migrant defenders and supporters have ultimately had to face lengthy criminal proceedings on charges with heavy prison sen-

tences, such as human trafficking or facilitating entry into or transit through Europe. In fact, there are several national laws in European countries that allow the criminal prosecution of solidarity, such as the Swiss Federal Law on Foreigners or the Hungarian Criminal Code. The European Union's own regulatory framework plays an important role in the criminalisation of solidarity by requiring any act of facilitation of irregular entry and transit in Europe to be sanctioned, without exempting humanitarian aid. In fact, in 24 of the 27 EU countries, facilitating the entry and transit of a migrant in Europe is currently a criminal offence, even if it is done without the intent to gain profit, as in the case of dangerous high mountain rescue operations.

All these administrative and criminal impediments have led to a reduction of European civic space, given the direct impact they have on creating a chilling effect for social organisations and ship crews, forcing them to rethink whether or not to continue with their activities. In addition, they have a significant emotional impact on defenders or those who have shown solidarity with migrants and have been involved in legal proceedings. In addition to the time spent on defence and the economic resources involved, the collective impact is also very important, since these persecutions send a serious message to civil society that their actions are not welcome and will not be allowed.

In view of the above, it is imperative that European authorities and institutions take decisive measures to reverse these patterns in order to guarantee the right to defend human rights. The report establishes two major groups of recommendations specifically aimed at, according to their typology, various European Union bodies (Council, Commission, and Parliament), Member States of the Council of Europe and the United Nations, as well as the media and the general public.

The first group calls for measures to create a positive environment for those defending migrants' human rights, focusing on shifting the current approach to migration to one centred on human rights and on removing administrative obstacles to the work of civil society to ensure that there are guarantees for the right to defend human rights. For example, it calls for promoting legal migratory routes, abandoning the logic of outsourcing border control, and carrying out awareness campaigns with positive messages about the migrant population and that also publicly recognize civil society's role in defending and promoting human rights and the rule of law.

The second group of recommendations urges that all necessary measures be taken to ensure the duty to rescue and prevent the criminalisation of human rights defenders. These include the amendment of EU

Directive 2002/90/EC so that States cannot impose sanctions against people carrying out acts of solidarity, mitigating the risks of criminalisation of those providing humanitarian assistance to migrants in danger by drawing up clear guidelines to prevent the continuation of the phenomenon of criminalisation of migrant rights defenders in Europe.

I. INTRODUCTION

"I am concerned about this lethal disregard for desperate people. I salute the organisations and human rights activists who continue to work to defend the rights of migrants in these difficult times"[2]

Statement by Michelle Bachelet, UN High Commissioner for Human Rights September 9, 2019 - 42nd session of the Human Rights Council

The member organisations of the OMCT and FIDH networks working in Europe have seen how EU policy, and that of its Member States, against migrants has hardened in recent years and, with it, the criminalisation of solidarity and of the organisations defending the rights of migrants. This report aims to contribute to the visibility of this phenomenon, based on the stories of those who have been persecuted in Europe for defending the rights of migrants and on the work of the Observatory for the Protection of Human Rights Defenders (an OMCT and FIDH joint program). There is still a long way to go and there is still a need to analyse the specific patterns of criminalisation of solidarity in Europe in order to tackle situations such as those described in this report.

The "criminalisation of solidarity" concept will be used to define a process that encompasses several trends and strategies used by the authorities that seek to obstruct the work of those defending the right to migrate, going beyond the criminal prosecution of defenders. In terms of structure, after a first chapter that seeks to understand the dynamics of migration to the European continent, the report will look at the reasons why people decide to leave their countries and what they

2. Michelle Bachelet, UN High Commissioner for Human Rights, September 9, 2019, https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf

experience on the way to Europe. This report presents three major trends related to criminalisation. The first of these trends, described in the second chapter, is the creation of a hostile environment that is directed both at the migrants themselves and at people who defend their rights or show solidarity with them. The second of these trends is the use of administrative law to obstruct the work of organisations and individuals in support of migrants. The third trend is the use of the criminal code to bring to justice, at the risk of imprisonment, people who defend the rights of migrants or carry out humanitarian tasks to support them.

With this in mind, this report identifies three recurring patterns in most European Union member countries, as well as in countries that are part of the Council of Europe: the creation of a hostile environment, obstructive administrative measures, as well as the criminalisation and criminal prosecution of migrants' rights defenders. All of this violates human rights and, more specifically, restricts the right to defend human rights.

COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

47 countries are members of the Council of Europe, 27 of which are members of the European Union. All members have signed the European Convention on Human Rights.

The Council of Europe is an international organisation based in Strasbourg that was created to promote democracy and protect human rights and the rule of law in Europe. Not to be confused with the European Council—an institution of the European Union formed by Heads of State or Government of the Member States together with the President of the European Commission, in order to plan EU policy.

As for the method, this report began with non-exhaustive documentary research on reports on the subject, court rulings, and reports from UN institutions or the Council of Europe. More than 20 interviews were then conducted with organisations and activists defending the rights of migrants in 11 countries (Germany, Belgium, Cyprus, Slove-

nia, Spain, France, Greece, Hungary, Italy, Switzerland, and Turkey[3]), as well as with citizens' platforms working on this issue at the European and global levels.

The Observatory would like to thank all those who gave their time to talk and make this report possible, in hopes that their stories will help us understand the importance of building a Europe of solidarity that guarantees the right to defend human rights without discrimination.

3. Specifically, the following organisations were interviewed: Irídia (Spain), Greek Helsinki Monitor (Greece), Human Rights Association (Turkey), Save our Seas Foundation, Hungary Helsinki Centre (Hungary), Antigone (Italy), Ligue DH (Belgium), PIC (Slovenia), CEAR (Spain), PICUM (regional), Kisa (Cyprus), MigreEurope (regional), Sea-Watch (Germany), Caminando Fronteras (Spain-Morocco), Solidarity is not a Crime (Belgium-France), as well as the lawyer Olivier Peter (Switzerland), lawyers Dimitris Choulis and Alexandros Georgoulis (Greece), Arturo Salieri (Italy), and human rights defenders Marco Omizzolo and Mussie Zerai (Italy), and Fabiola X (migrant in Switzerland).

II. A LOOK AT MIGRANTS

In order to understand and approach the criminalisation of solidarity of those defending the rights of migrants, we need to analyse the dynamics of migration to the European continent.

Key concepts for understanding the migration process

This report refers to migrants or people on the move based on the concept of **mixed migration**. According to the United Nations High Commissioner for Refugees (UNHCR) and the International Organisation for Migration (IOM) definitions, the term refers to cross-border movements of people, including refugees, stateless persons, victims of human trafficking, migrant workers, and economic migrants. People in mixed flows are motivated to move by a multiplicity of factors and have different legal statuses and a variety of vulnerabilities. They travel along similar routes, using similar means of transport, usually irregularly, and are aided in whole or in part by human traffickers. Despite being entitled to the protection of international human rights law, regardless of their status, they are often exposed to multiple rights abuses and protection risks throughout their journey[4].

Refugee: The concept of mixed migrants also includes refugees. This term is used to refer to a person who "as a result of a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of their nationality and is unable to or, as a result of such fear, is unwilling to avail themselves of the protection of their country; or who, not having a nationality and being outside the country of former habitual residence as a result of such events, is unable to or, as a result of such fear, is unwilling to return to it.[5]"

Human rights defender: Article 1 of the UN Declaration on Human Rights Defenders states that "[e]veryone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national

4. UNHCR defines mixed migration flows as "a movement in which several people travel together, usually irregularly, using the same routes and means of transport, but for different reasons. People traveling as part of mixed movements have diverse needs and profiles, and may include, for example, asylum seekers, refugees, victims of human trafficking, unaccompanied/separated children, and migrants with an irregular situation," UNHCR, 10-Point Action Plan, 2016.
The IOM maintains that "the main characteristics of mixed migratory flows include its irregular nature and multiplicity of factors that drive such movements, as well as the differentiated needs and profiles of the people involved." Mixed flows have been defined as "complex population movements that include refugees, asylum seekers, economic migrants, and other migrants." Unaccompanied migrant children, environmental migrants, migrants who have been smuggled illegally, victims of trafficking, and stranded migrants, among others, may also be part of a mixed flow." Ninety-sixth Session of the IOM, Discussion notes: International Dialogue on Migration, 2008.
5. Definition of the 1951 Geneva Convention relating to the Status of Refugees.

and international levels."[6] Consequently, a human rights defender is a person who, individually or in association with others, is committed to human rights, regardless of occupation, identity, or leadership.

The first stage of a long journey: the escape

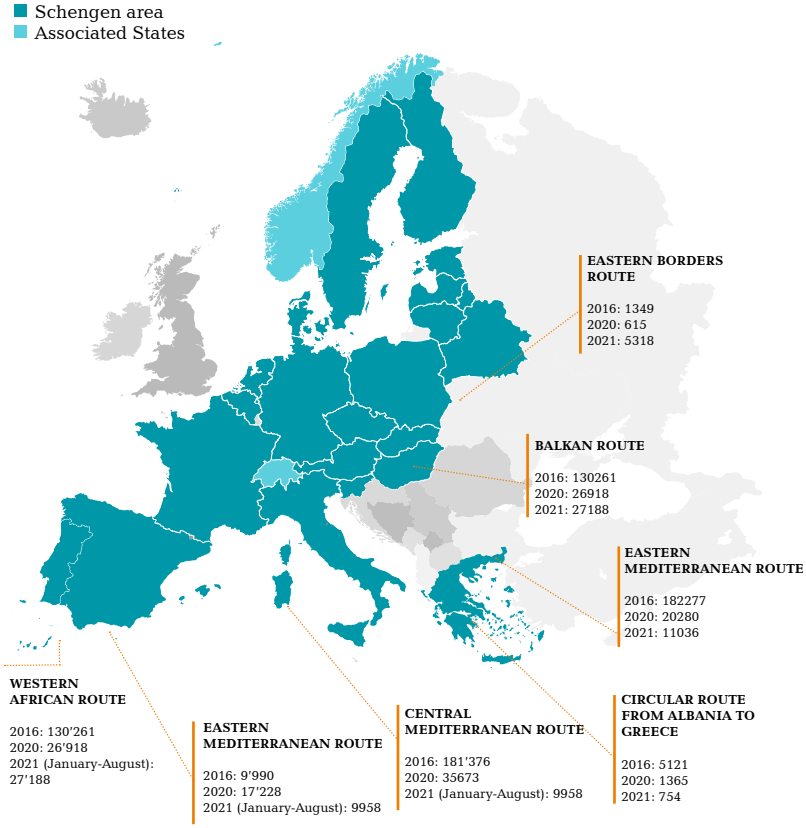
The history of humankind is a history in perpetual motion. Since the beginning, human beings have moved from one place to another for different reasons, whether voluntary or not. However, in recent years, the perception of this movement has taken a negative turn towards those who migrate in precarious conditions and, generally, in route to the global North. The reasons for migration, in any case, are various: wars, living conditions so precarious that they endanger one's own life, persecution for reasons of gender, religion, race or ethnicity, belonging to persecuted groups, etc., and also for economic, environmental, climatic reasons with changes that make life difficult in certain territories. The ultimate goal of these migrations has a common denominator: the search for a dignified life without fear.

According to UNHCR, by mid-2020, the global number of displaced persons outside their borders was 29.9 million people [7]. More than one million refugees were, at that time, found in each of the following countries: Turkey (3,577,500), Colombia (1,765,500), Pakistan (1,425,500), Uganda (1,396,800), Germany (1,111,300), and Sudan (1,058,800). In addition, there were more than 45 million displaced persons seeking to protect their lives in another department or region of their own country, such as the 8 million in Colombia, 6.7 million in Syria, or 5.5 million in the Democratic Republic of the Congo[8].

As far as Europe is concerned, between 2009 and 2020, nearly 3 million people sought refuge on the continent, entering in ways considered irregular by the European Border and Coast Guard Agency (Frontex). Except for 2015, with more than 1.8 million people and 2016 with 0.5 mil-

6. Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, UN General Assembly, 1998.
7. UNHCR, "Forced displacement passes 80 million by mid-2020 as COVID-19 tests refugee protection globally", December 9, 2020. https://www.acnur.org/noticias/press/2020/12/5fd100c94/el-desplazamiento-forzado-supera-los-80-millones-de-personas-a-mediados.html
8. Ibid.

lion people [9], irregular entries into Europe have been less than 150,000 people per year. In fact, most of the people who migrate are not going to Europe, but to other countries close to their own. Map 1 shows the different routes that people are currently using to seek refuge in Europe.



Own elaboration with information from Frontex.

9. The increase in the figures during these years is due to the international situation where human mobility reached very high rates due to the conflicts in the Arab Republic of Syria, Afghanistan, and Somalia. In addition, the situations in Eritrea and Nigeria and the policies detrimental to asylum seekers in countries such as Lebanon, Jordan, and Egypt have also increased the number of displaced persons.

The journey: risks and dangers

Article 13 of the Universal Declaration of Human Rights states that "everyone has the right to liberty of movement and freedom to choose their own residence within the territory of a State" and that "everyone has the right to leave any country, including their own, and to return to their own country." Likewise, Article 14 states that "in case of persecution, everyone has the right to seek asylum and to enjoy the right to asylum in any country."

However, the migration process, as well as the path taken by people fleeing their countries to reach their destination, exposes them to high vulnerability and serious risks.

In this sense, the first violent event they face is the decision to leave their country, which is made out of necessity. This decision is often accompanied by a separation from family, from loved ones, as well as an awareness of the risks that the person will face along the journey. In the case of women, this decision may stem from a need to flee various forms of gender-based violence and the lack of gender justice in their countries.

Secondly, migration for many people means crossing territories at war, controlled by armed groups. While crossing these territories, migrants face the risk of being murdered, kidnapped, sexually abused, or becoming victims of human trafficking. Examples of this are the migrants locked up in subhuman conditions in Saudi Arabia as a result of the health measures taken to prevent the spread of Covid-19[10] or, in the same country, the exploitation of migrants for the construction of the stadium for the 2022 World Cup[11], or the testimonies of migrant women used as sex slaves in Libya[12].

On the route to Europe there are also natural obstacles: rivers, mountains, and above all, the sea, in particular the Mediterranean Sea and the English Channel. The media has defined the Mediterranean Sea as "the largest migrant graveyard" in the world, with at least 40,000 people who drowned between January 1, 2014 and the end of 2020,

10. The Telegraph, "Hellish Covid detention centres," August 30, 2020.
11. Amnesty International, "Qatar World Cup of Shame," 2016.
12. France 24, June 20, 2021, "Women migrants reduced to sex slaves in Libya 'hell," June 20, 2021.

according to IOM figures. Of these, 2,300 were children[13]. In the first half of 2021, at least 1,146 migrants lost their lives in the Mediterranean—more than double all those who died there during the same period in 2020[14].

Assuming that migrants arrive in a "destination" country, they are still at risk of ill-treatment and torture by both State authorities and private actors. These include housing in refugee camps or migrant detention centres, often in inhumane and degrading conditions; labour or sexual exploitation; harassment by authorities; accusations of human trafficking; detention and subsequent expulsion; as well as precarious and poorly paid livelihoods and jobs that, in the case of women, foster gender inequalities.

The UNHCR has mentioned the serious risks taken by those migrating to Europe, including reports of "refugees and migrants who have been kidnapped, held against their will for several days, physically and sexually assaulted, tortured, or extorted by smugglers and criminal gangs in various locations along the main routes."[15] Regarding this point, the militarisation of routes to prevent the passage of migrants is not a strategy that responds to the fight against criminal human trafficking networks. This strategy only makes it possible to block certain passages for migrants, forcing them to use other, more dangerous routes, with or without the help of smugglers. "Whenever one route is closed, another more dangerous one is opened," says the CEAR organisation in its recent report on migration routes to the Canary Islands[16].

People also have rights when they migrate

All persons, whether migrating or not, have all the rights enshrined in the various human rights instruments. The GMG [17], in a statement on the human rights of migrants in an irregular administrative situation, recalls that "the Fundamental Rights of all persons, regardless of their migratory status, include:

13. MigrEurop, "Les damné·e·s de la mer," February 5, 2021.
14. Missing Migrants IOM, "Migrant deaths on maritime routes to Europe double in the first half of 2021," July 2021 https://missingmigrants.iom.int/region/mediterranean (accessed June 24, 2021).
15. UNHCR, "Réfugiés et migrants prennent des risques énormes pour rejoindre l'Europe, selon le HCR," February 28, 2017.
16. CEAR, "Migración en Canarias, la emergencia previsible," (Migration in the Canary Islands, the foreseeable emergency), March 1, 2021.
17. The Global Migration Group (GMG) is an inter-agency group that brings together fourteen agencies (12 UN agencies, the World Bank, and the International Organisation for Migration) to promote the implementation of relevant international instruments and norms on migration and to encourage the adoption of more coherent, comprehensive, and better coordinated approaches to the issue of international migration.

- The right to life, liberty, and security of person and to be free from arbitrary arrest or detention, and the right to seek and obtain asylum from persecution;
- The right not to be discriminated against on the basis of race, sex, religion, national, or social origin, or other status;
- The right to be protected from abuse and exploitation, not to be held in slavery or involuntary servitude, and not to be subjected to torture or cruel, inhuman, or degrading treatment or punishment;
- The right to a fair trial and legal recourse;
- The right to the protection of economic, social, and cultural rights, including the rights to health, to a dignified life, to social security, to adequate housing, to education, and to just and favourable conditions of work." [18].

In addition to general human rights instruments, there are also instruments that specifically cover migrants [19]. This is the case, for example, of the UN International Convention on the Protection of Rights of All Migrant Workers and Members of Their Families. Also, the UN Convention Relating to the Status of Refugees which, in Article 31, states that a refugee should not be criminally punished for irregular entry into a territory [20].

These rights translate into obligations and duties for the States, which must take appropriate measures to guarantee their enjoyment, and protect and redress those whose rights are violated. However, there are multiple violations of the human rights of migrants.

An example of this is the so-called pushbacks, whereby States expel refugees and migrants immediately after they have crossed a border, without taking into account their individual circumstances and denying them the possibility to apply for asylum or present arguments against their refoulement. These refoulements violate numerous rights enshrined in the following instruments:

- The 1951 Convention Relating to the Status of Refugees[21] which, in Articles 32 and 33, prohibits expulsions or refoulements that would

18. Statement of the Global Migration Group on the Human Rights of Migrants in an Irregular Situation, September 29, 2010.
19. Council of Europe, FRA, "Fundamental rights of refugees, asylum applicants, and migrants at the European borders," 2020.
20. Convention Relating to the Status of Refugees, July 28, 1951, Article 31.
21. Ibid.

endanger the lives of migrants and obliges States to allow individuals to appeal and present their claims.

Article 18 of the EU Charter of Fundamental Rights[22] guarantees the right to asylum in accordance with the rules of the Refugee Convention.

Article 19 of the Charter prohibits the refoulement, expulsion, or extradition of a person to a State where there is a serious risk that the person would be subjected to the death penalty, torture, or other inhuman or degrading treatment or punishment. Thus, in the case of refoulement, there is no possibility to analyse and make sure that the country the persons are returning to is not a country where they run these risks.

Moreover, refoulements generally affect entire groups of migrants, despite the fact that Article 19 of the Charter states that "collective expulsions are prohibited."

- Directive 2013/32/EU of the European Parliament and the Council of Europe[23], which enshrines the principle of non-refoulement.

- Protocol 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms[24] of the Council of Europe, which states in Article 4 that "collective expulsions of aliens are prohibited." According to the European Union Agency for Fundamental Rights, this prohibition also applies on the high seas[25].

- Article 3 of the 1984 UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment[26] prohibits the expulsion, refoulement, or extradition of a person to another State where there are substantial grounds for believing that the person would be in danger of being subjected to torture.

Likewise, the GMG insists that the protection of these rights is not only a legal obligation, but a matter of public interest that is intrinsically

22. Charter of Fundamental Rights of the European Union, December 18, 2000.
23. Directive 2013/32/EU of the European Parliament and the European Council, June 26, 2013.
24. Protocol 4 of the Convention for the Protection of Human rights and Fundamental Freedoms, September 16, 1963.
25. Council of Europe, FRA, "Fundamental rights of refugees, asylum applicants, and migrants at the European borders," 2020.
26. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, December10, 1984.

linked to human development. For this group, which includes many UN agencies, the irregular administrative situation in which international migrants may find themselves should not deprive them of their humanity or their rights.

