

HRC45 | Criminalisation of defenders in Europe must end

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The dire situation of refugees and other migrants in Greece, and elsewhere across the Mediterranean, deserves the Human Rights Council's attention. NGOs pressed European governments today on the incompatibility between protecting defenders abroad, and criminalising them at home.



In [a statement delivered today in Geneva](#), ISHR was joined by human rights groups and other community organisations defending the rights of migrants to draw attention to the concerning trends of criminalisation of solidarity in Europe.

Responding to [the opening remarks of UN High Commissioner](#) for Human Rights Michelle Bachelet, and building on years of work by other experts in the UN system, the groups highlighted the links between protecting the rights of migrants, and the creation of a safe environment for those who seek to protect them.

ISHR human rights advocate Sarah M Brooks, pointing to research conducted by Migration Policy Group (MPG), CEPS, PICUM and other partners within the frame [of the ReSOMA project](#), noted that in the last five years - from 2014 to 2019 - at least 60 cases of criminalisation, concerning more than 170 individuals, had been documented across the European Union.

Carmine Conte, legal policy analyst at MPG, underlines that since the emergence of the 'refugee crisis', there has [been an escalation of judicial prosecutions and investigations](#) against volunteers, human rights defenders, crew members of boats involved in search and rescue operations, but also ordinary citizens, journalists, mayors and religious leaders helping migrants.

The European Fundamental Rights Agency has also [spoken out on this concern](#). In the area of migrant search and rescue (SAR) NGOs alone, in the two years between 2018 and 2020, experienced 40 cases of criminal charges, disciplining including administrative fines, de-flagging, seizure and confiscation of ships, or their crews were otherwise prevented from leaving or docking at port. The Council of Europe Commissioner of Human Rights has recently [condemned Malta and Italy using COVID-19](#) as yet another excuse for non-rescue:

'In this trying period, we are reminded the hard way of the value of human life and the necessity to preserve the right to life, including of those who, adrift at sea, are far from the public eye'.

The rights of migrants cannot be fulfilled, Brooks said, without protection of fundamental freedoms for those engaged in the defence of migrants' rights.

'Whether it is through humanitarian assistance and search-and-rescue, legal aid or policy advocacy, exercising the right to protest and civil disobedience - including migrants' own strikes,' she said, 'these are protected acts.

'European governments must do more to protect the right to defend rights.'

Lina Vosyliute, Research Fellow at CEPS, one of the leading think-tanks on the EU affairs, has described the increasing suspicion, harrasment, disciplining and criminalisation of those who help migrants as '[policing humanitarianism](#)'. At the heart of the problem are so-called 'crimes of facilitation of irregular migration', which Vosyliute deems 'the most misused criminal provision against human rights defenders in Europe'. The EU Facilitation Directive falls short of the UN Migrant Smuggling protocol, since it does not require any evidence nor suspicion of 'financial or other material gain'. Under this provision in the EU and Schengen [states introduced laws](#) that prosecute 'any intentional assistance' to migrants, leaving out the question of motive and, specifically, 'material or financial benefit' that are central to smuggling crimes.

Vosyliute concludes, 'The vague definition of crime is counterproductive. While some prosecutors are investigating on human traffickers or migrant smugglers, who take thousands of euros from asylum seekers and migrants to board on unseaworthy dinghies, others keep policing humanitarians and human rights defenders.' The prosecutions of Sea Watch 3 captain Carola Rackete in Italy, Team Humanity and Proem Aid volunteers in Greece, or farmer Cedric Herrou in France, and many others, who helped migrants out of compassion, are used by governments to rather show a strong stance against irregular migration, than to fight the crime.

But far more simple acts of solidarity are also being met with administrative, civil and even criminal penalty.

Says Marta Gionco of PICUM, a platform representing more than 160 organisations across Europe and globally that defend undocumented migrants' human rights: 'In recent years, people across Europe have been put on trial for simple acts of human kindness: giving someone a ride in their car in a mountainous area so that they won't get hypothermia; saving someone's life who is drowning at sea; giving someone food or shelter; providing shelter and food; or lending a cell phone'.

In response to this trend, last year [more than 110 organisations signed a statement](#) asking the European Union to revise the EU Facilitation Directive and support and defend the rights of migrant rights' defenders across the EU.

Although the majority of documented cases end in acquittal, the financial, social and psychological impact of months, and often years, of criminal proceedings has had a clear chilling effect on their work.

