

PUNISHING COMPASSION: SOLIDARITY ON TRIAL IN FORTRESS EUROPE

EXECUTIVE SUMMARY

Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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In recent years, human rights defenders and civil society organizations that have helped refugees and migrants have been subjected to unfounded criminal proceedings, undue restrictions of their activities, intimidation, harassment, and smear campaigns in several European countries. Their acts of assistance and solidarity have placed them on a collision course with European migration policies. These latter are aimed at preventing refugees and migrants from reaching the EU, at containing those who make it to Europe in their first country of arrival, and at deporting as many as possible back to their countries of origin.

By rescuing refugees and migrants in danger at sea or in the mountains, offering them food and shelter, documenting police and border guard abuses, and opposing unlawful deportations, human rights defenders have exposed the cruelty caused by immigration policies and have become themselves the target of the authorities. Authorities and political leaders have treated acts of humanity as a threat to national security and public order, further hindering their work and forcing them to divest their scarce resources and energy into defending themselves in court.

This report shows how European governments, EU institutions and authorities have deployed an array of restrictive, sanctioning and punitive measures against individuals and groups who defend the rights of people on the move, including by using immigration and counter-terrorism regulations to unduly restrict the right to defend human rights.

Human rights defenders (HRDs) play an essential role to advance the enjoyment of human rights in society, as has been recognized by all states in the UN Declaration on Human Rights Defenders. The Declaration requires states to guarantee a safe and enabling environment in which they can operate without fear of reprisals. Restrictions on the right to defend human rights (which encompasses the rights to freedom of expression, association and peaceful assembly, among others) need to be provided by law, and to be necessary and proportionate to a legitimate aim. As the cases illustrated in this report show, this threshold is often not met, leading to violations of the human rights of HRDs and of people on the move. Far from acknowledging and recognizing the crucial role played by HRDs defending the rights of people on the move and ensuring that they can operate safely and freely, European authorities have instead created a hostile environment for them.

In this report, Amnesty International has documented cases of restriction and criminalization of assistance and solidarity towards people on the move in eight countries: Croatia, France, Greece, Italy, Malta, Spain, Switzerland, and the United Kingdom.

For example, NGOs in Croatia such as Are You Syrious and the Centre for Peace Studies (CMS) have been harassed, intimidated and prosecuted for “facilitating irregular migration” after becoming uncomfortable witnesses to the authorities’ push-backs and collective expulsions at the borders with Bosnia and Herzegovina and Serbia. In France, human rights defenders who helped people on mountain passes at the border with Italy have also been prosecuted and convicted for “facilitating irregular entry,” while human rights defenders distributing food and other basic necessities to refugees and migrants near Calais have been harassed and intimidated by the police, and have faced prosecutions when they challenged police misconduct towards foreign nationals. In Greece, Sarahardini and Séan Binder, who volunteered with a local NGO to help refugees and migrants disembarking in Lesbos after a dangerous sea journey, spent over 100 days in pre-trial detention and are facing accusations of facilitating irregular entry, espionage, money laundering and forgery. In Italy, a persistent smear campaign fuelled by government officials against NGOs conducting rescue operations at sea, has accompanied the imposition of a code of conduct and the passing of laws aimed at restricting and hampering their life-saving activities in the central Mediterranean. Criminal investigations for facilitating irregular entry and other offences have affected the crews of most NGOs and have led to multiple instances of impounding of NGO rescue vessels. In Malta, three teenage asylum-seekers are being prosecuted on terrorism and other charges for daring to stand up to the unlawful attempt of a shipmaster to take them and over 100 other rescued people back to Libya, where they were facing real risks of human rights abuses. In Switzerland, several individuals, including a pastor, have been prosecuted for “facilitating irregular entry and stay” of foreign nationals who were in need, distress or danger. In Spain, the authorities have prevented NGO rescue ships from saving lives in the central Mediterranean. In the UK, a group of 15 human rights defenders was convicted for terrorism-related charges for halting what they believed was an unlawful deportation which would have exposed some asylum-seekers to grave risks in their countries of origin.