Settlement in European countries: a context of racism and discrimination

Migrants arriving in Europe encounter a context that is not free of racism and discrimination, which affects them and the enjoyment of their rights. The EU has recognised this structural, institutional, and historical racism in its Anti-Racism Action Plan, presented in September 2020.[27] However, the anti-racist perspective has not been incorporated into its migration policies, which are focused on preventing the arrival of migrants classified as "irregular," or those who cannot access regular channels to enter Europe, thus placing a first racialised filter on migration[28].

Without the intention or ability to present an exhaustive look at the complexity of the situation, it is relevant to briefly refer to the process that has led the Permanent Peoples' Tribunal, an international ethical tribunal of non-governmental character, to conduct numerous sessions on violations of the human rights of migrants and refugees between 2017 and 2020[29]. Throughout its hearings and judgments[30], this symbolic Tribunal concluded that the European States violate the human rights of migrants.

- "Migration is an existential and political act. Ius migrandi should be accompanied by the duty to receive migrants, but this duty clashes with State sovereignty over their territorial domain. To affirm their sovereignty, States are detaining migrants at their borders, willing to violate their human rights. The sole objective of European policy

27. European Commission, A Union of equality: EU anti-racism action plan 2020-2025, September 18, 2020.
28. PICUM, Migration and Anti-racist Policies: Are we ready for a Europe without Racism?
29. Permanent Peoples' Tribunal, "45. Session on the violation of human rights of migrants and refugee people (2017-2020)."
30. In Barcelona and Palermo in 2017, in Paris, Barcelona, and London in 2018, at the European Parliament in 2019, and finally in Berlin in 2020.

is to block immigration." [31].

- "The European Union's immigration and asylum policies, based on agreements concluded between individual EU Member States and third countries, constitute the denial of the Fundamental Rights of individuals and of the migrant people, denying them their human dignity and defining them as illegals and considering any action to rescue and assist them at sea to be illegal." [32].

- "It is illegal to transform Europe into a fortress by closing ports and borders and refusing to rescue and assist those in need, because it violates binding international law and is unlawful because adopted using measures issued without any discussion and approval of the European Parliament and the national Parliaments." [33] .

- Europe's New Pact on Migration "confirms the policies and practices of the EU and its Member States in the area of asylum and immigration which, put together, are a total denial of the Fundamental Rights of migrants and asylum seekers [34].

> "A fair system which grants protection to those in need is a more credible system, and makes the case for returning those not granted protection status stronger"[35] - Remarks by Drahoslav Štefánek – Special Representative of the Council of Europe on Migration and Refugees.

Faced with this situation, there are many organisations and citizens who, in association with others or individually, are working to provide humanitarian support and accompany people seeking refuge in Eu-

31. The Permanent Peoples' Tribunal, "Final Document on the sessions on the violation of human rights of migrants and refugee people," Brussels, April 9, 2019, p. 3.
32. Ibid., at p. 4.
33. Ibid., at p. 7.
34. Permanent Peoples' Tribunal, "The Human Right to Health of Migrant and Refugee Peoples," Berlin, October 23-25, 2020, p.18.
35. Council of Europe, "First report on the activities of the Secretary General's Special Representative on Migration and Refugees," February 2018, p. 21.

rope, given the lack of response from States. Since 2011, boats from non-governmental organisations have launched themselves into the sea to try to prevent deaths, mountain guides have travelled mountains on their own in the middle of winter to save people at risk of frostbite and death, citizens have opened the doors of their homes to those in need, and so on and so forth.

In the face of these solidarity initiatives, Michelle Bachelet, UN High Commissioner for Human Rights, denounced the "action taken against organisations that protect migrants' rights in several European countries." [36].

Brief description of the European legal framework on migration in irregular administrative situations

The EU has adopted several legal instruments to fight irregular migration, with a focus on preventing criminal offences and deterring migration, rather than protecting the human rights of those migrating towards the EU, which has also had a serious impact on humanitarian assistance.

In 2002, two main instruments were adopted, which were jointly referred to as the "Facilitators' Package." This Package thus consists of Directive 2002/90/CE of November 28, 2002, defining the facilitation of entry, transit, and unauthorized or irregular administrative residence and stay (Entry Facilitation Directive) and Framework Decision 2002/946/JAI of the Council of the same date, which strengthens the penal framework for the repression of those who facilitate unauthorized entry into, transit through, or residence in the territory of the European Union. In addition, the Commission adopted its first 2015-2020 Action Plan against the smuggling of migrants, which brings together the specific actions of the European Agenda on Migration and the European Agenda on Security, to combat and prevent the smuggling of migrants.

36. Statement by Michelle Bachelet, UN High Commissioner for Human Rights at the 47th session of the Human Rights Council, June 21, 2021.

The New Pact for the period from 2021 to 2025 is pending adoption in the last quarter of 2021.

This Facilitators' Package has been the subject of numerous criticisms from civil society, as it provides an excessively wide margin of appreciation to the Member States in deciding what the basic criminal offence of human trafficking is. Indeed, the Directive called on EU member countries to put in place legal provisions by December 2004 to adopt sanctions "against any person who intentionally assists a person who is not a national of a Member State to enter into or transit through the territory of a Member State."[37] Thus, in almost all EU Member States, facilitation is a criminal offence even when it is carried out without the intent to gain profit, with the consequent punishment of humanitarian assistance. Article 1(2) of the Facilitation Directive recommends introducing the exception for humanitarian assistance, but leaves Member States the option of not criminalizing entry facilitation if it was done for humanitarian reasons. In addition, Directive 2002/90 allows Member States to decide for themselves whether or not civil society actors and family members of migrants are exempted from criminalisation. In some States, such exemptions have occurred, but at the same time, those same States have prosecuted civilian rescue operations at sea, such as Belgium, Greece, Spain, Finland, Italy, Malta, and the United Kingdom.

An assessment process conducted in 2017 by the European Commission analysed "the perceived risks of criminalisation of actions of civil society organisations or individuals assisting and/or working with irregular migrants." These perceptions and criticisms seemed to concern both "humanitarian assistance given within a Member State territory as well as at borders or even on the high seas, despite the different legal frameworks that apply to such conducts." [38]

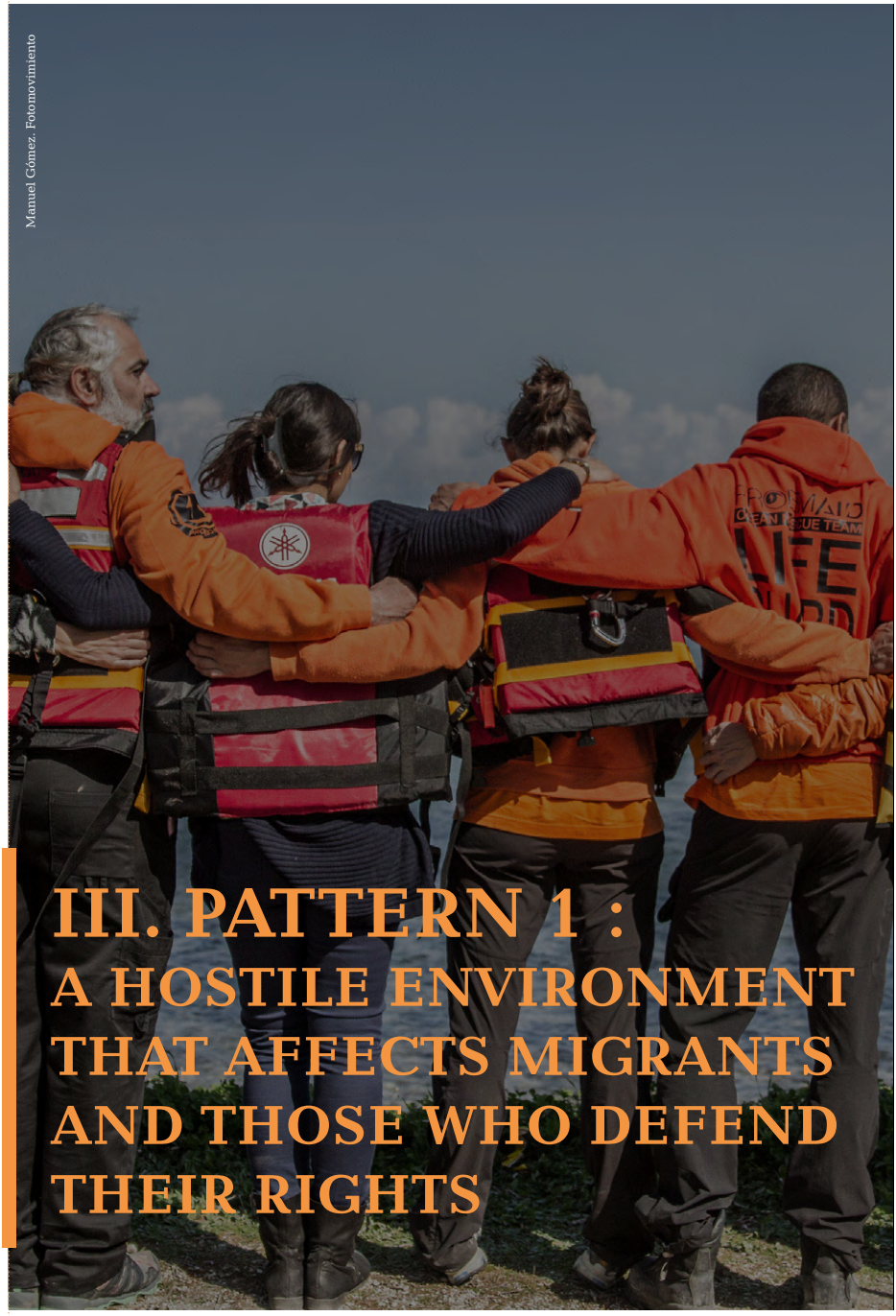
Surprisingly, however, the evaluation concluded that "there is insufficient evidence (...) on the need for a revision of the Facilitators' Package at this stage" and that there is no need for "a legal revision at that stage, but a more effective exchange of knowledge and good practices between prosecutors, law enforcement, and civil society to address the practical consequences of [the Package's] weaknesses." [39]

37. European Council, Directive 2002/90/EC of the Council on November 28, 2002, defining the facilitation of unauthorized entry, transit, and residence.
38. European Commission, 'Executive Summary of the Refit Evaluation of the EU legal framework against facilitation of unauthorized entry, transit and residence: the Facilitators Package (Directive 2002/90/EC and Framework Decision 2002/946/JHA),' March 22, 2017.
39. European Commission, Guidance on the implantation of the EU rules on definition and prevention of the facilitation of unauthorized entry, transit, and residence, September 23, 2020.

In July 2018, the European Parliament issued a resolution-guidance to Member States urging them to prevent the criminalisation of humanitarian assistance where it also asked the Commission to draw up a set of guidelines for interpreting the Entry Facilitation Directive [40]. On September 23, 2020, the Commission issued this guidance, in which Member States are to exclude the criminalisation of humanitarian assistance and in particular that of NGOs and non-state actors carrying out rescue operations at sea [41]. However, it does not take innovative measures to ensure that this is done and that States proceed to guarantee their duty to provide relief.

In addition to these measures, within the framework of the Council of Europe and its 47 Member States, it is worth highlighting the plan agreed on May 5, 2021, for the 2021-2025 period on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe [42]. This new plan is a follow-up to the previous plan focused on migrant children and emphasizes the special protection that Member States must provide to the most vulnerable people.

40. European Parliament, Guidelines for Member States to prevent humanitarian assistance from being criminalised, 2018/2769(RSP), July 5, 2018.
41. European Commission, Guidance on the implantation of the EU rules on definition and prevention of the facilitation of unauthorized entry, transit, and residence, pp. 8 & 9.
42. Council of Europe Action Plan on Protecting Vulnerable Persons in the Context of Migration and Asylum in Europe (2021-2025)



III. PATTERN 1 :
A HOSTILE ENVIRONMENT THAT AFFECTS MIGRANTS AND THOSE WHO DEFEND THEIR RIGHTS

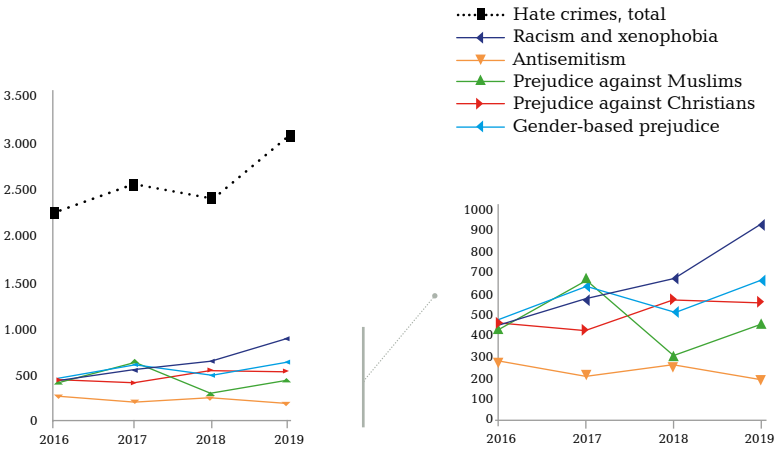
"Europe is facing an upsurge in hate speech, including all forms of expression that propagate, incite, promote, or justify racial hatred, xenophobia, Islamophobia, anti-Semitism, or other forms of hatred based on intolerance, (...) discrimination, and hostility against national or ethnic, religious, and linguistic minorities, immigrants, and people of an immigrant background, women and lesbian, gay, bisexual, transgender, and intersex (LGBTI) people".

Resolution 2275 of 2019 [43], Parliamentary Assembly of the Council of Europe.

Quantifying hate speech or hate calls presents numerous difficulties, mainly due to the absence of exhaustive and comparable data on the reports made, the lack of reporting by the victims due to fear, and the absence of control of the various spaces where this speech circulates, as underlined by the Council of Europe[44].

However, the statistical work conducted by the OSCE's Office for Democratic Institutions and Human Rights (ODIHR) gives an idea of the evolution of hate crimes in European national legislation. A comparison of reports produced from 2016 to 2019—the latest available at the time of writing—shows a three-year increase of more than 20% in hate crimes in all OSCE countries, from 5,998 in 2016 to 7,278 in 2019.

43. The Parliamentary Assembly of the Council of Europe, Resolution 2275 (2019), "Rôle et responsabilités des dirigeants politiques dans la lutte contre le discours de haine et l'intolérance ;" April 2019, paragraphe 1.
44. European Commission against Racism and Intolerance (ECRI) "General Recommendation number 15 on combating hate speech," December 2015.



Own elaboration with information from the ODIHR official web page.

Although access to detailed statistics (country concerned, type of crime) is limited to incidents the OSCE possesses detailed descriptions on (these represent approximately 50% of the total registered incidents by the OSCE), the graph shows that in member States of the Council of Europe, the rise in hate crimes is directly related to the increase in racism and xenophobia, both of which have been on the rise since 2016.

In the majority of European countries, governments, far-right groups, xenophobic and racist groups, as well as politicians and individuals are spreading messages and fake information that seek to portray migrants as invaders, criminals, rapists, people who take advantage of public funds or steal jobs from native citizens of the country in question, among others.

In a resolution from November 2020 on the freedom of press and media, the European Parliament warned against the use of "hate speech and disinformation (...) for political purposes as tools to intensify social polarisation[45] "The increasing levels of hate speech used in political communication by governments and political parties across the EU" was also deplored.

Sometimes narratives that incite hate and intolerance occur during election campaigns. An example of this were the elections for the Assembly of Madrid in Spain, in May 2021. The political party VOX used a poster of supposed funds destined for young children and adolescents that migrate alone (Unaccompanied Minors) - a particularly vulnerable group protected under International Law - and compared them with retirement pensions. The poster read "An unaccompanied minor: 4,700 euros per month, your grandmother: 426 euros of pension per month." Although the information was later refuted by mainstream media[46], the message was already circulating among many sectors of the population.

The same type of statement condemning the "cost of unaccompanied minors" was made by the political party "Front National" (National Rally) in France during the campaign for regional and provincial elections in 2021.

The political use of migrants has also been seen in relations between the EU and Turkey and between the EU and Morocco. Both countries have "threatened" to open their borders as a negotiating tactic with the EU.

Those who occupy top political positions in Europe must assume their role of responsibility and adopt an educational approach, as well as the use of narratives that disapprove of and discourage the creation of a hostile environment for migrants[47]. To this effect, although the EU

45. European Parliament, "Strengthening Media Freedom: the Protection of Journalists in Europe, Hate Speech, Disinformation and the Role of Platforms" November 25, 2020, paragraph E.
46. Radio Televisión Española, "Unaccompanied child migrants do not receive 4,700 euros per month in Madrid," April 2021; El País; "Vox lied about the 4,700 euros that Madrid pays for unaccompanied foreign minors," April 21, 2021.
47. The European Commission against Racism and Intolerance (ECRI) " General recommendation nº 15 regarding the fight against hate speech," December 2015, p. 5

Commissioner for Migration and Internal Affairs, Ylva Johansson, stated at a European Parliament event regarding the New Pact on Migration and Asylum that migration should not be feared, senior officials and politicians from all governments in Europe fuel hate speech by using warlike narratives against migration. Some examples of this:

- "I thank Greece for being our European ασπίδα (shield) in these difficult times," President of the European Commission, Úrsula von der Leyen, at a press conference in March 2020.[49]
- "This is an invasion," the words of Giorgos Karampatzakis in March 2020, mayor of the town of Marassia, Greece, a common border crossing point near the river Evros. [50]
- In March 2020, the President of Turkey, Recep Tayyip Erdoğan threatened Europe by announcing that "There will be more. Soon, this number will be expressed in millions,"[51] referring to the number of migrants at the border between Turkey and Greece.
- In a speech at the Human Rights Council in 2018, the Prime Minister of Hungary, Viktor Orban, condemned immigration and the mixing of populations. After the then United Nations High Commissioner for Human Rights publicly criticized the speech for being racist and xenophobic, Hungary's Minister for Foreign Affairs called for the High Commissioner's resignation[52].

The vocabulary used by political personalities, together with violent images of borders with walls, barbed wire, cameras, and sound cannons, is a fearmongering technique used to influence the public. These are belligerent words and images that evoke war and fuel hate speech against migrants.

The above happens despite efforts to dismantle the concept of "invasion" among other prejudices by various organisations, including the Coordination and Initiatives for Refugees and Foreigners (CIRÉ) and their anti-prejudice guide[53], as well as international institutions such as the UNHCR. In 2015, in a speech to the European Parliament, Jean-Claude Junker, the then President of the European Commission,

48. European Parliament, ' Hearing on the New Pact on Migration and Asylum," May 27, 2021
49. European Commission "Intervention de la présidente von der Leyen lors de la conférence de presse commune avec Kyriakos Mitsotakis, Premier ministre grec, Andrej Plenković, Premier ministre croate, le président Sassoli et le président Michel," March 3, 2020.
50. France 24, "Greek fear 'invasion' of migrants across Turkish border", March 2, 2020.
51. France 24, "Erdoğan warns Europe to expect 'millions' of migrants after Turkey opens borders" March 3, 2020.
52. DW, "Hungary demands resignation of UN human rights chief," February 27, 2018.
53. CIRÉ, "Réfugiés & étrangers: petit guide anti-préjugés – édition 2021," January 29, 2021.

claimed that refugees "still represent just 0.11% of the EU population [while] in Lebanon refugees represent 25% of the population." He also stated that in Europe there were sufficient "means to help those fleeing war, terror and oppression." [54]

In its *Manual for combating hate speech online*[55] the Council of Europe shows how stereotypes and negative prejudices gradually transform until they escalate into racist violence and hate crime, after going through the phases of "moderate" racism and normalisation of violent abuse.