When courts have determined that an individual is not guilty of a crime, state prosecutors - for example, in France - have nonetheless appealed. In the case of defender Pierre Manoni, despite a court decision finding that solidarity is constitutionally protected, prosecutors have filed four separate appeals to question his acquittal on the grounds that he acted out of compassion. Short-term detentions are also common, with police often failing to substantiate charges. These lengthy and expensive judicial proceedings put peoples' lives on hold risk.

When these human rights defenders are migrants themselves, the consequences of criminal proceedings are often harsher, frequently resulting in loss of residence permits and threats of deportation. For instance, in 2018 asylum seekers in Moria camp protested in Sappho square after the death of an Afghan asylum seeker. They were violently attacked by extreme right groups. However, it was not violent attackers, but the asylum seekers themselves who were prosecuted, for the 'occupation' of public space.

In another case, Ahmed H - a long-term resident in Cyprus - organised a protest at Hungarian border zone. He has been accused of terrorism-related crimes, for holding a megaphone, and deprived family life for four years. Time and again, asylum seekers and migrants helping each other during the journey are prosecuted as criminals. And in some cases, when they arrive in their destination country, this 'criminal record' alone can preclude the access to the right of asylum.

Brooks notes that the European Union, and many EU member states, have been powerful voices at the Human Rights Council and abroad in defending and supporting human rights defenders. However, when it comes to policies at home - often driven by border management mindsets and national security rationales - those same governments are engaged in judicial harassment of defenders.

As Front Line Defenders has noted, criminalisation is only one way in which [migrant rights defenders are being targeted](#), including within Europe. They are also subjected to physical and verbal attacks, short term detention, smear campaigns and arson attacks on their property. Their experiences are largely under-reported because, the organisation notes, human rights defenders and aid workers prioritise cooperation with the authorities; even if it's extremely fragile, it can be beneficial to the protection of migrants.

'Judicial harassment, trumped-up charges, threats and intimidation and chilling effects are not unique to countries outside of Europe's borders. It's time that European governments took seriously their obligations at home', Brooks asserts.

The right to help is especially important during the COVID-19 pandemic to ensure that, as [the UN has](#)

[emphasised](#), 'no one is left behind'.

Says CEPS' Vosyliute: 'Our newest study on civic space shows that the work of human rights defenders is ever more vital. Volunteers are sewing masks and distributing soap and hand sanitizer to stop the spread of the virus among various marginalized communities, like those in Moria refugee camp. At the same time, human rights defenders are even more at risk'.

Yet, COVID-19 restrictions are also disproportionately targeting refugees and other migrants and those who assist them. 'For instance, in France, volunteers helping those stuck in Calais Jungle, [received fines for violating social distancing rules](#). In Greece, some NGOs could not provide psychosocial counseling in camps due prolonged quarantine imposed on refugee camps, but not on the rest of the island. Italian and Maltese governments have [prevented SAR NGOs](#) to disembark rescued migrants for weeks'.

Civil society actors have raised concerned over worsening legal environment. For instance, the Greek authorities have advanced [additional registration requirements](#) targeting NGOs working in the area of migration, asylum and integration.

According to the NGO law experts of the Council of Europe, those regulations are [incompatible with the freedom of association](#) - 'onerous, complex, time-consuming and costly for NGOs' - especially given the context and dire needs among asylum seekers and migrants.

European governments and the EU should be expected to uphold their human rights obligations to create and enabling environment for human rights defenders, as outlined in the UN Declaration on Human Rights Defenders. A [recent legal analysis of the so-called 'Stop Soros' legal package in Hungary](#), conducted by law firm Freshfields Bruckhaus Deringer LLP on behalf of ISHR and the Slovenia-based Legal-Informational Centre for NGOs (PiC), found that such an obligation exists for European governments in view of international and EU law.

At the same time, clear expectations have been set out by the Organisation for Security and Cooperation in Europe (OSCE), whose human rights watchdog, ODIHR, has called out dangers for human rights defenders in similar situations. As early as 2014, their [guidelines on protection of human rights defenders](#) alerted European states that '[any] legal provisions that directly or indirectly lead to the criminalisation of such [human rights] activities should be immediately amended or repealed'. More recently, the Council of Europe's [NGO Expert Council came up with Guidelines](#) that seek to prevent the misuse of criminal law provisions against NGOs that assist migrants and uphold their rights.

'The framework is there', the groups conclude, 'but Europe needs to choose to do more'.

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Watch the statement here:

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