Many of the criminal investigations and prosecutions brought against HRDs described in this report rely on the crime of facilitation of irregular entry, transit and stay in the territory of a EU member state. In 2002, the EU sought to harmonize member states’

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legislation in this area through a directive and a framework decision, known as the “Facilitators’ Package,” to combat smuggling of human beings in Europe. However, Amnesty International has found that the vagueness of its provisions and the extent of the discretion left to member states in implementing them, has led to criminal proceedings being brought and sanctions being applied against numerous human rights defenders who were doing nothing less than showing solidarity with people on the move. This, in the end, constitutes undue interferences with the rights of human rights defenders that cannot be justified by the states’ pursue to combat human smuggling.

A review of the Facilitators’ Package is urgently needed to align it with the UN Smuggling Protocol, as well as international human rights and refugee law. In particular, a requirement of a financial or other material benefit should be introduced before the criminalization of the facilitation of irregular entry, transit and stay of a foreign national in an irregular status. Moreover, amendments are required to prohibit the criminalization of smuggled migrants, and to provide for a mandatory humanitarian exemption clause to act as a bar to prosecutions against individuals offering assistance to refugees and migrants. Amnesty International is also calling for the repeal of the offence of irregular entry, in line with international law provisions recognizing that irregular entry may be the only option for many to seek protection and that the victims of smuggling should not be punished.

In preparation of this report, Amnesty International interviewed dozens of people who reported undue restrictions, burdensome bureaucratic requirements, sanctions and practices such as harassment and intimidation aimed at hampering their activities to assist refugees and migrants, whether as individuals or as members of groups. Many of these human rights defenders are themselves refugees and migrants. In the course of numerous research missions, prosecutors, lawyers, and officials were also interviewed. Amnesty International also monitored judicial hearings and reviewed dozens of judicial rulings, as well as legal texts, academic papers, international organizations’ and NGOs’ reports.

The variety of the measures and practices used by national authorities at various levels makes it virtually impossible to determine how many people, NGOs and civil society groups have been affected. The opening of criminal investigations is a more tangible manifestation of the criminalization of solidarity. According to one study, between 2015 and 2018, 158 individuals were investigated or prosecuted for facilitating irregular entry or stay of foreign nationals in a EU state, and 16 NGOs were affected by the criminal proceedings.¹ Amnesty International is concerned that many more cases may go unreported, especially when they affect human rights defenders who are themselves refugees and migrants, due to the risks of public exposure for individuals whose status may be precarious. For instance, while in Switzerland 76% of those prosecuted for facilitation irregular entry, circulation or stay have Swiss residency status or are of Swiss nationality, non-Swiss nationals are twice as likely to be convicted, and among these there could be family members or friends who are trying to help their loved ones.

Furthermore, Amnesty International analysed numerous cases where undue restrictions and prosecutions of legitimate activities of HRDs were imposed, including through interviews of HRDs, lawyers, prosecutors and other public officials, and the review of charges brought against them and judicial decisions available to the organization. The report documents how the “criminalization of solidarity” has hampered individuals’ and NGOs’ activities to save lives, protect the dignity and defend the rights of refugees and migrants in Europe.

This report shows that national authorities, within the framework of agreed EU migration and asylum policies, have on multiple occasions deliberately misused migration laws and policies and other measures to crack down on human rights defenders of people on the move. Measures purportedly used to combat smuggling fail to meet the threshold of necessity, legality, and proportionality, leading to undue interferences with the right to defend human rights.

Amnesty International urges European leaders at the EU and national levels to stop undermining and criminalizing human rights defenders. The criminal cases against the HRDs featured in this report should be dropped or dismissed. It is also urgent that the Facilitators’ Package and national laws on the facilitation of irregular entry, transit and stay are amended to prevent them from being misused to punish acts of solidarity and humanity. In addition, Amnesty International calls on governments and EU institutions to take all appropriate measures to ensure that the UN Declaration on Human Rights Defenders is fully implemented within Europe to provide a safe and enabling environment for human rights defenders.

¹ ReSoma, Crackdown on NGOs and volunteers helping refugees and other migrants, June 2019, <http://www.resoma.eu/node/194>