The rise of hate-fuelled violence is a common phenomenon in European countries. In Germany, the Federal Minister of Interior, Horst Seehofer, claimed in May 2021 that far-right criminal offences represent more than half of all politically motivated crimes[56] and they have reached a record high[57]. With regards to this, in February 2020, 11 teenagers in the city of Hanau were murdered due to their migrant backgrounds [58].

The main victims of the hostile environment are migrants; however, it also seriously affects those who show support or solidarity with migrants, as well as those who defend their rights. Examples of this are repeated across European countries:

- In **Italy** in 2019, as she was entering the port of Lampedusa, **Carole Rackete**, captain of the Sea-Watch 3 vessel, and her team were applauded for their work. However, they also received insults and accusations of complicity in human trafficking[59].
- In **Germany**, in June 2019, the local politician Walter Lübcke was murdered by a member of a neo-Nazi group for defending the German government's refugee policy [60].
- In **France**, a far-right website called FdSouche published a list of everyone who called on people to protest against islamophobia on November 10, 2019, labelling them "Islamist-lefties." They also published another list of organisations that help migrants.

54. European Commission State of the Union 2015: Time for Honesty, Unity and Solidarity," September 9, 2015.
55. Council of Europe, "Connexions - Manuel pour la lutte contre le discours de haine en ligne par l'éducation aux droits humains" 2020.
56. SwissInfo, "Germany identifies the ultra-right as a principal threat to their security," May 4, 2021.
57. DW, "Germany: Right-wing criminality at a record high," May 4, 2021.
58. Ibid.
59. Radio Télevision Suisse, "Assistance à personne en danger : un crime," March 12, 2020.
60. BBC, "Walter Lübcke: Man on trial admits to killing German politician," August 5, 2020.

- In **Greece**, a structure of the UNHCR for temporary residence in Sykamnia suffered an arson attack in March 2020.[61] A warehouse in Chios, used by an NGO to store materials to help refugees was also set on fire[62].
- In **France**, the Twitter accounts of solidarity movements, such as @Utopia_56, constantly receive xenophobic comments, insults, and threats.
- In Lesbos, **Greece**, journalists and photographers have been assaulted for covering issues related to migrant rights. Photographer **Julian Busch** posted the following on his Twitter account on March 2, 2020: "My colleague @FranziEire and me just got attacked on the Island of #Lesvos driving with the car along the coast of #Moria. A group of masked and black-wearing men with sticks and stones threw stones on our car - we had to drive very fast to escape."[63].
- In **Spain** in May 2021, a Spanish Red Cross volunteer had to close her social media accounts due to the level of harassment she received after showing humanity and hugging a migrant who was crying after having arrived in the country.
- Also in **Spain**, the organisation CEAR (Spanish Commission for Refugees) condemned the harassment of property owners who rent apartments to migrants and receive threats from the neighbourhood because of it [64]. More recently, the same organisation condemned the accusations and stigmatisation of migrants infected with Covid-19 by the media, who published their residence addresses, something that does not happen with other non-migrant people who have caught the virus [65].

Regarding hate speech online, the European Parliament highlighted that "it has become increasingly widespread in recent years, as individuals and disruptive actors use the power of online platforms to spread hateful information." [66]. This reflects the hostile environment experienced by those who show solidarity. People who try to defend migrant rights are faced with threats on a daily basis.

61. IN, Lesvos: Fire at the reception centre in Skala Sykamnia "Λέσβος : Στις φλόγες κέντρο υποδοχής στη Σκάλα Συκαμνιάς – Άγνωστοι έβαλαν φωτιά," March 1, 2020.
62. Jacobin, "How Greece Became Europe's "Shield" Against Refugees," March 2020.
63. Julian Busch – Tweet from March 2, 2020.
64. Interview from May 25, 2021.
65. SenseTopics and CEAR, "Racism and xenophobia in times of Covid," December 2020.
66. European Parliament, "Strengthening Media Freedom: The Protection of Journalists in Europe, Hate Speech, Disinformation and the Role of Platforms," November 25, 2020.

These circumstances have a serious psychological impact on those who defend human rights. A member of Irídia - a Spanish and member of the OMCT - commented that "we feel our personal safety is deteriorating as now we're unsure that even leaving our house something might happen to us."[67] In this sense, the creation of the hostile environment does not seem to be coincidental, rather it seeks to discourage individuals and organisations that work in favour of migrant rights.

Faced with this context, States have an obligation to combat hate crimes and their advocacy and they must guarantee the right to defend the rights of others. Similarly, it is important to highlight that the racist and xenophobic narrative is not protected under freedom of expression:

"Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."

Article 20.2 International Covenant on Civil and Political Rights

"States Parties condemn all propaganda and all organisations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination."

Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination

67. Interview from May 12, 2021.

Greece - Moving backwards: the decriminalisation of hate speech.

In 2014, Greece amended its Anti-Racism Law 927/1979 with Law 4284/2014. Regarding the amendment, the European Commission against Racism and Intolerance (ECRI)[68] stated that:

- Racial discrimination in the exercise of one's public occupation is not criminalised by the modified law and recommends amending it.

- The law does not criminalise public expression, with a racist aim, of ideologies with a claim of superiority.

Accordingly, the Greek Helsinki Monitor - a member organisation of the OMCT network - considers that this modification "decriminalises incitement of hate." [69].

Greece has repeatedly received recommendations from international organisms and instruments to improve its legislation regarding combating discrimination and hate crimes. In 2016, for example, the UN's CERD (Committee on the Elimination of Racial Discrimination) recommended the Greek State "declare illegal and prohibit organisations that promote and incite racial discrimination, such as the political party Golden Dawn, as previously recommended by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and by the Council of Europe Commissioner for Human Rights."[70] In 2020, leaders of this neo-Nazi group were condemned to 13 years in prison by an Athens court for having operated a criminal organisation under the guise of a democratically elected party.

68. European Commission against Racism and Intolerance "ECRI Report on Greece," February 24, 2015.
69. Racist crimes watch "Prosecution of racist crimes in Greece 2015-2019," October 19, 2019.
70. CERD - "Concluding observations on the twentieth to twenty-second periodic reports of Greece," August 26, 2016.

Similarly, during a visit to Greece, the ECRI delegation reported to have been "informed by various interlocutors that the widespread problem of hate speech had increased substantially since 2009, in particular in the context of the rise of Golden Dawn (...) hate speech is mainly directed against migrants, Muslims and Roma, but also against Jews and LGBT persons." [71].

The Greek Helsinki Monitor has systematised some of the racist crimes that have taken place in Grace over the past few years. In 2017, more than 115 hate crimes were against migrants and refugees.[72] There are some alarming cases where the perpetrators of these hate crimes are actually State officials. It is the case of a public prosecutor of the court of appeal, who claimed in 2018 in an article that "illegal immigrants and refugees constitute a population group with a high rate of serious criminality… Greece, with the armies of hordes of destitute aliens, tends to become not only a garbage dump of human souls, but, worst of all, a dangerous arena of multidimensional and upgraded crime." [73]

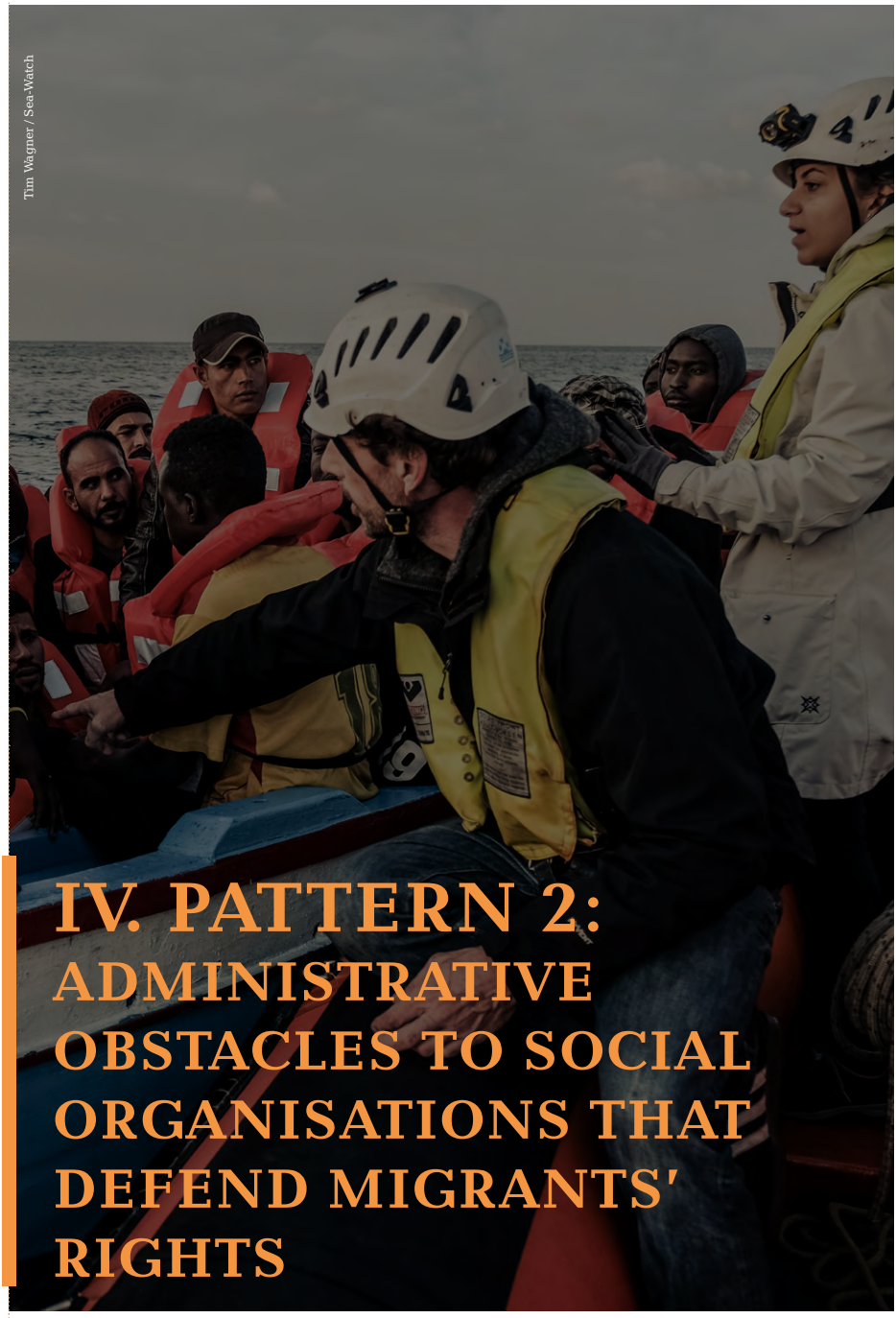
In France, journalist Eric Zemmour popularized far-right activist Renaud Camus' thesis about "the great replacement" (Le grand remplacement), who also inspired the author of the Christchurch shootings in New Zealand. This far-right, racist and xenophobic theory suggests that there is a deliberate process of substitution of the French and European population for a non-European population, mainly from black Africa and from Maghreb. This journalist became one of the stars of CNews, a private TV network, by spreading hate comments, especially against Muslims. He could become one of the presidential candidates in the 2022 election.

71. European Commission against Racism and Intolerance "ECRI Report on Greece," February 24, 2015.
72. Racist crimes watch, "Greece: Hate crime report for 2017 by Greek Helsinki Monitor (GHM) sent to the OSCE Office for Democratic Institutions and Human Rights (ODIHR)," May 14, 2018.
73. Racist crimes watch "Greece: Racism, detention, police violence and the lukewarm response of the judiciary | a presentation by GHM's Vassilis Tsarnas at Oxford's Border Criminologies Conference," May 26, 2021.

In the majority of European countries, crimes of intolerance and hate against migrants are on the rise. Unfortunately, this negative vision of those who migrate is upheld and disseminated by governments and the media. Few take a public and decisive stance to modify this trend. Demonisation of migrants is the first step to attacking those who defend their rights and those who show solidarity.

The Office of the United Nations High Commissioner for Human Rights, through its campaign #StandUp4Migrants, recalls that "there is an urgent need to question and change the way we speak about migrants and migration. When migrants are portrayed in a negative light, their human rights are heavily impacted. They are discriminated, excluded and dehumanised. Communities also become divided. How we perceive and speak about migrants and migration – the narrative – plays a fundamental role in guaranteeing equality and the human rights of migrants." [74]

74. UN, #StandUpforHumanRights.


Tim Wagner / Sea-Watch

IV. PATTERN 2: ADMINISTRATIVE OBSTACLES TO SOCIAL ORGANISATIONS THAT DEFEND MIGRANTS' RIGHTS

"The Ministerial Decision and related legislative amendments raise both procedural and substantive difficulties with respect to freedom of association and the protection of civil society space."

Expert Council on NGO Law of the Conference of INGOs of the Council of Europe - Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration[75].

Many countries are trying to obstruct the work of organisations that support and defend the rights of migrants through the adoption of legislation that limits the right to freedom of expression and drastically reduces legitimate spaces of work and civil society action. This legislation takes on different forms, such as demands regarding official registration, access limitations to financial funds or unreasonable demands regarding transparency and communication, among others. The cases presented below are examples of this situation and show that, when civil society organisations' voices are silenced, the voices of thousands of migrants who see their rights violated on a daily basis are also silenced.

Cyprus - Process of dissolution of KISA [76]

History and management of migratory flows in the Republic of Cyprus

The history of Cyprus has been marked by enormous sensitivity to issues of identity related to the arrival of migrants crossing the maritime border with Turkey.

In 1991, Cyprus adopted the "Criteria and procedure for the granting of work permits for foreigners/ remuneration and terms of employment,"[77]

75. Expert Council on NGO Law "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration," July 2, 2020, paragraph 103.
76. Interview with the Executive Director of Kisa - Doros Polycarpou, May 2021.
77. Ministry of Labour & Social Insurance, "criteria and procedure for the granting of work permits to foreigners/remuneration and terms of employment," December 2, 1991.

which imposes as a precondition in order to offer work to a migrant person "the absence of prospects to meet the specific needs of the employer by the local workforce (either because it does not exist or because Cypriots are unwilling to be employed in the specific occupation/sector due to the nature of the occupation or sector or due to night work)." [78] The objective of this work permit, therefore, is that it should be of a short or medium duration in order to be eventually taken on by people of Cypriot nationality. Furthermore, migrant workers must be the first to be dismissed should the company be faced with financial problems. Lastly, the criteria also enable the hiring of migrants on a temporary basis when the company lacks the appropriate security conditions necessary to employ a Cypriot. These rules are still in effect.

Regarding refugees, it was only as part of the process of joining the EU in 2004 that the Republic of Cyprus adopted national legislation on refugees in 2000[79] as well as establishing necessary asylum procedures for the effective implementation of the law. Although the legislation seems to be aligned with the EU directives[80], in practice, the level of discrimination and isolation of the migrant population is very high. As reported by NGO KISA and confirmed by an investigation carried out by the UNHCR in 2018[81], migrants can only access precarious jobs: generally in agriculture in the case of men, and as cleaning staff in private homes in the case of women. Access to more qualified work that matches their skills and qualifications is blocked and reserved for workers of Cypriot nationality.

The government focuses its narrative on the supposed "abuse of the asylum system" by those who migrate, according to the NGO KISA, who since the 1990s has fought to defend the rights of all those reporting the discrimination that the migrant population suffers and those who fight against racist and xenophobic narratives. This kind of approach generates an environment of confusion and promotes far-right anti-migratory narratives. The migrant population ends up being assimilated to potential terrorists, considered as a threat to democracy, and linked to Turkey, which carries, for some of the Cypriot population, a negative image.

Reports made by KISA and their dissolution

Exercising its right to monitor the actions of the government, KISA systematically reports racist narratives and hate speech, as well as figures

78. Ibid. p. 01.
79. Law on refugees 2000, 'Ο περί Προσφύγων Νόμος του 2000 (6(I)/2000)'
80. UNHCR, "The Living Conditions of Asylum-Seekers in Cyprus," 2018.
81. Ibid.

or information that the authorities or far-right political groups have manipulated. The organisation claims "Mr Nouris (Minister of Interior) does not miss an opportunity to identify asylum seekers with terrorism and fundamentalism. In an interview with the newspaper Philelefthteros he referred to asylum seekers held in Menogia, claiming they are "wanted" by Interpol and associating them with the Islamic State and Al Qaida."[82].

Similarly, KISA condemns the Cypriot Government's treatment of migrants, their conditions of detention, as well as so-called refoulements or immediate deportations prohibited under international law. In March 2021, the Council of Europe Commissioner for Human Rights requested an investigation on this [83].

KISA has suffered continuous harassment and accusations due to their work, from political parties and right-wing media as well as the Government of Cyprus itself. The defamation campaigns[84] seek to link KISA to terrorist groups, human traffickers and other criminal groups. This situation was gradually preparing for the dissolution of the organisation.

- In July 2020, a new law[85] was passed that gives the Minister of Interior the power to dissolve en masse the NGOs of the Associations Register that don't comply with the formal obligation of presenting information on their General Assembly, Board of Directors, constitution and audited accounts. This dissolution is irreversible and the continuation of their work is immediately prohibited.
- On August 27, 2020, the Minister of Interior published a list of 2,827 NGOs, among them KISA, which would be dissolved for not complying with the formal requirements mentioned earlier. Associations could request the annulment of their inclusion in the list within a time frame of two months from the date of publication.
- On October 26, 2020, within the mentioned time frame, KISA requested the annulment of their inclusion in the list. KISA informed the Registrar of the Associations Register that they are still an active association, that they had prepared audited accounts and that all of their pending information would be sent after their general assembly which would take place in December of the same year. KISA

82. KISA, "The Minister of Interior aims at the breach of the right to asylum and constitutional guarantees," May 27, 2020.
83. Letter from the Council of Europe High Commissioner for Human Rights to the Minister of Interior of Cyprus, March 10, 2021.
84. KISA, "Report of attacks, defamation, persecution and prosecution of KISA and its leadership," December 2020.
85. Law that modifies Law of Association and Foundations, August 17, 2020.

also requested an extension for their general assembly due to the Covid-19 pandemic.

- On November 27, 2020, the Associations Register rejected KISA's request alleging that they had not formally complied with the relevant requirements. The organisation was informed of their inclusion in the second list of associations to be dissolved. According to article 47 of the Law on Associations, the organisation still had the possibility to appeal this decision within 30 days.
- On December 14, 2020, the Minister of Interior of Cyprus announced the elimination of KISA from the Associations Register for, supposedly, not having presented audited accounts nor having carried out statutory and electoral assemblies since August 2020. This decision resulted in the prohibition of any continued action [86].
- On December 17, 2020, KISA presented a hierarchical appeal before the Minister of Interior within the established time frame. The appeal was rejected on January 7, 2021.
- On January 8, 2021, KISA registered a new appeal before the Administrative Court.
- On February 19, 2021, 37 European organisations, including the the Observatory for the Protection of Human Rights Defenders denounced the constant harassment of KISA and called on Cypriot authorities to re-register the organisation and guarantee solidarity with migrants and refugees and those who assist them.[87].
- On June 10, 2021, the administrative court of Cyprus refused KISA's appeal. "With this ruling, the court practically justified the Minister of Interior's de-registration of an NGO that has been active for more than 23 years in the field of human rights and migration, solely on the grounds of a delay in the amendment of their statutes due to completely unpredicted restrictions because of the pandemic."[88].

International petitions were made on various occasions to express concern regarding the decision and process against KISA, since it infringes on the human rights standards regarding freedom of association.

86. The Observatory for the Protection of Human Rights Defenders (OMCT_FIDH), "Cyprus: Deregistration of the NGO KISA," December 23, 2020.
87. The Observatory for the Protection of Human Rights Defenders (OMCT_FIDH) "Cyprus: 37 organisations denounce the ongoing harassment against a leading human rights group," February 19, 2021.
88. KISA, "Court Decision of June 10, 2021 – KISA's deregistration," June 11, 2021.

- On March 10, 2021, the Council of Europe Commissioner for Human Rights spoke out on this incident in a letter to the Cypriot government stressing that: "The dissolution of an NGO [...], should only be used as the last resort when all other less restrictive options have been unsuccessful, and it should never be used to address minor infractions [...]. This applies even more forcefully when the NGO in question complies with these requirements with a delay, as it is reportedly the case of the NGO KISA, which has been eliminated from the Associations Register and is currently facing a dissolution procedure."[89] In their letter of response, the Minister of Interior did not respond to nor mention the concerns regarding the case of KISA[90].
- On March 31, 2021, five UN special rapporteurs also pronounced their "grave concerns"[91] to the government regarding the passing of the Amendment to the Law on Associations and Foundations in July 2020 and the way in which it was applied thereafter." They insisted on the fact that "the suspension and involuntary dissolution of an association are the severest types of restrictions to freedom of association" and that "to give an NGO such a short time frame to submit a substantive number of documents and furthermore hold statutory and electoral assemblies to change their constitutions seem to go against the right to freedom of association." In conclusion, they implied "if the above allegations are confirmed, KISA appears to have been targeted in relation to the exercise of its rights to freedom of association and freedom of expression in support of migrants and combatting racial discrimination and xenophobia in Cyprus."

This administrative and judicial harassment has a grave impact on the organisation. As the Executive Director, **Doros Polycarpou**, commented, "there are people who cannot openly collaborate with KISA because they will not be able to find work otherwise." Furthermore, he added, "the impact is felt on a daily basis, I have suffered physical attacks and threats because of my work." For Polycarpou, "we need to change our perspectives of migrants, we must think of them without discrimination and seek their integration into society." The Executive Director of KISA pointed out that "if the EU wants to fight against trafficking networks, they must set up legal and safe routes to do so. NGOs can provide sup-

89. Letter from the Council of Europe High Commissioner for Human Rights to the Minister of Interior of Cyprus, March 10, 2021.
90. Reply letter from the Minister of Interior of Cyprus to the Council of Europe Commissioner for Human Rights , March 16, 2021.
91. Special mandates' correspondence, March 31, 2021.

port, links with NGOs must be strengthened, not criminalized." Furthermore, he as well as other colleagues have suffered different forms of harassment and arbitrary arrest for their work defending migrant people's rights. Since 2010, the Observatory for the Protection of Human Rights Defenders recorded seven attacks against KISA staff. [92]

Greece - Exhaustion after continuous changes in legislation

In Greece, the obstruction of organisations that defend migrant rights and their work dates back to the beginning of what was erroneously called the "refugee crisis" in Europe starting in 2011. The timeline that follows suggests that, on top of passing legislation against legitimate civil society space, the Greek State has developed a strategy based on the enactment of new regulations every few months. This wears organisations out as they are forced to dedicate time and resources to adjust to the new rules. It is, unfortunately, a successful and inconspicuous strategy to hinder the work of organisations.

- In January 2016, according to the EU Agency for Fundamental Rights (FRA), "In Greece, a ministerial decision put all NGOs in Lesbos directly under state control and refused to recognise the operations of independent and unregistered NGOs, effectively criminalising them." [93].
- In October 2019, the Greek parliament passed a law that imposed additional requirements on all organisations that were not certified by the Ministry of Citizens Protection (article 66) that restricted access to migrant reception and detention centres, transit zones or border crossing points on external borders. For Amnesty International, this article "finds no express justification in EU law and should hence be removed." [95].
- On February 7, 2020, **Law 4662/2020** created new requirements for the operation of NGOs. In its article 191, the law asks the registration of non-governmental organisations that work in the field of migration and asylum to include information on all of their mem-

92. Observatory for the Protection of Human Rights Defenders (OMCT_FIDH) "Police abuse and arbitrary detention against Mr. Doros Polykarpou," August 20, 2019.
93. European Union Agency for Fundamental Rights - FRA, "Challenges facing civil society organisations working on human rights in the EU," 2017, p. 22 .
94. Greek Law nº 4636/19, November 1, 2019.
95. Amnesty International "Greece: Amnesty International submission on the proposed changes to the Greek law on international protection", October 25, 2019, p. 07.

bers, as well as information on employees and associates of the organisations. The decision on this law was accompanied by stigmatizing statements from Deputy Minister to the Prime Minister and Government Spokesman, Stelios Petsas, who insinuated there were good and bad organisations. For him, "many NGOs may have helped decisively (in managing the issue of migration) but others operated in a faulty and parasitic manner."[96].

- **Ministerial Decision 3063/2020** was adopted on April 14, 2020. Although such decisions do not have the character of a law and should only explain and clarify existing ones, this decision establishes additional conditions, such as the need to re-register for organisation already registered in the previous system. Not only does it request extensive documentation from organisations. It also grants total discretion to the Ministry of Migration and Asylum to deny registration. Moreover, once the registration process is complete, an organisation can apply for certification, thus spending more time and resources in a process that is again left at the discretion of the Ministry. Unfortunately, this certification is necessary for all NGOs wishing to work in State-sponsored facilities or to access certain types of funding.
- On May 12, 2020, **Law 4686/2020** was passed which provides more details on the legal requirements for the registration of NGOs and specifies that those that are not registered cannot conduct activities in the field of asylum, migration and social integration in Greece and in particular, cannot provide legal, psychosocial and medical services nor information and advice [97]. Furthermore, the Ministry of Immigration and Asylum reserves the power to establish other requirements when they see fit.

Additionally, this law shows evident discrimination in the treatment of migrants based on their purchasing power since it makes amendments to the Greek "Golden visa" programme, allowing any foreign investor to obtain a Schengen Visa if they invest 250,000 euros in Greece. [98]

- On September 9, 2020, **Ministerial Decision 10616/2020** was passed introducing new amendments that require not only the registration of staff who conduct activities in migrant reception centres and asylum offices, but also that of all members, staff, and volunteers of NGOs, independently of the work they do and the degree of contact they have with refugees and migrants. Further-

96. EURACTIV, "Greece passes new law to better monitor NGOs dealing with migration," February 5, 2020.
97. Expert Council on NGO Law "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration," July 2, 2020.
98. Orience International "Golden Visa Greece, latest news for international investors," May 24, 2020.

more, the process of certification becomes an obligatory procedure for all NGOs who work with the migrant population, along with all of the costly requirements that this entails, plus the uncertainty of whether or not they will be approved by the authorities. In the same way, the regulatory framework for organisations that work in the defence of migrant rights became even more restrictive than the regulation for all other social organisations. This contributed to the majority of them closing down.[99]

The Council of Europe's conclusions after having analysed the aforementioned Greek legislation are very critical: "The imposition of onerous reporting and disclosure requirements on NGOs is widely considered to be linked to efforts leading to the shrinking of space for civil society, given the direct impact it has on creating a chilling effect for NGO's work. The Greek measures are likely to have a chilling effect on NGO's ability to carry out work in support of refugees and other migrants in several ways." [100]

If the mere act of reading the long list of legislation is difficult, the same goes for the situation faced by organisations and social movements obliged to comply with them. As **Panayote Dimitras**, spokesperson for the Greek Helsinki Monitor and member of the OMCT General Assembly, states, "The issue is not a legal one, it is political. The intention is to wear down the determination of those who wish to show solidarity and defend migrant rights. We condemn violations of migrants' human rights, as well as immediate refoulements, and that is what bothers the Greek government. That is why they are obstructing organisations' work."

" Instead of guaranteeing the rights of refugees and other migrants, Ministerial Decision 10616/2020 removes a key means by which their rights (…) were capable of being realised. It ignores the crucial role played by NGOs in fostering access by refugees and other migrants to their human rights."[101]

Expert Council on NGO Law of the Council of Europe's Conference of INGOs

99. Interview with the member organisation of the SOS-Torture network, Greek Helsinki Monitor, May, 2021
100. Expert Council on NGO Law "Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration," July 2, 2020, paragraph 85..
101. Expert Council on NGO Law "Addendum to the Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration,"November 23, 2020, paragraph 20.

Hungary's highly restrictive migration policy

Background

Hungary is one of the most infamous and well-known cases internationally, given that its anti-migration policy has been condemned to the highest level since 2015, when the rest of European countries had not yet gone down the same path.

The UNHCR, together with the Council of Europe and the Office for Democratic Institutions and Human Rights of the OSCE (ODIHR) denounced the fact that "in December [of 2015], the Hungarian government launched a public campaign that portrays those who are fleeing war and conflict as criminals, invaders and terrorists based on their religious beliefs and places of origin."[102] In light of this situation, the Hungarian State was asked to "adopt a humanitarian spirit in helping those who have been forced out of their countries against their own will and choice and are currently seeking safety in Europe."[103] The UN High Commissioner for Human Rights at that time, Zeid Ra'ad Al Hussein, showed his dismay at Hungary's actions, stating that "the images of women and young children being assaulted with tear gas and water cannons at Hungary's border with Serbia were truly shocking. [104]" He also stated that "some of these actions suggest clear violations of international law" and he lamented that xenophobic and anti-Muslim opinions appear to be at the forefront of politics within the Hungarian government.

Consequently, the European Parliament urged the European Commission to "immediately initiate [...] a process of detailed control regarding the situation of democracy, the rule of law, and fundamental rights in Hungary."[105] This request was motivated by "the series of legislative measures adopted […] that have made it extremely difficult to access international protection and have unjustifiably criminalised refugees, migrants, and asylum seekers." [106].

102. UN News, "UNHCR urges Hungary to refrain from policies and practices that promote intolerance, , December 21, 2015.
103. Ibid.
104. United Nations, Office of the High Commissioner for Human Rights "Hungary violating international law in response to migration crisis: Zeid," September 17, 2015.
105. European Parliament "Resolution on the situation in Hungary,"June 10, 2015.
106. European Parliament Resolution on the situation in Hungary,"December 16, 2016. Furthermore, for more information on the specific situation regarding migrants and refugees and those who provide them with assistance in the context Syrian refugees' arrival to Europe in 2015, pages 51 to 59.

Overthrowing the 'Lex NGO Law:' a bittersweet victory for social movements

As with all social organisations, those who work in favour of migrant rights have also been affected by the NGO Law. Although existing laws in Hungary previously required NGOs to be transparent and publish their annual financial reports, on June 13, 2017, the Hungarian Parliament adopted Law LXXVI on the transparency of organisations who were receiving international economic support. The law stipulated, under penalty of severe sanctions, new obligations regarding registration, declaration, transparency, and publicity for civil society organisations who were directly or indirectly receiving foreign economic support above €24,000.[107] They had to systematically and publicly pronounce themselves "recipient organisations of foreign support," as well as declare this in all of their publications. This artificially created two groups of organisations, stigmatizing those who receive international funding as being at the service of foreign influences. Furthermore, when registering, they must also include the name of their donors when their support exceeds €1,400 [108].

The official justification of this law is that NGOs with international funding could be a threat to national security: "funding from unknown foreign sources to organisations established based on the freedom of association might enable foreign interest groups to enforce their own interests instead of public interest in the political and social life of Hungary, through the societal influence of these organisations, and with respect to the fact that this may endanger the political and economic interests of the country. [109]"

On July 13, 2017, the European Commission began an infringement procedure against Hungary regarding this law[110] and eventually

107. European Commission, Press release "Infringements - Hungary: Commission launches infringement procedure for law on foreign-funded NGOs," July 13, 2017. For more information on the situation and challenges that NGOs faced in Hungary prior to the NGO Law of 2017 and the Stop Soros legislative package of 2018, consult the previous UN Special Rapporteur's report on the situation of human rights defenders published in January 2017, available here.
108. InfoCuria Jurisprudence, 'European Commission v Hungary C-78/18, Judgement of the Court (Grand Chamber),' (detailed) June 18, 2020.
109. Hungarian Helsinki Committee, 'Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds,' 2017. For more information, consult the statement published by the Observatory for the Protection of Human Rights Defenders (OMCT-FIDH) warning against the risks of the Law of April 14, 2017. Also, the open letter to members of the European Parliament from June 8, 2017 from the Observatory.
110. European Commission, press release "Infringements - Hungary: Commission launches infringement procedure for law on foreign-funded NGOs" July 13, 2017.

brought Hungary to the CJEU in December 2018 [111], asking this court to declare that the country had failed to comply with obligations set out in the Treaty of the Functioning of the European Union and of the EU Charter of Fundamental Rights. In its ruling on June 18, 2020, the CJEU confirmed that Hungary had failed to comply with obligations concerning "the establishment of discriminatory and unjustified restrictions regarding foreign donations to civil society organisations. [112]"

In March 2021, the government initiated the process to repeal the law. It was a victory for civil society, in the eyes of **Márta Pardavi**, co-president of the Hungarian Helsinki Committee [113]. However, since then the government has been working on a new bill that raises concern among social movements, who were not consulted when the law was being drafted. In particular, this bill anticipates financial inspections of organisations by the public audit office [114], and it is feared that these inspections will be carried out selectively and arbitrarily [115]. These concerns are completely valid due to the anti-organisations campaign that the Hungarian State has been conducting for several years.

Economic blockades – Special tax for activities in support of migrants [116]

On July 20, 2018, the Hungarian Parliament adopted Law XLI on the amendment of some tax laws. Article 253 of the law imposes a 25% tax on financial support of any programme, action, or activity that, directly or indirectly, aims to promote immigration through media campaigns and seminars, participation in said activities, educational organising,

111. European Commission, press release "Infringements -European Commission refers Hungary to the Court of Justice for its NGO Law,"December 7, 2017.
112. InfoCuria Jurisprudence, "European Commission v Hungary C-78/18, Judgement of the Court (Grand Chamber),' (verdict) June 18, 2020. For more information, consult the statement published by the Observatory for the Protection of Human Rights Defenders (OMCT-FIDH) on the EU Court of Justice (CJEU) ruling, June 18, 2020.
113. Hungarian Helsinki Committee "Intervention at the European Parliament's LIBE Committee's Democracy, Rule of Law, and Fundamental Rights Monitoring Group,"April 29, 2021; European Parliament (Video) 'LIBE Working Group on Democracy, Rule of Law and Fundamental Rights Monitoring Group,'April 29, 2021. For more information see press release published by the Observatory (OMCT-FIDH) 28 June 2020.
114. "According to the proposal, the State Audit Office would annually inspect the finances of those approximately thousand associations and foundations which have an annual budget above 20 million HUF (~55,500 €). Sports and religious organisations, as well as national minority organisations are exempted, despite sports organisations receiving large amounts of public funding. The State Audit Office's primary function is the control of the management of public funds and national assets. Using the State Audit Office for inspecting CSOs not receiving public funding is just another tool to discredit and stigmatise these groups" Press release, civil society organisations, April 21, 2021.
115. For a rigorous analysis of this law´s effects and impact, consult the report by the Hungarian Helsinki Committee from April 21, 2021.
116. For more information, see the Observatory "In solidarity with Civil Society in Hungary", February 19, 2018; "Hungary: Call to vote own the proposed Law on the taxation of civil society organisations", July 19, 2018.

creating and the operating networks or propaganda activities that portray immigration in a positive light[117].

In September 2018, the Hungarian Helsinki Committee criticised this law before the Strasbourg European Court of Human Rights, stating that "the special 25% tax is unjust […] the government is threatening those who oppose their opinions. The new tax law obstructs the work of civil society organisations as its wording is deliberately ambiguous in order to discourage donors." For them, the government's message was clear: "One of the target organisations is the Hungarian Helsinki Committee."[118] At the time of writing this report, the tax is still in effect.

These developments triggered a historic resolution of the European Parliament in September 2018[119], which led to the activation of the procedure established in Article 7 of the TEU[120]. In its conclusion, the resolution states that there is "a clear risk of serious violation" of the EU's founding values in Hungary due to the systematic attack on the rule of law as well as of fundamental rights of the population, including migrant rights and rights of organisations who work for their protection. Multiple debates on the situation followed in the Council of the European Union. Since then, the European Commission has also initiated five infringement procedures against Hungary regarding the right to asylum. [121].

Turkey - Widespread closure of civic space

In Turkey, the closing of spaces for civil society organisations has been widespread and has also affected organisations that defend migrants' rights. Findings from the latest report by the Observatory for the Protection of Human Rights Defenders on the situation of those who de-

117. European Commission for Democracy through Law; Office for Democratic Institutions and Human Rights of the OSCE"Joint opinion on section 253 on the special immigration tax of act XLI of 20 July 2018," December 2018.
118. Hungarian Helsinki Committee, "The Hungarian Helsinki Committee takes legal action to challenge the anti-NGO laws,"September 20, 2018
119. European Parliament resolution, September 12, 2018, on a proposal asking the Council, in accordance with article 7, section 1, of the Treaty on European Union, to determine the clear risk of serious violation of the founding values of the Union by Hungary (2017/2131(INL))
120. Article 7 is the mechanism set out in the Treaty on European Union to demand governments' responsibilities whose actions threaten the rule of law, human rights and democratic principles of the block.
121. For more information regarding this situation see the analyses conducted by the Hungarian Helsinki Committee. Regarding the state of the infringement procedures regarding the Hungarian asylum system, see here.

fend human rights in the country reveal attempts by the government to weaken civil society activities through hostile and stigmatising narratives against them and several actions of criminalisation and harassment. Between 2016 and 2018, more than 1,400 civil society organisations were closed down by the authorities[122].

Towards the end of 2020, Law 7262 was passed "on the prevention of funding for the proliferation of weapons of mass destruction" which grants powers to the Public Ministry to freeze funds to organisations that are considered suspects of collaborating with terrorist groups. International organisations[123], various UN Special Rapporteurs[124], as well as the Council of Europe Commissioner for Human Rights[125] expressed numerous concerns, including those highlighted below:

- The lack of consultation with social organisations themselves;
- The power given to the Minister of Interior to suspend members of an association under investigation in order to name trustees and block activities of the association while awaiting investigation results;
- New powers given to the Ministry of Interior to control, and if necessary, block civil society fundraising activities.

The Council of Europe Commissioner for Human Rights has "repeatedly pointed out the increasingly challenging and hostile environment in which human rights defenders and non-governmental organisations (NGOs) have to operate in Turkey, (and there are) clear indications that some of its aspects [of the legislation] threaten the very existence of human rights NGOs"[126].

According to Osman Isci, ex Secretary-General of the Human Rights Association (İnsan Hakları Derneği – İHD) and member of the General Assembly of the OMCT, "The situation is easy to summarize: if you are considered an ally of the government, you have all of your rights, and if not, it is almost impossible to work. In our case, when we have tried

122. Human Rights Joint Platform, "Updated Situation Report- State of Emergency in Turkey,"April 17, 2018.
123. FIDH, "Turkey: New law seriously threatens freedom of association and must be repealed!," January 15, 2021.
124. Statement from three UN Special Mandate holders, February 11, 2021.
125. Statement from the Council of Europe Commissioner for Human Rights, February 25, 2021.
126. Ibid.

to access migrant camps, we have been blocked by police and military authorities "[127].

This statement is backed by the Council of Europe Commissioner for Human Rights who explained "public funds only seem to be allocated to NGOs which espouse the same values as the government and do not criticise official policy, in a non-transparent way that excludes rights-based civil society organisations "[128].

Search and rescue operations at sea: the ban on humanitarian acts

> The delay in search and rescue operations of migrants in danger on land and at sea, as with the designation of safe ports for disembarking, can also equate to torture or abuse and undermines the right to life."[129].
>
> UN Special Rapporteur on the human rights of migrants

Reports by organisations, press articles, and several documentaries have given the public an insight into the obstacles met by NGO vessels dedicated to migrant search and rescue operations in the Mediterranean Sea.

However, States have the obligation to rescue any person that finds themselves in a situation where their life is at risk, be it at sea or in other places, for example in the mountains.

127. Interview with Osman İşçi (IHD) in May 2021.
128. Council of Europe Commissioner for Human Rights, February 25, 2021.
129. UN Special Rapporteur on the human rights of migrants, "Report on the ways to address human rights impacts of immediate refoulements of migrants on land and at sea," May 12, 2021.

The duty to assist

The omission of the duty to assist is a criminal offence that condemns not providing assistance to a person in danger. In contrast to the majority of criminal legislation, it is a criminal offence by omission and not commission, meaning the author did not act when they should have.

Spanish Criminal code - Article 195

1.Whoever does not assist a person who is unprotected or in serious, manifest danger, when able to do so without risk to himself or third parties, shall be punished with the penalty of a fine of three to twelve months.

Greek Criminal code - Article 288 (translation from Greek)

2. The person that, in case of accident, common danger, or common need does not offer the help that has been requested and could have offered it, without running any substantial risk, will be sanctioned with a penalty involving the deprivation of liberty for up to six months.

In the case of **Belgium**, these penalties are even more severe in the case of one of the motives for not providing help being "hate, disregard, or hostility towards someone due to their supposed race, skin colour, ancestry, national or ethnic origin, nationality, gender, sexual orientation […]"[130].

The duty to assist is also laid out in Conventions and International Treaties for situations at sea:

- Article 98 of the UN Convention on the Law of the Sea (1982) stipulates that "every State shall require the master of a ship flying its flag, insofar as he can do so without

130. Art. 422 quater. Belgian Criminal code

serious danger to the ship, the crew or the passengers: a) to render assistance to any person found at sea in danger of being lost; b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, insofar as such action may reasonably be expected of him.

- Through Article 10 of the International Convention on Maritime Search and Rescue of 1989 (entered into force in 1996): "Every master of a ship has a duty to render assistance to person found at sea in danger of being lost, when this does not entail grave danger for the ship nor the people on board."

It must be, therefore, the States' responsibility to assume a service of maritime search and rescue, and due to the fact that in many European countries this does not work effectively, many organisations have taken the initiative to organise search and rescue operations.

Italy - Obstacles to prevent civil rescue operations

Since 2011, many images have been published in the media of boats carrying hundreds of people in precarious health and safety situations, hoping to be able to reach European shores [131]. "Not only have ships been impounded and crews prosecuted, but those rescued at sea have been disregarded as the Italian government, followed by Malta, adop-

131. Many of these situations have been documented by the Observatory (OMCT-FIDH) over the past years, see
https://www.fidh.org/es/temas/defensores-de-derechos-humanos/italia-incautacion-del-barco-de-ong-proactiva-open-arms-amenazas-de
https://www.fidh.org/en/issues/human-rights-defenders/italy-judicial-harassment-of-10-search-and-rescue-volunteers
https://www.fidh.org/en/issues/human-rights-defenders/italy-abritrary-arrest-and-judicial-harassment-of-carola-rackete-for
https://www.fidh.org/en/issues/human-rights-defenders/italy-domenico-lucano-under-house-arrest

ted a new policy of refusing to allow ships to dock and those on board to disembark." "[132].

On October 3, 2013, a ship transporting some 500 African migrants sunk near the Italian island of Lampedusa. The catastrophe resulted in the death of 366 people. Consequently, on October 18, 2013, the Italian humanitarian and military operation Mare Nostrum was conceived, with significant economic resources. This operation rescued around 150,000 people in the Mediterranean. However, it did not have EU support financially or support regarding the distribution of the reception of migrants, and consequently Italy decided to end the operation in 2014.

Following the end of Mare Nostrum, the EU began operation Triton, alongside Frontex. When this operation launched, the IOM commemorated the work of Mare Nostrum and reminded the world that Europe was not facing an "invasion" along its southern coast, and that rescue operations do not create "pull factors."[133] IOM Director, William Lacy Swing, warned that Operation Triton "cannot be considered a replacement for Mare Nostrum." [134]

In light of the vacuum created regarding search and rescue skills, various organisations in Europe emerged that sought to conduct search and rescue operations, many of them operating in Italian waters. This is the case of SeaWatch [135], created in 2015. According to Marie Nass from SeaWatch whom we interviewed for this report [136], there was a good level of collaboration between SeaWatch and Italian authorities during the first year and a half. However, since 2017, and especially with Matteo Salvini's administration, the scope of action for these organisations became complicated. First, the authorities began to pass emergency legislation, evading ordinary legislative formalities, which amended Italian internal procedural and migratory law, obstructed access to migrants' rights, and focused on border security (security laws)[137].

132. The Institute of Race Relations, "When witnesses won't be silenced: citizens' solidarity and criminalisation," 2019..
133. IOM, "L'OIM salue l'opération de secours italienne Mare Nostrum : « elle n'est pas un facteur d'incitation »,"October 31, 2014.
134. Ibid.
135. Interview with Marie Nass - Advocacy officer at SeaWatch SeaWatch is a German non-governmental organisation that operates in the Mediterranean Sea, in particular sending ships to rescue refugees, July 7, 2021
136. Ibid.
137. It is worth noting, among others, the following regulations: i) The Minniti-Orlando decree from 28 March 2017 which had two main aims: accelerate procedure regarding international protection and introduce effective measures to combat irregular migration, ii) The law decree Salvini n. 113/2018 which sought to abolish humanitarian protection, iii) the Salvini Decree 2 June 2019 heavily criminalises irregular transport of migrant persons, amends the Criminal Code, Code for waterways and port management and establishes restrictions to freedom of assembly and demonstration, making the focus internal security.

On top of this, Italy started to close ports and criminalise vessels that carried out rescue operations. The first process was conducted against the Iuventa crew and the German NGO Jugend Rettet in 2017, who were accused of facilitating migrants' "illegal entry." At the time of writing this report, the case was still open.

SeaWatch ships had been banned from accessing secure ports in Italy for days and weeks.[138] This ban on entering secure ports and the threat of criminalisation has a clear impact on those on board as it prevents them from planning operations, working hours, and presents real risks for the crew who are forced to rethink whether or not to continue with rescue operations.

There have been numerous cases of criminalisation of these ships and their crews.[139] In Italy, dozens of legal processes have been launched against NGOs and the crew of rescue vessels in accordance with the security decrees mentioned above.

In addition, according to SeaWatch,[140] the Italian government's strategy appears to have changed and now they are also seeking to ban the departure of ships for search and rescue operations under excuses related to ship safety. According to **Marie Nass**, "banning the disembarkation of ships with dozens or hundreds of migrant persons on board has media repercussions for the government, stopping us from departing from ports under safety pretexts does not have the same visibility." Therefore, using administrative and vessel safety arguments, Italian authorities seem to be systematically trying to prevent SeaWatch ships from carrying out their search and rescue missions. This policy has benefited from the Covid-19 pandemic, as from April 7, 2020, Italy decided to close its ports to rescue operations carried out by foreign ships outside of their territorial waters. Months later, on December 18, 2020, Law 173/2020 was passed, reversing existing legal restrictions and reinstating some of the guarantees that were eliminated by the security laws, such as the extension of the scope of application of humanitarian protection.

138. It is necessary to remember that, according to International Law, ships with rescued persons on board must disembark at the nearest secure port.
139. For more information, see for example, the urgent actions of the Observatory (OMCT-FIDH)) "Italy: Seizure of NGO Proactiva Open Arms' vessel, death threats and criminalisation of 3 of their members"; "Italy: Judicial harassment of 10 Search and Rescue volunteers"., and "Italy: arbitrary arrest and judicial harassment of Carola Rackete for rescuing migrants."
140. Interview with Marie Nass - Advocacy officer at SeaWatch.

However, on March 26, 2021, Italian authorities blocked the SeaWatch 3 vessel again, arguing that it was carrying too many passengers. This despite it having been checked in a shipyard and having received confirmation from Spanish and German authorities that the ship was safe and well equipped. As for SeaWatch 4, which had been blocked in September 2020 for carrying too many life jackets on board and due to the sewage system not having been designed for the potential number of rescued people among other reasons, it was able to resume search and rescue missions from March 2, 2021 following a decision by the Administrative Court of Palermo[141].

For SeaWatch, it is obvious "that the port State controls and subsequent arrests [of its members] are part of Italy's new strategy to ban our rescue operations."[142] It is clear that these controls are more political than technical or administrative in nature. Their consequences are dramatic: according to the IOM, 1,146 people died in the Mediterranean Sea in the first six months of 2021.

In a report from December 2020, the FRA reported that between 2016 and 2020, "some 50 proceedings have been initiated [...] by Germany, Greece, Italy, Malta, the Netherlands, and Spain. Nine new legal cases were opened in the past six months, almost all in Italy. Among the six addressed to vessels, four ('Alan Kurdi,' 'SeaWatch 4,' 'Ocean Viking,' 'SeaWatch 3') consisted in administrative seizures based on technical irregularities relating to maritime security."[143] The FRA observed "an increasingly frequent use of non-criminal administrative means based on laws of navigation and safety at sea."[144] With this strategy, authorities avoid provoking public demonstrations in support of rescue ships by replacing images of boats with hundreds of people crammed together in a precarious health and safety situation, with empty ships anchored in ports "due to safety issues."

Prohibiting humanitarian assistance beyond the sea too

Beyond obstacles for civil search and rescue operations, several European countries have also launched actions to limit any humanitarian

141. Sea-Watch, "Rescue ship Sea-Watch 4 is free – 363 rescued aboard Sea-Watch 3 await assignment to port of safety,"March 2, 2021.
142. Sea-Watch, "Sea-Watch 3 blocked again: Solidarity is not a crime!,"March 26, 2021
143. FRA, "December 2020 update - NGO ships involved in search and rescue in the Mediterranean and legal proceedings against them,"December 18, 2020.
144. Ibid.

act towards migrants under various pretexts, including safety and, since March 2020, the Covid-19 pandemic.

Exhaustive and rigorous reports[145] show how in France, in the Pas-de-Calais and Nord regions, and specifically in the Calais and Grande-Synthe areas, authorities have systematically sought to intimidate people and organisations who support migrants in different ways, including through accusations of human trafficking, defamation of public workers, contempt, and aggression.

In September 2020, French authorities issued a directive to ban "any free distribution of food and drink [in twenty streets, piers, and squares in the centre of the city] to stop public disorder and limit sanitary risks associated with undeclared agglomerations."[146] This ban was extended ten times, the last one from June 29, 2021 until July 26, 2021.[147] Migrants themselves are constantly harassed, forced to move on, while police systematically destroys their few belongings, such as tents or boats they bought to travel to England, and even their food and water.

For social organisations that carry out humanitarian assistance, these are measures that seek to put a strain on and obstruct solidarity with migrants—as **Antoine Nehr**, member of the organisation Utupia56, told InfoMigrants when the directive was issued.[148] Some seven months later, **Pierre Roques**, coordinator of Utopia56, said it was about a "policy of harassment against those who offer help."[149]

Another phenomenon observed by this organisation are the fines given to those who provided help to migrants during the Covid-19 pandemic, for being outside during the imposed sanitary curfews, despite a Ministry of Interior notice authorising the presence of humanitarian workers during curfew hours.

This demonstrates a practice that blocks the work of organisations based on arguments of health and safety. Furthermore, according to in-

145. Amnesty International, "Europe: Punishing compassion: Solidarity on trial in Fortress Europe," 2020.
146. InfoMigrants, "Calais : un arrêté interdit aux associations de distribuer de la nourriture aux migrants, les humanitaires s'insurgent,"September 11, 2020.
147. Administrative acts de la 'Préfecture du Pas-de-Calais,'June 28, 2021.
148. Ibid.
149. InfoMigrants, "Calais : nouvelle prolongation de l'interdiction de distribuer des repas aux migrants,"April 7, 2021.

formation from the newspaper *L'Humanité*,[150] several associations that operate in the area have received orders from their main funder—under pressure from the United Kingdom—to stop distributing leaflets with emergency numbers and practical advice in case of problems in trying to cross the English Channel by boat. The organisations insist that this information can save lives and therefore they will not obey orders and will continue distributing it.

Intimidation for defending other rights

Italy: Threatened for defending migrant workers' rights

Marco Omizzolo[151],sociologist and researcher for the Eurispes Institute. President of the association Tempi Moderni and professor at the University La Sapienza, Roma, explains how he began to support Sikh workers in the Latina province of Italy. He discovered their reality while he was writing his doctorate thesis at the University of Florence on international migration and an empirical case study of the Sikh community in the town of Pontina. He developed the thesis through a process of participative observation by working as a labourer with Indian workers. Over several months he followed a trafficker of Indian people in Punjab, researching the methods and interests hidden behind international human trafficking for labour exploitation which characterizes part of this migratory flow.

His research uncovered the labour exploitation of Sikh workers in the Latina agricultural sector: working days of more than 10 hours, sometimes up to 14 hours, of sowing seeds and manually harvesting vegetables, forced to call their boss "master," physical violence, a salary of €4 per hour in the best of cases, delayed salary payments lasting months, sometimes

150. L'Humanité, "Migrants. Les associations empêchées de sauver des vies dans la Manche,"May 31, 2021.
151. Interview with Marco Omizzolo from June 5, 2021.

never getting paid at all. In 2006, Marco Omizzolo ogether with the workers, organised a historic strike that slightly improved work conditions; before this their salary was around €1 per hour.

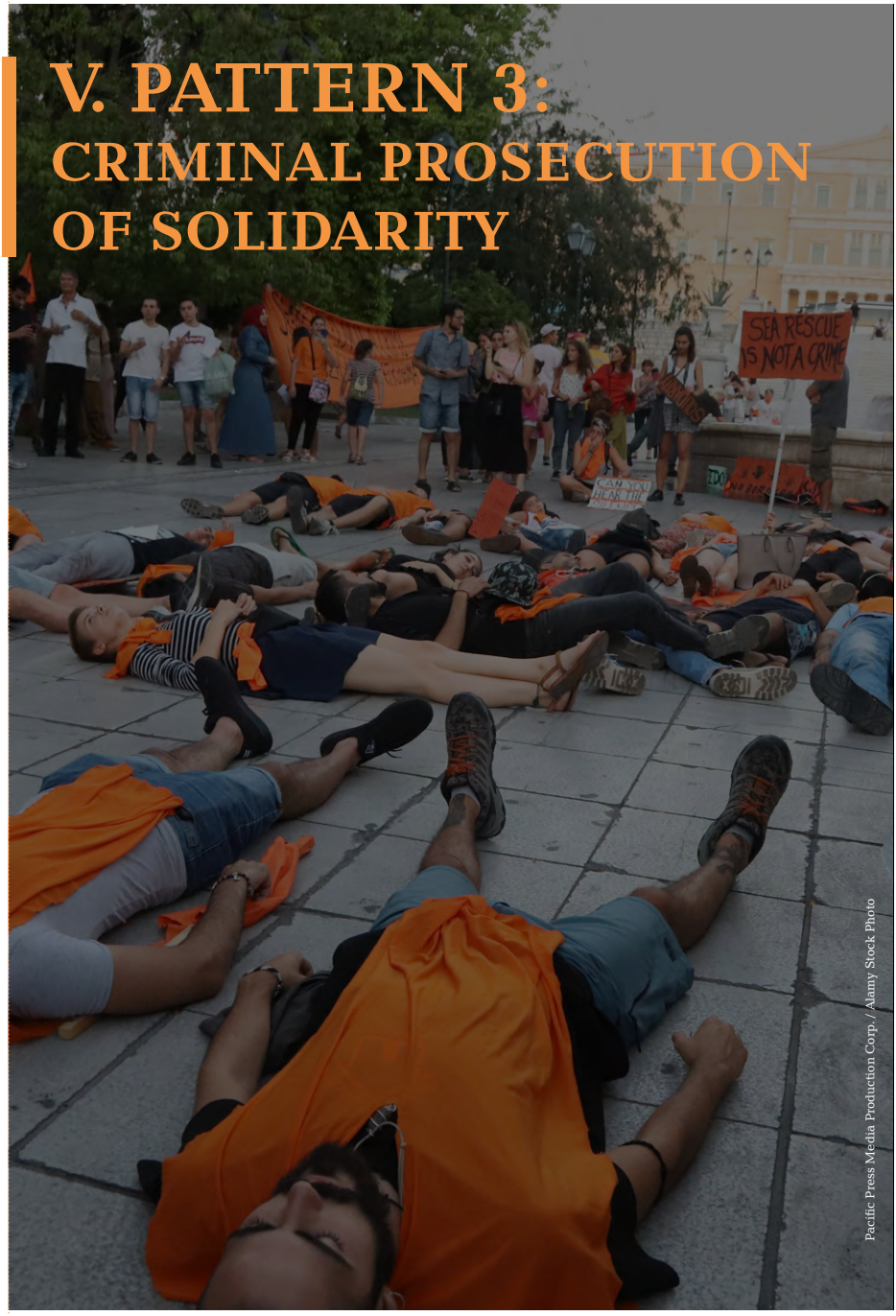
When he published his research, demonstrating the Italian mafia's involvement in this business of exploitation, Marco Omizzolo began to receive threats. His car was destroyed three times and even the local police said he would be better off leaving. However, Marco Omizzolo continues to research this situation. From his point of view, one of the solutions is for governments to stop seeing migration as something illegal. "Seeing people as illegal makes them vulnerable to those who wish to exploit them." Therefore, laws that are supposedly made to combat human trafficking seem to actually benefit it while making its victims more vulnerable.

In October 2018, the UN Special Rapporteur on the freedom to peaceful assembly stated that one of the threats that undermine civil liberties, in general, is "the use of legislation to repress legitimate exercising of freedom of peaceful assembly and association. Repressive legislation is being used to stifle dissent, thus creating a complex legal environment with onerous requirements for the operation of civic organisations and groups. In the name of transparency, associations are forced to comply with complicated, restrictive, and invasive regulations in order to operate normally. Often these laws contain clauses that threaten associations with de-registration, loss of legal personality, or even criminal prosecution for non-compliance. Any restriction of the exercise of the rights of peaceful assembly and association must pursue a legitimate interest and, at the same time, defend the fundamental pillars of a democratic society"[152].

152. Civicus, "New Social Rapporteur on the rights to freedom of peaceful assembly and of association outlines threats to human rights, October 10, 2018.

This section shows how, under administrative pretexts, many European States are managing to block the work of social and human rights organisations in favour of migrant populations. These actions and their respective and rigid legislative frameworks impose serious restrictions on the exercise of the right to freedom of association, in violation of the States' international obligations in this area.

V. PATTERN 3: CRIMINAL PROSECUTION OF SOLIDARITY



Pacific Press Media Production Corp. / Alamy Stock Photo

A legislative or political problem?

According to data collected by the research platform ReSoma, between 2015 and December 2019, 171 migrant rights defenders were being prosecuted (at least 60 cases concerning criminal proceedings) in 13 European countries on charges such as "human trafficking," "facilitation of entry or transit," or "facilitation of residence"[153]. In June 2019, this platform, in which specialized migration organisations and networks participate, warned that, under the pretext of fighting against networks of human traffickers, the EU legal framework against the facilitation of unauthorized entry, transit, and residence, as well as national legislations, have allowed the criminalisation of the work of organised civil society[154] and that of citizens who, under ethical and humanitarian criteria, have supported and, on many occasions, saved the lives of migrants.

European Council Directive 2002/90 plays an important role regarding the criminalisation of solidarity with migrants. The Directive called on EU member countries to put legal provisions in place by December 2004 to adopt sanctions "against any person who intentionally assists a person who is not a national of a Member State to enter into or transit through a Member State's territory."[155] Although the Directive gives countries the possibility of "not imposing sanctions [...] in cases where the purpose of such acts is to provide humanitarian aid," it does not oblige them to take this humanitarian nature into account. In fact, according to ReSoma's research, "the facilitation of entry is a criminal offence, even without the intent to gain profit, in 24 of the 28 EU Member States"[156]

An assessment conducted in 2017 by the European Commission (see first chapter) concluded that "there is insufficient evidence [...] on the need for a revision of the Facilitators' Package at this time." Nevertheless, the Package is clearly against the provisions of the Protocol Against the Smuggling of Migrants by Land, Sea, and Air, supplementing the

153. ReSOMA, "The criminalisation of solidarity in Europe," 2020.
154. ReSOMA, "Crackdown on NGOs and volunteers helping refugees and other migrants,"June 2019.
155. European Council, Directive 2002/90/EC of the Council on November 28, 2002, defining the facilitation of unauthorized entry, transit, and residence.
156. ReSOMA, "Crackdown on NGOs and volunteers helping refugees and other migrants," June 2019.

UN Convention against Organised Crime, which the European Council approved on behalf of the European Community on July 24, 2006. Thus, the Protocol specifies that such activities should be criminalized only "when committed intentionally and for the purpose of obtaining, directly or indirectly, a financial or other material benefit."[157] However, the Facilitators' Package disregards this requirement and leaves it to the discretion of its Member States as to how the criminal offence of smuggling of migrants is constituted. Thus, in most Member States, the requirement of financial gain is not part of the criminal offence but is considered an aggravating factor.

In addition, Article 16 of the same Protocol requires "each State party [to provide] appropriate assistance to migrants whose lives or safety have been endangered." However, the criminalization of solidarity towards migrants is directly related to an attempt to criminalize migrants, thus seeking to isolate these people despite their highly vulnerable situation.

The case of Hamza Haddi and Mohamed Haddar - Greece [158]

Hamza Haddi and his brother Yassine decided to migrate to Europe to escape Hamza's persecution in Morocco for his commitment to human rights. En route, in Turkey, they met two Moroccan companions, Reda and Mohamed Haddar. In July 2019, they were detained at the Turkey-Greece border. Hamza Haddi and Mohamed Haddar were charged with human trafficking and in February 2020 were sentenced to four years and one month in prison.

Reda was pressured to sign his testimony which was then used against Hamza and Mohamed. The document was written in Greek, but Reda could neither read nor write Greek. In addition, he was

157. European Council, Council Decision of July 24, 2006.
158. Summary based on the pronouncements of MigreEurope, LaCimade, Borderline Europe, Deportation Monitoring Aegean, and StateWatch.

later able to confirm that the document he had signed did not match his testimony. Likewise, one of the persons who was allegedly the victim of smuggling is Hamza Haddi's own brother, with whom he was traveling. The accusation is therefore contrary to the interpretative notes of the Protocol against the Smuggling of Migrants, which state that "the activities of all those who provide support to migrants for reasons [...] of close family ties are excluded." [159]

Thanks to the mobilization of citizens and the support received by Hamza Haddi and Mohamed Haddar, as well as the work of their lawyers, the court of the Greek city that heard their case decided in September 2020 to modify the accusations and "limited" itself to convicting them of "facilitating the passage of persons" into the territory and not for "human trafficking." The criminal offence of "facilitation" carries a much lesser penalty, so both were released. This was a partial victory as Hamza Haddi and Mohamed Hadar spent more than a year unjustly deprived of their liberty. In this regard, it should be noted that the Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the Council of Europe recommended in April 2020 that Greek authorities seek "to remedy structural problems that have led to enduring ill-treatment of detainees, prison overcrowding, and staff shortages" in Greek prisons, where many of the persons deprived of their liberty are migrants[160].

A necessary reflection on the concept: "a financial or other material benefit"

The Interpretative Notes for the official documents (travaux préparatoires) for the negotiation of the Protocol against the Smuggling of Migrants by Land, Sea, and Air indicate that the "reference to 'financial or

159. UNODC. "Interpretative Notes for the official documents (travaux préparatoires) for the negotiation of the United Nations Convention against Transnational Organised Crime and its Protocols," November 3, 2000, paragraph 88.
160. Council of Europe, "Greece: Reforming prison system and ending police ill-treatment are urgent priorities, says CPT", April 9, 2020.

other material benefit' was made to emphasize that the defined notion encompassed the activities of organised criminal groups acting for profit, but excluded from it the activities of all those who provide support to migrants for humanitarian reasons or due to close family ties"[161].

The legislative guide to the Protocol insists that the objective is to combat "organised criminal group(s)" and that at no time does it seek to "criminalize groups that facilitate the clandestine movement of migrants for humanitarian or altruistic reasons, as is often the case with asylum seekers."[162] However, this has not been reflected in European national legislation, where the profit motive is not necessary for it to be considered a criminal offence, but the fact of seeking financial gain is only used as an aggravating factor. "The concern with this approach is that, in the absence of other legal exceptions, many countries criminalize the activities of persons aiding irregular migrants, including refugees and asylum seekers, for humanitarian reasons or persons aiding their family members in the migrant process without obtaining, or seeking to gain, any material advantage." [163]

In addition, during the documentation process for this report, we learned of numerous cases of people in vulnerable situations who, when seeking to cross the Mediterranean, the English Channel, or any European border, fall into the hands of a human trafficking network and are forced to perform certain actions for the traffickers in order to finance their journey. This often occurs when the person does not have sufficient economic resources and is therefore forced to perform tasks that include looking for other "clients," serving as interpreters with the other migrants, closing the door of the truck, and even driving the boat.

Although these are cases of instrumentalization of people facilitated by their situation of vulnerability, unfortunately, in the cases that have been analysed, the courts have seen in these actions a 'financial or material benefit' that turned them into victimizers and not victims. On these cases, the UNODC, in its Global Report on Smuggling of Migrants published in 2018, identified as a common pattern in the migration

161. UNODC, "Interpretative Notes for the official documents (travaux préparatoires) for the negotiation of the United Nations Convention against Transnational Organised Crime and its Protocols," November 3, 2000, paragraph 88.
162. UNODC, "Legislative Guide for the Implementation of the Protocol against the Smuggling of Migrants by Land, Sea, and Air," paragraph 18.
163. Council of Europe, European Committee on crime problems, Working document, 2016, p. 06.

process the collaboration of migrant victims of human trafficking with their traffickers, often in recruitment or intermediary roles, in order to finance their own journey.[164]

Migrants are charged with human trafficking for saving the lives of others - Greece. [165]

Mohamad H., a native of Somalia and father of four children, fled the civil war in his country hoping to reunite his family at a later date. He arrived in Turkey and for eight months was looking for work until December 2020, when he decided to try to cross to Greece by boat. Since he spoke some Turkish, he was the only one of the migrants who could communicate with the traffickers. When the boat malfunctioned and began to sink, it was Mohamad H. who called the Turkish Coast Guard 11 times to save them. Turkish rescue teams arrived twice and both times pushed the vessel into Greek waters. With shipwreck imminent, Mohamad H. tried to control the vessel and navigate it to port. However, the ship ended up capsizing near the island of Lesbos. Two people died and the others were picked up by the Greek Coast Guard. Mohamad H. was charged by Greek authorities with trafficking, endangering the lives of others on board, and causing the death of two of them. All this despite the fact that the other people on the boat claimed that it was Mohamad H.'s actions that saved their lives. On these charges, he faced a sentence of two life sentences and more than ten years in prison for each passenger. Finally, on May 13, 2021, he was sentenced to 146 years in prison for illegal transportation of foreign nationals on Greek territory.

According to Mohamad H.'s lawyers, **Dimitris Choulis** and **Alexandros Georgoulis**, there is no real will in Greece to fight against human trafficking networks. Thus, many migrants provide the authorities with the telephone numbers of their smugglers. However, there is no real collaboration

164. UNODC, "Global Study on Smuggling of Migrants 2018," June 2018.
165. Based on an interview with the lawyers of Mohamad H.; Dimitris Choulis, and Alexandros Georgoulis.

with Turkish authorities to dismantle these criminal networks. Instead, there are repeated accusations and cases against migrants like Mohamad H., people who hold the rudder to steer the boat, who take the lead in calling the coast guard for help, or who simply speak a common language.

In the Greek case, moreover, most migrants do not have the capacity to hire legal assistance to protect their rights. In these cases, they are assigned a public defender, who receives several cases on the same day with little time to study each specific procedure. Such trials last an average of 38 minutes, with sentences averaging 44 years and fines of more than €370,000 for migrants who are convicted.

In the specific case of migration lawyers Choulis and Georgoulis, both claim that since they have been defending the rights of migrants, they have been victims of some kind of harassment by the Greek authorities, especially the police, on the Greek island of Samos where they work and provide legal assistance, such as receiving threats of being arrested if they did not leave the place where a group of migrants were disembarking.

The social organisations interviewed fear that, in anti-immigration contexts, the term "financial or material benefit" included in the Protocol's definition of "human smuggler" may be interpreted excessively broadly by the authorities to include cases such as a cab driver who transports a migrant in an irregular situation and charges the normal fare for the ride, or a citizen who rents a room at a fair price to a migrant in an irregular situation. However, the application of criminal legislation should respond to its main objective: to fight organised networks of human traffickers and protect migrants. It should not be used to intimidate migrants and those in solidarity with them.

The term "passer" or guide (passeur in French) has been used in Europe since the Spanish Civil War and World War II to refer to those people, many of whom belonged to resistance movements, who helped others flee war and repression. Currently, it is used as a pejorative term that includes both criminal trafficking networks that profit from the exploitation of other human beings in vulnerable situations, as well as those who help populations flee from risky situations, defend their right to migrate, or even the migrants themselves who are forced to perform an action for the benefit of the trafficker.

Laws that allow for criminal prosecution of solidarity

Switzerland- punishing those who act on humanitarian grounds

Article 116 of the Swiss Federal Law on Foreign Nationals and Integration[166] (LEI, as per its acronym in French) entitled "Incitement to illegal entry, exit, or residence," provides that "anyone who [...] facilitates the illegal entry, exit, or residence of a foreigner or participates in preparations for it shall be punished by imprisonment for up to one year or by a financial penalty" (paragraph 1). It opens the possibility that "in minor cases, the sanction may consist of a fine" (paragraph 2) and the penalty is increased to 5 years if "the perpetrator acts to procure unjust enrichment for himself or a third party" (paragraph 3).

The use of this article has led to court cases with wide media coverage, such as that of **Pastor Norbert Valley**, **Anni Lanz**, or **Lisa Bosia Mirra**.[167] Regarding the case of Anni Lanz, on June 30, 2020, the Swiss Federal Tribunal upheld the conviction against her to pay a fine for helping an Afghan refugee in a serious family situation. According to the information platform HumanRights.ch, "in 2018, Swiss judicial

166. Loi fédérale sur les étrangers et l'intégration, of December 16, 2005.
167. For more information on this topic, see Amnesty International, "Europe: Punishing compassion: Solidarity on trial in Fortress Europe," 2020.

authorities convicted 972 people for violations of Article 116 of the LEI. Only 32 of them were genuine traffickers or people who took advantage of the migrants' distress for their own benefit. In addition, 58 sentences were handed down for illegal employment. Thus, almost 900 people were convicted because they acted out of solidarity, compassion, family duty, and in the context of a marriage."[168] According to statistics including information on 2020,[169] more than 90% of the sentences are given for section 1 (770 cases in 2020) and only 4% of them for section 3 (30 cases in 2020). It is important to take into account that, of these cases, more than 70% are accusations against non-Swiss nationals, who may find themselves in an unfavourable situation before the courts or as a result of the impact of judicial decisions. These are 70% of cases that remain invisible to the public but have serious consequences on the life projects of convicted persons and their families.

It is important to note that until 2008, the Federal Law on the Stay and Settlement of Foreigners (LSEE) contained a provision according to which the provision of assistance was not punishable in certain situations if the motives were honourable (Article 23). This provision disappeared in 2008, when the LSEE was replaced by the LEtr (Swiss Federal Law on Foreigners). This law was again replaced by LEI, which continues to criminalize solidarity, despite attempts from different left-wing political groups to modify this legislation.

In September 2018, Lisa Mazzone of the Green Group launched an unsuccessful parliamentary initiative to have the law amended so that "the person who assists is not punishable if their motives are honourable." This initiative was taken up in August 2019 by the Groupe de Saint-François,[170] with the aim of including, in Article 116 of the LEI, a provision that would avoid punishing those who act on humanitarian grounds. The initiative was rejected with 102 votes against, 89 votes in favour, and one abstention.

168. Plateforme d'information HumanRights.ch, "La criminalisation des défenseur·e·s des droits humains," April 21, 2021.
169. Office fédéral de la statistique, Confédération Suisse, 'Adultes: Condamnations pour une infraction au sens des articles de la loi sur les étrangers et l'intégration (LEI) (2008 - 2020).'
170. Asamblée Genéral – Petición.

Hungary – When the criminal code becomes a weapon to fight defenders

The steps taken by Hungary to hinder the work of social organisations either through the "LEX NGO" or the special migration tax have been analysed in the chapter on administrative obstacles. In addition to these measures, on June 20, 2018, on World Refugee Day, Hungary's legislature adopted a bill submitted by the government the previous month. The legislative package included amendments to the Basic Law, the Criminal Code, and the Asylum Law, among others. According to the Hungarian Helsinki Committee, these amendments proposed "to use criminal sanctions and prison sentences as weapons against human rights defenders under the pretext of tightening the rules against irregular immigration."[171].

The amendment to the Criminal Code punishes with up to one year imprisonment the provision of legal assistance to asylum seekers and third-country nationals who are in Hungary irregularly. The language of this law seems intentionally vague and does not clearly specify the actions that can be criminally prosecuted. Considering the array of attempts to block organisations and individuals seeking to help migrants, this abstract language becomes a "perfect tool in the hands of the government to intimidate members of civil society, such as the Hungarian Helsinki Committee." [172]

In response to this new rule, the European Commission sent on July 19, 2018 a formal letter to Hungary saying that "the criminalization of support for asylum and residence applications and the related restraining measures curtail asylum applicants' rights to communicate with and be assisted by relevant national, international, and non-governmental organisations,"[173] which represents a violation of European laws and treaties. The process continued and on July 25, 2019 the Commission decided to take Hungary back to the CJEU. [174]

171. Hungarian Helsinki Committee, LexNGO, 2018.
172. Hungarian Helsinki Committee, "Advocate general: Hungary's criminalisation of assistance to asylum-seekers violates EU law," February 25, 2021.
173. European Commission, "Migration and Asylum: Commission takes further steps in infringement procedures against Hungary," July 19, 2018.
174. European Commission, "Commission takes Hungary to Court for criminalising activities in support of asylum seekers and opens new infringement for non-provision of food in transit zones," July 25, 2019.

On this issue, Advocate General Rantos of the CJEU asserted in a non-binding opinion of February 25, 2021 that "by imposing criminal penalties on organising activities intended to enable persons to initiate the international protection procedure who do not fulfil the national criteria for the grant of that protection, Hungary has failed to fulfil its obligations under EU law."[175] At the time of writing this report, the Tribunal had not yet reached a decision.

"This strengthened protection is needed because the mass immigration afflicting Europe is continuous, while the Soros network[176] and the pro-immigration policy of Brussels are creating the threat of attempts to also swamp our country with migrants."

Words used by the Hungarian Minister of Interior to justify the legislative proposals [177].

In the same legislative package, a "seventh amendment" to the Constitution was adopted, ensuring that the State authorities "shall protect the constitutional image and Christian culture of Hungary," and stipulating that "no foreign population shall settle in Hungary." [178]

This type of laws, framed in a xenophobic and racist campaign against the migrant population and those who defend their rights, consolidate the establishment of a hostile environment, which, far from fighting against criminal networks of human traffickers, assimilates the arrival of migrants fleeing a dramatic situation to an 'invasion.'

175. Court of Justice of the European Union, "Advocate General's Opinion in Case C-821/19," February 25, 2021.
176. George Soros is the founder and chair of the Open Society Foundations, a grantmaking network.
177. Cabinet Office of the Prime Minister, "'Stop Soros' and amendment to the Fundamental Law assert the will of the Hungarian people," June 20, 2018.
178. Hungarian Helsinki Committee, Seventh amendment of the Basic Law of Hungary - Unofficial translation, May 2018.

France – The impacts of insufficient legislative developments[179]

In France, aiding the irregular entry or stay of foreigners has been considered a criminal offence since 1938 under Article 4 of the Executive Order on the Aliens Police. This article has been taken up verbatim in the Ordinance of November 2, 1945[180] on the conditions of entry and residence of foreigners in France in Article 21; as well as in 2005 by Article l622-1 of the Code for Entry and Residence of Foreigners and Right of Asylum (CESEDA), which stipulates:

"Any person who, by direct or indirect assistance, facilitates or attempts to facilitate the irregular entry, movement, or residence of a foreigner in France shall be punished by five years' imprisonment and a fine of €30,000." [181]

Different amendments, such as one in December 2012, have been adding grounds for criminal exception. Thus, as currently stated in Article L622-4 of the CESEDA, no one should be criminally prosecuted "when the allegations did not give rise to any direct or indirect consideration and consisted in the provision of legal advice or food, accommodation or medical care intended to ensure decent and dignified living conditions for the foreigner, or any other assistance aimed at preserving their dignity or physical integrity."[182] In any case, these exceptions are clearly only related to "aid for irregular residence" and do not mention "aid for entry or movement."

Despite this, there are numerous cases that show that judicial persecution against those who defend the rights of migrants or show solidarity with them is a reality in France:[183] examples are the cases

179. Based on information from the Groupe d'information et de soutien des immigrés (GISTI), the Vie-Publique dossier "Du délit de solidarité au principe de fraternité : lois et controverses" and legislative archives.
180. Ordonnance n°45-2658 du 2 novembre 1945 "Relative a l'entree et au sejour des etrangers en france et portant creation de l'office national d'immigration."
181. Art. L622-1 as adopted in 2005
182. Art. L622-4 amended by LOI n°2012-1560 of December 31, 2012
183. Amnesty International, "Europe: Punishing compassion: Solidarity on trial in Fortress Europe," 2020.

of **Cédric Herrou**[184] **Pierre Alain-Mannoni**[185], **Martine Landry**[186], and **Pierre Mumber**[187], which were largely reported in the media. All of them were prosecuted and charged with facilitating the entry and movement of persons in an irregular situation. Although most of the trials ended with the acquittal of the defendants, the impact has been high in terms of emotional toll, time spent on defence, energy, and economic resources. It is also important to highlight the deterrent effect both for them and for all other persons who could carry out rescue operations of migrants in an irregular administrative situation.

> The natural border between Italy and France—the Alps—represents a life-threatening obstacle for migrants who decide to cross it. Lack of knowledge of the mountains, lack of adequate equipment, extreme temperatures, and snow represent serious dangers for migrants. In response to this, citizens have organised what is known in French as "les maraudes", that is to say groups of people, rescuers, and mountain guides who go into the mountains to assist migrants in difficulty, blocked by snow, and even in a state of hypothermia. This rescue work, comparable to search and rescue missions at sea, has been criminalized by the French State and its security forces.

The French institution for the protection of human rights, the National Consultative Committee on Human Rights (CNCDH), repeatedly asked the French legislature in 2018 to amend Article L622-1 to make it punish only "facilitating unauthorized entry, movement, or residence

184. On March 31, 2021, the Court of Cassation definitively confirmed his acquittal. For more information, see the urgent appeals made by the Observatory (OMCT-FIDH) FRA 001 / 0817 / OBS 092, FRA 001 / 0817 / OBS 092.3 and the statement "France: Cédric Herrou, enfin la relaxe définitive!", April 1, 2021.
185. In October 2020, he was acquitted of all charges by the Lyon Court of Appeal, but in March 2021, the public prosecutor decided to continue the criminal prosecution against him. For more information, see the urgent appeals made by the Observatory (OMCT-FIDH) FRA 002 / 0917 / OBS 097 y FRA 002 / 0917 / OBS 097.1.
186. In July 2020, she was finally acquitted.
187. For more information on the judicial harassment against "the Briançon 7," see the urgent appeals made by the Observatory (OMCT-FIDH) FRA 001 / 0518 / OBS 077; FRA 001 / 0518 / OBS 077.1 y FRA 001 / 0518 / OBS 077.2..

for profit."[188] The legislature decided not to listen to the CNCDH and continued to broaden the exceptions to criminal liability, leaving the door open to the criminalization of solidarity or defence of migrants' rights.

Despite a decision of the Constitutional Council which, based on the principle of fraternity, refuses to condemn the hosting of migrants in transit out of solidarity, the latest version of the law, amended in 2018, ensures that criminal proceedings may not be opened "for assisting the unauthorized movement or residence of a foreigner" [i.e., "circulation" was added but not "entry"] "when the allegation did not give rise to any direct or indirect compensation and consisted in the provision of legal, linguistic, or social advice or support, or any other assistance provided for exclusively humanitarian purposes." By including the word "exclusively," the text allows to criminalize any action since, in addition to the "humanitarian" aspect, it can be concluded that it is also a social or political militant action.

The CNCDH stresses that "the commitment of those who provide aid and support to migrants is legitimate in terms of the protection of fundamental rights" and "condemns the obstacles placed in the way of solidarity actions by civil society, whose sole objective is to make up for the shortcomings of the State." Therefore, in its second recommendation in 2017, it "calls on public authorities to stop using accessory offenses unrelated to the offenses of Article L622-1 of the CESEDA, or to immigration (criminal offenses of "contempt, insult, and defamation," "rebellion or violence against an officer of the authority," the criminal offence of "obstructing the movement of an aircraft," hygiene or safety regulations applicable to premises; etc.) to intimidate and sometimes prosecute those showing solidarity. The use of these procedures must be stopped." [189]

188. Commission Nationale Consultative des Droits de l'Homme (CNCDH), "Mettre fin au délit de solidarité," May 18, 2017; CNCDH "Avis sur le projet de loi 'pour une immigration maîtrisée et un droit d'asile effectif," May 2, 2018
189. CNCDH "Mettre fin au délit de solidarité," May 18, 2017

Voices from the Field: Personal Stories of Migrants' Right Defenders

"It is clear that they want to silence us, the strategy of the European States is to silence us so that they can continue to let people die, or kill people, people who are only looking for a better future. We will not be silenced."

Helena Maleno, Human Rights Defender.

Helena Maleno – From the externalization of borders to the externalization of repression (Spain - Morocco) [190]

As a result of her work as a researcher specializing in migration phenomena, with a special focus on women and children and expertise on human trafficking, Helena Maleno and other colleagues created the organisation Caminando Fronteras to accompany migrant communities on the western border of Europe and Africa in their processes of demanding their rights.[191] In 2007, the first distress call came from a sinking skiff in the Mediterranean Sea. Helena Maleno then called the Spanish Maritime Safety and Rescue Society to report the situation. Since then, Helena Maleno and her team have alerted the Spanish, Moroccan, and Algerian maritime rescue services to every distress call from sinking boats.[192] The relationship with the maritime rescue teams was always positive and, most importantly, it saved lives. However, since Caminando Fronteras began operating, low-intensity violence against Helena Maleno and the rest of the members, including insults on social networks, began too. At the time, Helena Maleno did not consider this harassment as a form of persecution against her.

190. Based on an interview with Helena Maleno, June 2021. This case has also been documented by the Observatory (OMCT-FIDH) since the threats began in 2017, during the criminalization until the deportation from Morocco. See https://www.omct.org/es/recursos/llamamientos-urgentes/actos-difamatorios-y-amenazas-de-muerte-contra-la-defensora-de-los-derechos-de-las-personas-migrantes-helena-maleno-garz%C3%B3n
https://www.omct.org/en/resources/statements/the-spanish-state-must-urgently-uphold-helena-malenos-and-caminando-fronteras-right-to-defend-human-rights.
191. Access areas from Morocco, Algeria, Mauritania, and Senegal to Spain.
192. Since the countries that share rescue waters (the so-called SAR zones) have the obligation to coordinate and share information for those States to ensure the right to life at sea.

However, in 2014, the so-called "Tarajal massacre" changed everything. On February 6 of that year, a group of approximately 300 people attempted to swim across the breakwater separating the beach of Ceuta, a Spanish autonomous city located in the north of the African continent, from Morocco. Of these, 200 reached the sea and the rest were blocked on land by Moroccan guards.

Although the Spanish authorities denied it at all times and the case is still in court, the testimonies gathered by Caminando Fronteras assure that once the migrants jumped into the water, the Moroccan guards stopped intervening. However, the Spanish Civil Guard fired directly at the floats of the group of migrants, hitting vital parts of their bodies, such as their heads, and used their guns to prevent the migrants from clinging to the rocks in the Spanish territory. The result of the police action was at least 14 dead, numerous wounded, and immediate push-backs[193] to Morocco.

Caminando Fronteras published an extensive report[194] on the facts. From that moment on, the harassment on social networks and the hostile environment against Helena Maleno and her work[195] increased exponentially. In 2014, Helena Maleno was the victim of an assassination attempt in Morocco, as Moroccan police remained passive. In the summer of 2017, a social media campaign orchestrated by the Spanish far right and some police officers threatened the life of Helena Maleno, who received photos of guns, bullets, and raped women's bodies.

In November 2017, proceedings were initiated against her in Morocco for alleged "human trafficking." After several inquiries, Helena Maleno discovered the origin of this criminalization: the Spanish High Court had initiated proceedings against her following several police reports. The proceedings were closed by the prosecution in 2016 as there was no evidence of a criminal offence. However, Helena Maleno discovered that since 2012 the Spanish police had been investigating her as a trafficker and that, in 2017, before the closure of the

193. "Push-backs are a set of state measures by which refugees and migrants are forced back over a border – generally immediately after they crossed it – without consideration of their individual circumstances and without any possibility to apply for asylum or to put forward arguments against the measures taken. Push-backs violate – among other laws – the prohibition of collective expulsions stipulated in the European Convention on Human Rights." ECCHR-glossary.

194. Walking Borders, "Report of analysis of facts and collection of testimonies of the tragedy that took place on February 6, 2014 in the border area of Ceuta". March 13, 2014.

195. As an example of this environment see urgent action from the Observatory ESP 001 / 0817 / OBS 091, 25 de agosto de 2017, August 25, 2017.

procedure in Spain, four Spanish police reports from the Central Unit of Illegal Immigration Networks and Documentary Falsifications and from Frontex had been sent to Morocco, pressuring the Moroccan authorities to open a case against her.

The documentation sent to the Moroccan authorities denotes an evident will to delegitimize Helena Maleno as a human rights defender and as a woman, as well as to affect her personal and love life. On the first pages there was a list of people with whom Helena Maleno allegedly had an emotional or sexual relationship, both men and women, although she did not even know some of them.

Learning this information had a major emotional impact on Helena Maleno. "When I saw this, I broke down," she said in an interview for this report, "It was the first thing the judge was going to see. The ultimate objective of these documents seemed to be to present me as a 'whore and a lesbian' to a judge in a country where prostitution and homosexuality are punishable." By reading the file, she also discovered that her phones had been tapped and that, in addition, Frontex, as part of Operation 'Indalo,'[196] interrogated and asked for information about her from migrants arriving in Spanish territory.

In the files sent to Morocco, the Spanish police asked to apply the maximum penalty against Helena Maleno, i.e., life imprisonment according to Morocco's national legislation. However, the Spanish documentation recognised that Helena Maleno was not profiting from her activities as a "trafficker," so a conviction in her case would have meant sending a clear message to all those who defend rights at European borders. "Spain tried to pressure the Moroccan authorities to arrest me and sentence me to life imprisonment. Fortunately, having achieved major mobilization of support, having had an honest judge and—evidently—there being absolutely nothing in the dossier of the Spanish police that was a crime, caused the Moroccan justice system to end up completely acquitting me in March 2019."

Despite the acquittal, the defender has continued to face various forms of harassment, including the denial of her residence permit in Mo-

196. Ministry of Defense of the Government of Spain: "The main objective of 'Indalo' is to control irregular immigration flows and fight cross-border crime (piracy, illicit drug trafficking, illicit arms trafficking, illegal fishing, etc.) taking place on the coasts and external borders of the southern Iberian Peninsula, through the coordinated use of air and naval means."

rocco, where she had been living with her family for more than 15 years. This led to her violent deportation from Morocco on January 23, 2021, when she was returning home to Tangier after a trip to Spain. "They did not explain anything to me, I didn't know where my things were, they would not let me take my medication, I could not talk to my daughter. It was terrible," says Helena Maleno. "The most difficult part was the forced separation from my 14-year-old daughter for 32 days, living every day in fear that something would happen to her, until we managed to get her out of Morocco with diplomatic support from the Spanish State."

Since March 2020, Helena Maleno has documented at least 34 attacks against her, including threats, police alerts and raids on her home. Unknown individuals entered her home three times while no one was inside. They drugged her dog and cat and took documents, including her daughter's school activities and schedules. To Helena, this entire process has involved serious physical and psychological suffering, which she does not hesitate to describe as torture. "The continued attacks, the terror they have set out to cause to my life and that of my family. Knowing that they could enter my house whenever they wanted, that they had kept me under police surveillance with no judicial control for years. My daughter could not go to school alone. Since 2017, my life has changed completely. The therapists who have accompanied us during this time say that we have symptoms that are typical of torture victims."

However, Helena Maleno values the lessons regarding collective protection that she and her team have learned as a result of the persecution against them. "The most important thing about my case is the judicial precedent it sets and how we managed to get to the court decision of acquittal in Morocco by putting together a collective protection process with my close network, as well as with other organisations and the migrant community... This case can serve to explain the need for collective protection for those of us who defend rights at the border."

Mussie Zerai - From Nobel Peace Prize Candidate to Accused Human Trafficker (Italy - Switzerland) [197]

Father Mussie Zerai decided to flee Eritrea when he was just 14 years old. He went to Italy, where he applied for asylum and obtained refugee status and a residence permit.

Since the late 1990s, in Italy, he has been involved in supporting refugees in various areas, translating or accompanying them to the offices of State institutions to carry out official procedures.

In 2003, Father Mussie Zerai gave his telephone number to a journalist who required an interpreter in order to investigate conditions at a detention centre in Libya. Shocked by what he heard, he began to be in contact with migrants at these detention centres and to report the subhuman conditions in which they were held, which reached the threshold of torture. As in the case of Helena Maleno, his phone number began to circulate naturally among migrants in Libya. In May 2003, Father Mussie Zerai received the first of many distress calls from a boat and proceeded to call the Italian Coast Guard to report the situation.

Father Mussie Zerai's work in the defence of migrants' rights has caused him to face harassment on social media and in the press. In 2013, a far-right group filed a criminal complaint against him, but eventually decided to drop the case.

In 2015, Father Mussie Zerai was nominated for the Nobel Peace Prize for his contribution to saving the lives of migrants in distress in the Mediterranean Sea. This did not prevent, however, a process of criminalization against him, precisely because of his work in the defence of migrant rights.

In August 2017, he was informed of an investigation against him that had been pending since November 2016 in court. The Trapani Public Ministry in Sicily accused him of being in contact with human traffickers and assisting them in the entry of migrants into Europe. Throughout the judicial process, Father Mussie Zerai learned that all

197. Based on an interview with Fr. Mussie Zerai.

of his communications were being monitored, including those with his lawyer, with various elected politicians whom he informed of the situation, with the media and with members of the Catholic Church. His file is approximately 30,000 pages long.

At the time of publication, the Italian Public Ministry had requested his acquittal. The Court of Trapani had not yet handed down the final verdict.

In Italy, judicial authorities cast doubts on the work of NGOs. For example, Carmelo Zuccaro, the Public Minister of Catania, in Sicily, stated that "together with Frontex and the navy, we are trying to monitor all these NGOs that have shown that they have great financial resources."[198] These comments create a cloud of doubt that justifies these judicial processes in the eyes of the public.

This has had a significant impact on Father Mussie Zerai and other human rights defenders, even though most of the judicial proceedings end in acquittal. In his case, the publicity that Father Mussie has experienced has been accompanied by threats and physical attacks in both Italy and Switzerland. In addition, he lives in a permanent state of alert not only for himself but also for his family. Likewise, the fact that he has become a public figure has led the ecclesiastical hierarchy to refrain from appointing him to positions that involve public exposure in order to avoid being harmed by the controversy surrounding him. "By trying to attack me legally, they wanted to set an example and thus scare others, to prevent them from deciding to support migrants in vulnerable situations," he says.

On European migration policy, Father Mussie commented in an interview with SwissInfo: "The starting point is wrong: they are discussing how to close the doors and not how to protect people who are fleeing their countries."[199] He is therefore calling for long-term solutions in both countries of origin and destination and to pave legal access pathways to save lives and fight against criminal human trafficking networks.

198. The Intercept, "Friends of the traffickers – Italy's Anti-Mafia Directorate and the 'Dirty Campaign' to criminalize migration," April 30, 2021
199. SwissInfo, "Migrants are not adventurers or tourists," April 28, 2015.

"I am calling on citizens to wake up and open their eyes: do not believe everything they are saying. Only 1% of refugees are trying to reach Europe, the rest are in other countries. Citizens must rise up to demand justice and shout 'do not do this in my name,'" concluded Father Mussie Zerai in the interview conducted for this report.

Katarina Bervar Sternad - Criminalized for alerting authorities and explaining their rights to migrants (Slovenia) [200]

The Slovenian Legal-Information Centre (PIC) provides professional legal support to individuals, vulnerable groups and non-governmental organisations to exercise and protect their rights and strengthen their position in society. In relation to migrants, refugees and asylum seekers, the PIC provides legal advice and information on the management of their status, protection and access to social, economic and other rights. They are also monitoring the situation in Slovenia and in the border areas, including the analysis of immediate refoulements.

In Slovenia, migration only began to be depicted as problematic by politicians in 2015. Although the country is currently one of the stages on the long journey of migrants to Northern Europe and not the final destination, far-right parties have created a toxic environment and negative rhetoric around migrants.

In July 2018, the PIC produced a report on the implementation of return procedures and the principle of non-refoulement in the country following a field visit in Bosnia and Herzegovina, which documented immediate refoulements from Slovenia.[201] Following the presentation of the report, Katarina Bervar Sternad, the director of the PIC was accused of human trafficking and a public defamation campaign was launched against the NGO, seeking to harm its public image.

One of the cases against director Katarina Bervar Sternad was brought by the police in the south-eastern part of Slovenia in 2018. The accusation centred on the PIC putting pressure on and threatening

200. Based on an interview with Katarina Bervar Sternad, Director of the Pravno-informacijski center nevladnih organisacij - PIC Slovenian Legal-Informational Center for NGOs, Slovenia.
201. Legal-informational centre for NGOs –PIC Amnesty International, "Report on findings and observations on the implementation of return procedures in accordance with the principle of non-refoulement," July 2018.

the police. However, the PIC's job is to inform migrants who want to apply for asylum in the country about the location of the nearest police station and the procedure for the application. Similarly, the PIC calls the police station to inform where the migrants are located, their intention to seek asylum and the support provided by the PIC. This is a regular job in a human rights organisation, which also seeks channels for dialog with the police. The lawsuit was dismissed by the Prosecutor's Office in 2019 due to a lack of criminal elements.

In May 2019, a second trial was brought against Katarina Bervar Sternad, following allegations of human trafficking by a member of the Slovenian parliament, Zmago Jelinčič,[202] of the Slovenian Nationalist Party. The proof that Katarina Bervar Sternad was involved in trafficking networks was her participation in a television programme where she spoke of the entry of migrants in Slovenia. After being questioned by the police, the case was closed due to a lack of criminal elements.

Slovenian law punishes, with fines of between 100,000 and 240,000 Slovenian tolars (between €500 and €1,000), "persons who allow or assist or who attempt to allow or assist aliens to enter, transit or reside in the territory of the Republic of Slovenia"[203] without respecting legal pathways.

While the proceedings against Katarine Bervar Sternad were eventually dismissed without charges, the impact on her family, her organisation, and herself has been tough and lingers on. "My image and that of the organisation have been affected. The entire process is very wearying, I have received threats through phone messages. You spend a lot of time defending yourself, it is a constant pressure that impacts even your personal life, and I think there is also a strong gender bias. I don't think the harassment would have been the same with a man. On the other hand, they are trying to send a message to other organisations; if they can attack the PIC (Slovenian Legal-Informational Centre), one of the largest organisations in Slovenia, what can happen to smaller ones, with fewer resources and less support?"

202. Slovenian MP Zmago Jelinčič was expelled from the Council of Europe in June 2018 for life for his involvement in corrupt activities with Azerbaijan.
203. Ministry of the Interior of Slovenia, 'ALIENS ACT' Art. 99/2005

Persecution of those who host migrants in their homes (Belgium)

In Belgium, numerous social movements have organised themselves—especially since 2015—to help migrants, mostly on their way to England, who find themselves in a vulnerable situation, without food and sleeping outdoors. This is how the Plateforme Citoyenne de Soutien aux Réfugiés (the Platform) was born in 2015 as a meeting place for individual and collective initiatives concerned with migration issues. In this context, different people opened their doors to migrants to offer them a roof over their heads and a place to rest. On October 20, 2017, four of these individuals along with eight migrants were detained on suspicion of human trafficking.

These arrests are part of an increasingly repressive policy against migrants. In 2015,[204] the Secretary of State stigmatized migrants who were in Belgium irregularly, referring to them as a "threat to national security," asserting that "a firm response is needed to those who take advantage of our hospitality" and comparing them to "criminals" and "thieves."

This is the context in which police aggressively raided the homes of four caring Brussels residents hosting migrants who had been living on the street.

Walid,[205] who had hosted Mahmoud after a chance meeting in a café in Schaerbeek,[206] said that the police entered his home, messed up all his belongings, pushed him onto the bed, handcuffed him, and took him to the police station in Dendermonde city, accusing him of human trafficking.

Zakia watched in disbelief as the police entered her living room at five in the morning and took her to the police station. The agents spoke Dutch and were accompanied by an Arabic-speaking translator, even though Zakia speaks French. Zakia supported the work of the Platform in Maximilien Park in Brussels, where they organised the distribution of food and homes of caring citizens to host migrants.

Myriam had taken in Hassan in 2015, after the destruction of what was known as the 'Calais Jungle' in France.[207] As in the cases of Wa-

204. Chambre des Représentants de Belgique, « Note de Politique Générale - Asile et Migration » November 3, 2015.
205. In the absence of any specific mention to the contrary, the testimonies of hosting individuals as well as the migrants are taken from the book "Welcome" published in 2021 by Antidote Publishers.
206. A commune in Brussels, Belgium.
207. The temporary camp located near the French city of Calais where hundreds of migrants were living.

lid and Zakia, a group of Dutch-speaking police officers burst into her home at 5 am and took her into custody at the Dendermonde police station.

Anouk gave Moha, a migrant she met in Maximilien Park, a place to stay. That night, seven armed police officers wearing bulletproof vests broke into her home and took her to the Dendermonde police station.[208] Along with all of them, eight migrants were arrested that night.

The four hosts were charged with human trafficking for hosting undocumented migrants and faced a complicated four-year judicial process that landed two of them in prison. In November 2018, the first hearings took place where the public prosecutor in charge of the trial requested the acquittal of the hosts Walid and Anouk and a suspended sentence for Zakia and Miriam. In the case of the eight migrants arrested, sentences ranging from one year to 40 months in prison were requested.

A month later, in December 2018, the court's first judgment arrived. The four hosts were acquitted. Seven of the detained migrants were sentenced to fines and suspended prison sentences, having served time in prison while on pre-trial detention. For the eighth migrant—absent from the trial—the conviction is final. However, in January 2019, the Public Ministry decided to appeal the decision and new hearings were held in March 2021. Finally, on May 26, 2021, a new sentence marks the end of this lengthy process and confirms the acquittal with an important message: sheltering people in need is not a crime.

However, throughout the judicial proceedings, a racist and discriminatory bias was observed in the judicial treatment of the individuals involved based on their origin and nationality. Thus, Anouk and Myriam, both Belgian nationals, did not go to jail. On the other hand, Zakia, a Belgian-Moroccan national, spent two months in custody, and Walid, a Tunisian national who has been a regular resident of Belgium since 2001, spent more than eight months in prison. This had a devastating impact on his life. Walid lost his apartment and furniture. In addition, after his release from prison, he became physically and psychologically ill, suffering from nightmares and depression for months.[209] Likewise, the economic cost of the long judicial process

208. RTBF, "Perquisitionnés après avoir accueilli des migrants: 'Je suis suspectée de trafic d'êtres humains,'" January 24, 2018.
209. VICE "Avec quatre personnes en procès pour avoir hébergé des migrant-es" May 19, 2021.

was so high that he had to resort to micro-patronage and citizen support to be able to cover the expenses for his representation and defence.

The May 2021 ruling was also a victory for the convicted migrants and their representatives. The punishments to which they had been sentenced by the lower court were reduced despite the appeal of the Public Ministry that requested up to five years in prison. They were sentenced to suspended prison terms ranging from one year to 20 months. However, it is important to recall that they had already spent 13 months in pre-trial detention. Finally, the judgment considered each of the migrants accused of human trafficking as "victims." [210].

Risk of deportation for defending migrants' rights (Russia)

On September 25, 2021, Valentina Chupik[211], was arbitrarily detained by the Russian border police at the Sheremetyevo International Airport, in Moscow, upon returning from a trip to Armenia. She is a migrants' rights defender and the head of the human rights organisation 'Tong Jahoni', a centre providing free legal assistance to migrant in Russia. Valentina Chupik fled her country of origin, Uzbekistan, following the massacre in the city of Andijan on May 13, 2005, and the acts of torture the security services of Uzbekistan perpetrated against her. She has resided in Russia since then, where she was granted a refugee status in 2008.

The authorities seized her documents and informed her that she was banned from entering Russia for 30 years (until 2051) and that her refugee status had been cancelled on September 17, 2021 based on Article 9, subparagraph 2 of the Law On Refugees of Russia ("submission of false information or forged documents for obtaining refugee status").

According to the defender, police officers at the airport told Valentina Chupik that her refugee status had been removed due to her "bad behaviour", as she had denounced cases of corruption within the Minis-

210. Excerpt of the judgment published on Myriam Berghe's on Myriam Berghe's Facebook account.
211. Observatory for the Protection of Human Rights Defenders (OMCT-FIDH), Urgent Appeal RUS 005 / 0921 / OBS 098CYP 002 / 1220 / OBS 142, September 27, 2021.

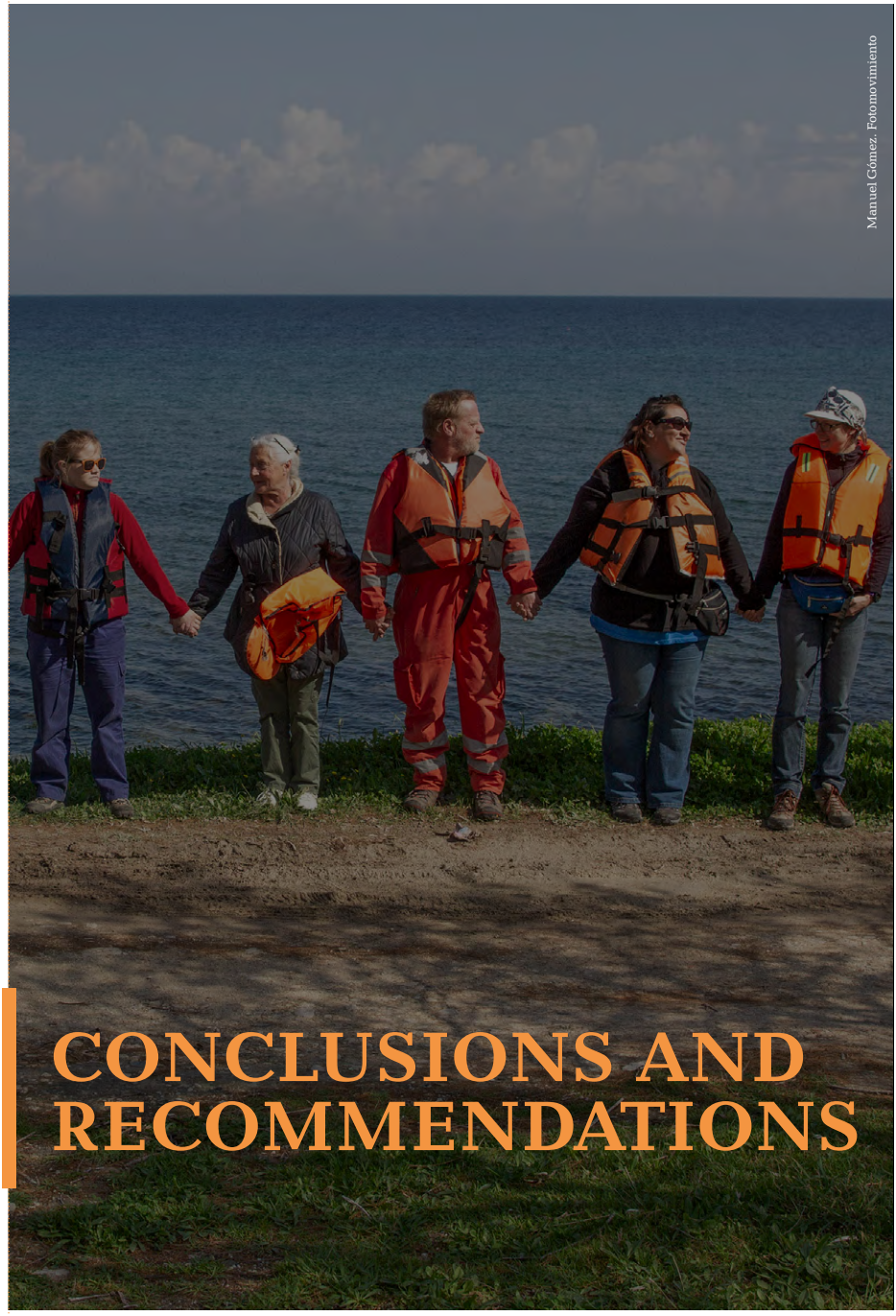
try of Internal Affairs of the Russian Federation and lodged numerous complaints. Moreover, Valentina Chupik reported that police officers have threatened her life, stating that "she could be taken away and killed at any time".

Valentina was detained at the deportation centre of Sheremetyevo airport for several days, without ventilation, natural light and windows. During this time, she was not provided with a towel and soap and was denied access to her lawyers.

The ECtHR granted her interim measures under Rule 39 and stopped her deportation to Uzbekistan where she faced serious risk of torture and other ill-treatment. She has had to leave Russia but is currently safe.

Criminal law is a last resort, i.e., it can only be used by the State in very serious situations, when other legal orders have proved to be insufficient. Therefore, criminal prosecution should not be used to criminalize those who defend the human rights of migrants on a non-profit basis, whether out of solidarity or conviction. Much less should it be used to criminalize migrants, since migration is not a crime and those who migrate and those who support them are protected by international human rights law.

Unfortunately, as we have seen in this chapter, the state response in European countries does not usually adopt a rights-based approach, where the defence and protection of the rights of individuals as human beings is the focus of all action, but rather a criminal and security-based approach, which leads to the excessive use of criminal law against migrants and those who show them solidarity.



Manuel Gómez. Fotomovimiento

CONCLUSIONS AND RECOMMENDATIONS

"Defenders of people on the move also face a number of obstacles: the difficulty of accessing people on the move and the locations where human rights violations are committed against them; the criminalization and stigmatization of their work and of people on the move; and the increasing involvement of non-state actors in violations committed against people on the move."[212].

Special rapporteur's report on the situation of human rights defenders, 37th session of the Human Rights Council, February 26 to March 23, 2018.

With these words, Michel Forst, the UN Advocate on the situation of Human Rights Defenders at the time, showed his concern in 2018 for those who defend the rights of people on the move. This report confirms that the situation in Europe has not improved since then.

People who migrate to Europe in an irregular manner or lacking economic resources continue to face systematic and persistent human rights violations throughout their migratory journey. Those who defend their rights face numerous obstacles from the authorities of European countries.

The trigger for this situation is the criminal approach to migration, which, in a context where racism toward the "other" remains embedded in societies, leads to the arrival of people on the move being seen as a national security problem and even as an "invasion." This narrative creates a toxic environment that surrounds all activities related to support, relief, solidarity, and the defence of the rights of people on the

212. Special Advocate on the situation of human rights defenders, 'Report to the 37th session of the Human Rights Council,' (para', (paragraph 50), January 16, 2018.

move. It also has a significant impact on the daily lives of migrants and the people who support them. The testimonies in this report tell of cases of threats and harassment on social media or on their own phones, and many defenders of migrants' rights are under pressure from their neighbourhood.

This environment goes against the values of European countries that advocate solidarity, tolerance, freedom, equality, and respect. Unfortunately, European governments and institutions are no strangers to these narratives, which they promote, in some cases directly through public policies and speeches, or indirectly, by failing to take action and not enforcing tough measures with a human rights approach to tackle the toxic environment.

In addition to not counteracting stigmatizing discourses, many European States have implemented laws that, under the pretext of protecting the security and safety of citizens or controlling corruption and money laundering, hinder the work of human rights organisations. In fact, there are many laws that make it difficult to access funds, or that impose so many formal requirements that they end up leading to the dissolution of organisations or the blocking of their activities.

Finally, human rights defenders who have provided various types of assistance to migrants for humanitarian purposes are criminalized in Europe. Accusations against defenders can range from "human trafficking," "facilitating irregular entry" or the simple fact of having housed or fed a migrant who was on the street. Although most cases result in acquittals, the damage caused individually to the defender and collectively to the solidarity movement remains over time.

Faced with the systematic actions against people and organisations that defend human rights or show solidarity to people on the move, the Observatory for the Protection of Human Rights Defenders recommends:

Regarding the creation of a positive environment for those defending the human rights of migrants: changing the approach to migration and removing administrative obstacles to the work of civil society so that there are guarantees for the right to defend human rights

To the Member States of the Council of Europe

- Change the migratory and criminal approach through which the situation of people on the move is analysed and replace it with a human rights approach based on respect for and protection of people, regardless of their status, including the following measures in particular:

  - Encourage and promote legal migration channels and safe access routes in order to counteract human trafficking and prevent people from dying while trying to enter Europe using unsafe routes, forcing them to resort to criminal networks of traffickers.

  - Abandon the logic of outsourcing border control as it results in dissociating countries from their international human rights responsibilities, including the right to asylum, while delegating this responsibility. Furthermore, it outsources the responsibility of management to countries with poor human rights records and which do not offer sufficient guarantees of respect for human rights nor have a functioning asylum system in place to provide international protection to those who are entitled to it.

  - Adopt a gender and intersectional approach to understand the particular needs of each migrant based on gender, ethnicity, age group, origin, etc.

  - Ensure the public resources required for States to develop search and rescue operations along the routes taken by people on the move by land, sea, and air. In the case of the sea, ensure that pri-

vate search and rescue vessels can access safe harbours quickly and are not blocked for no compelling reason.

- Ensure that all allegations of immediate refoulements are investigated.

- Holistically implement the general policy recommendations developed by the European Commission against Racism and Intolerance (ECRI)[213] and in particular:

  - Adopt the necessary measures to ensure that national criminal, civil and administrative law expressly and specifically combats racism, xenophobia, anti-Semitism, and intolerance.

  - Penalize the following acts when committed with intent to:

    - public incitement to violence, hatred, or discrimination,

    - public insults and defamation, or

    - threats against a person or category of persons because of their race, colour, language, religion, nationality, national or ethnic origin;

    - the expression in public, with a racist objective, of an ideology that claims superiority or that disparages or denigrates a category of persons on the grounds of race, colour, language, religion, nationality, national or ethnic origin;

    - the denial, trivialization, justification or approval in public, with a racist objective, of crimes of genocide, crimes against humanity or war crimes;

    - public disclosure or distribution or production or storage for the purpose of publicly disseminating or distributing, for a racist purpose, written, graphic or other material containing statements of the types described in paragraphs a), b), c), d) and e);

    - the creation or leadership of a group that promotes racism; the support given to such a group; and the participation in its activities for the purpose of contributing to the offenses referred to in subparagraphs a), b), c), d), e) and f);

213. European Commission against Racism and Intolerance (ECRI), General Policy Recommendations (GPR) addressed to the governments of all Member States.

- racial discrimination in the individual exercise of a public occupation.

- Conduct awareness campaigns with positive messages about the migrant population that take into account that migrants are subjects with agency and life stories beyond their migratory transit.

- Publicly recognise through awareness campaigns the role that civil society plays in defending and promoting human rights and the rule of law, particularly its role in the defence of migrants.

- Refrain from using existing standards in other areas (e.g., the fight against the Covid pandemic or the fight against terrorism) to hinder the work of organisations that defend the human rights of migrants.

To the European Commission

- Develop guidelines on freedom of association and assembly at the European level and develop a European Commission strategy with a set of measures for the protection of civic space.

- Develop an internal EU human rights strategy with key commitments to protect and promote the work of human rights defenders and journalists in the EU, as well as third country human rights defenders residing in the EU, including guidelines - developed in consultation with the organisations themselves and the European Union Agency for Fundamental Rights - to protect human rights defenders within the EU.

- Include in the mandate of the Presidency of the Commission and of the acting First Vice-Presidency in charge of the Rule of Law and Human Rights, a specific objective of respecting, protecting, and promoting the role of civil society, including those who defend the human rights of migrants.

- Continue to bring infringement proceedings, when there is a breach of EU law that violates the European civic area 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 Commission must ensure a more active role for civil society in ongoing infringement proceedings.

- Ensure consistency between internal and external policies, including the provision of funds to strengthen European civil society with mechanisms similar to those existing in foreign policy, including funding to develop strategic litigation at both national and regional levels, including actions before the EU Court of Justice. The Commission must specifically guarantee funding for human rights organisations that defend migrants' rights so that they can carry out their work, free from attack and without arbitrary restrictions.

To the European Parliament

- Hold an Exchange of Views in 2022 on the fundamental role of civil society in the defence of human rights, expressly including the role of defenders of migrants' rights, and adopt a resolution recognising the legitimacy of their work and claiming the right to defend human rights in the territory of the EU.

- Monitor the development of new legislation by States to ensure that the latter do not contravene international standards and pose obstacles to the legitimate work of human rights organisations

To the institutions of the Council of Europe

- Ensure that the new CoE Action Plan on migration includes the protection of human rights defenders and the mitigation of criminalization risks faced by those who provide humanitarian assistance to migrants in distress.

- Monitor the development of new legislation by States to ensure that the latter do not contravene international standards and pose obstacles to the legitimate work of human rights organisations.

To the media

- Refrain from giving visibility to racist, xenophobic or hate speech or messages and, on the contrary, exercise journalism with a focus on human rights that does not promote negative messages or stereotypes against migrants.

- Conduct research to counter political discourse based on false information.

- Give visibility to positive migration narratives that do not resort to stereotypes and do not dehumanise migrants.

To the public

- Inform and be informed of the reality of migration, fight against stereotypes and racist and xenophobic acts against migrants, so as not to be influenced by stigmatizing false news.

- Refrain from any racist and xenophobic comments on social media.

- Report hate and/or xenophobic speech to the appropriate institutions and mechanisms.

In relation to the duty to assist and the criminalisation of solidarity

To the European Commission and the European Council

- Amend EU Directive 2002/90/EC on the facilitation of unauthorized entry, transit and residence ("Facilitated Entry Directive") so that States may only impose sanctions against people and organisations whose purpose is to make a profit.

- Establish a proactive EU search and rescue mission to address gaps in the humanitarian protection of people on the high seas.

- Adopt guidelines on respect for the fundamental rights of human rights defenders and humanitarian actors in anti-smuggling and other border control operations. Such guidelines should introduce the "firewall" principle to clearly separate migration law enforcement and the mandates of civil society and professionals (including the role of health, educational, social, and legal actors, as well as labour inspectors and law enforcement authorities).

- Monitor the first signs of solidarity surveillance, before it leads to the criminalization of humanitarian actors. This monitoring could be carried out by an independent observatory linked to the Rule of Law Mechanism proposed by the EU, and through parliamentary inquiries.

Monitoring should not only include criminal convictions, but also all cases of criminal investigations, as well as ongoing harassment and persecution of those defending the human rights of migrants.

To the European Parliament

- Create a commission of inquiry with broad participation of defenders of the human rights of migrants to investigate cases of criminalization of solidarity in Europe, as well as cases of judicial harassment.

- Follow up on the European Parliament Resolution of July 5, 2018 on guidelines for Member States to prevent the criminalization of humanitarian aid with a new resolution critically analysing the role played by the European Commission, urging Member States to transform the exception for humanitarian aid into national laws, and to urge the Commission to amend Article 1(2) of EU Directive 2002/90/EC "defining the facilitation of unauthorized entry, transit, and residence" to provide for its mandatory nature and not just the power to establish the humanitarian exception, in line with international law.

To the European Union Agency for Fundamental Rights

- Extend the monitoring of the restrictions faced by civil society organisations involved in search and rescue (SAR) activities to cover all individuals and organisations defending the rights of migrants, including in non-maritime contexts.

- Promote the recommendations included in this report with all EU institutions within their competence.

To the Member States of the Council of Europe

- Put an end to interference with Humanitarian Maritime Rescue missions as well as other rescue actions in the mountains or elsewhere and ensure that authorities fulfil their duty to provide relief in accordance with human rights and a person-centred approach.

- Ensure that health and social service providers, security forces (police) and labour inspectors are not required to collect and share information with immigration authorities, based on the "firewall" principle. Refrain from criminalizing defenders of migrants' rights and

decriminalize solidarity, as well as suspend administrative and judicial proceedings and drop ongoing charges against those providing assistance to migrants.

- Develop a comprehensive, transparent and participatory monitoring mechanism that documents and analyses the patterns, risks and attacks faced by human rights defenders and social organisations.
- Promote the development of a binding protocol for the Public Ministry in a participatory process that establishes very clear guidelines to prevent the continuation of the phenomenon of criminalization of migrant rights defenders in Europe.

- Include the prohibition of penalties in cases where the person under investigation was a victim of trafficking and has been forced to perform certain actions in order to be able to continue the journey to Europe.

- Implement General Policy Recommendation 16 of the European Commission against Racism and Intolerance (ECRI)[214] and, in particular, not criminalize the provision of social and humanitarian assistance to irregular migrants. This applies to all areas of public and private services, including the rental of accommodation to irregular migrants.

- Raise awareness and train administrators of justice to refrain from interpreting laws designed to fight organised crime against human rights organisations or against migrants themselves.

- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly Resolution 45/158 of December 18, 1990, as an important step toward the recognition of the rights of all migrant workers and, in particular, their dignity.

To UN mechanisms:

- Provide interpretative guidance on the concept of "financial or material benefit" to ensure that law enforcement and judicial actions are

214. European Commission against Racism and Intolerance (ECRI), 'Protection against Discrimination of Irregular Migrants.'

focused on fighting criminal human trafficking networks. Similarly, these guidelines should clarify the concept so that it cannot be used against the people on the move themselves or those who support them for humanitarian purposes or out of conviction.

- The United Nations Advocates on Human Rights Defenders and Migrants, follow up, document and report on the criminalization of solidarity in Europe, including through field visits, as well as on the administrative and judicial harassment of anyone prosecuted for their activities in defence of the human rights of migrants.

215. ECRI, "La protección contra la discriminación de las personas migrantes en situación irregular", https://rm.coe.int/recomendacion-num-16-de-politica-general-de-la-ecri-la-proteccion-cont/16808da191.

OMCT
SOS-Torture Network

Created in 1985, the World Organisation Against Torture (OMCT) works for, with and through an international coalition of over 200 non-governmental organisations - the SOS-Torture Network - fighting torture, summary executions, enforced disappearances, arbitrary detentions, and all other cruel, inhuman and degrading treatment or punishment in the world and fighting for the protection of human rights defenders.

Assisting and supporting victims
OMCT supports victims of torture to obtain justice and reparation, including rehabilitation. This support takes the form of legal, medical and social emergency assistance, submitting complaints to regional and international human rights mechanisms and urgent interventions. OMCT pays particular attention to certain categories of victims, such as women and children.

Preventing torture and fighting against impunity
Together with its local partners, OMCT advocates for the effective implementation, on the ground, of international standards against torture. OMCT is also working for the optimal use of international human rights mechanisms, in particular the United Nations Committee Against Torture, so that it can become more effective.

Protecting human rights defenders
Often those who defend human rights and fight against torture are threatened. That is why OMCT places their protection at the heart of its mission, through alerts, activities of prevention, advocacy and awareness-raising as well as direct support.

Accompanying and strengthening organisations in the field
OMCT provides its members with the tools and services that enable them to carry out their work and strengthen their capacity and effectiveness in the fight against torture. OMCT presence in Tunisia is part of its commitment to supporting civil society in the process of transition to the rule of law and respect for the absolute prohibition of torture

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Establishing the facts
Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.
FIDH has conducted more than 1,500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

Supporting civil society
Training and exchanges

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community
Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them.
FIDH also takes part in the development of international legal instruments.

Informing and reporting
Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website... FIDH makes full use of all means of communication to raise awareness of human rights violations.

17 passage de la Main-d'Or - 75011 Paris - France
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Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- A mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- The observation of judicial proceedings, and whenever necessary, direct legal assistance;
- International missions of investigation and solidarity;
- A personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- The preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- Sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- Sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations. With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

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FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80