

## CRIMINALISATION OF SOLIDARITY

### POLICY BRIEF

#### BACKGROUND

Since 2015, civil society organisations and individuals witnessed and experienced a growing trend of criminalisation of solidarity with refugees and migrants.<sup>1</sup> Tendencies of the European Union to adopt measures that prioritise the securitisation of migration and monitoring of territorial borders rather than the protection of human lives led to widespread implementation of policies that rely on criminal law and public scrutiny against the acts of solidarity. Consequently, civil society organisations and individuals found themselves stranded in a limbo between the need to defend the rights of refugees and migrants and the risk of prosecution due to EU Member States' anti-migrant smuggling operations and laws. This policy brief sets to show in which way criminalisation of solidarity manifests within and outside of the formal process of criminalisation through de-legitimation, disciplinary measures, and intimidation. Furthermore, this policy brief will identify key problems of the current legislative framework and will define what should policymakers do in order to tackle the growing trend of criminalisation of solidarity.

#### WHAT IS THE ISSUE?

The Facilitators' Package<sup>2</sup>, used as a tool for preventing irregular migration, laid down the grounds for criminalisation of "anyone who assists a person to irregularly enter, transit or stay

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<sup>1</sup> This policy brief will use the syntagm *refugees and migrants* when identifying the groups with whom individuals and civil society organisations show solidarity. However, it must be noted that these terms are not mutually excluding. By using both terms simultaneously we are trying to avoid categorical fetishism which perceives them as neutral categories and overlooks the fact that persons on the move can fall in both categories. Furthermore, by putting both categories together we are also deconstructing false dichotomy that was built between these two categories, and that was oftentimes used as a ground for criminalisation of solidarity. This dichotomy lays on the presumption that persons falling in one category are more deserving of help than others which is in conflict with international standards. Lastly, whatever the status of the person is, she should never be deprived of her human rights.

<sup>2</sup> The EU legal framework that addresses the issue of smuggling and trafficking is reflected through the so-called Facilitators Package composed from the Directive of the Council Defining the Facilitation of Unauthorised Entry, Transit and Residence and the Council Framework Decision on the Strengthening of the Penal Framework to Prevent the Facilitation of Unauthorised Entry, Transit and Residence.



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in the territory of a Member State’’<sup>3</sup> regardless of the manner, motivation and/or interest behind this act. Exclusion of the requirement of “financial and other material benefit’’<sup>4</sup> not only arises legal uncertainty but also goes against the standard set in Article 6 of the UN Protocol against the Smuggling of Migrants by Land, Sea, and Air.<sup>5</sup> The Facilitators’ Package therefore overlooks the importance of differentiating smuggling from assisting refugees and migrants out of solidarity or for altruistic reasons. The absence of the criteria of “financial and other material benefit’’ together with the non-compulsory exemption of humanitarian assistance from criminal prosecution allowed a very heterogeneous implementation of the Facilitators’ Package. Consequently, Facilitator’s Package did not become a criminal justice tool, on the contrary it became a tool for policing acts of solidarity.

## HOW IS IT DONE?

The criminalisation of solidarity is perceived through different modalities, which include formal criminalisation, disciplining, intimidation and harassment.

- **Formal criminalisation of solidarity**

**Formal criminalisation** can be understood as a **two-part process**. Firstly, it builds a feeling of **suspicion towards organisations** who provide assistance to refugees and migrants through a narrative that seeks to equalise humanitarian and solidarity activities with smuggling. To build upon this built misconception as a second step, **the state adopts laws which vaguely define “migrant smuggling”** and explicitly target organisations and individuals who provide assistance to refugees. In such a way the state deliberately misuses laws that should protect refugees and migrants from smuggling to prevent humanitarian activities and criminally prosecute those that act in protection and promotion of the rights and safety of refugees and migrants.<sup>6</sup>

<sup>3</sup> Carrera S., Guild E., Alvireti A., Allsopp J., Manieri G., Levoy M., (2016) Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants. Bruxelles: LIBE Committee of the European Parliament, p. 21.

<sup>4</sup> United Nations, “Protocol Against the Smuggling of Migrants By Land, Sea And Air, Supplementing the United Nations Convention Against Transnational Organized Crime’’, 2002, Article 3.

<sup>5</sup> United Nations, “Protocol Against the Smuggling of Migrants By Land, Sea And Air, Supplementing the United Nations Convention Against Transnational Organized Crime’’, 2002, Article 6.

<sup>6</sup> Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update*. Bruxelles: PETI Committee of the European Parliament, p.21.



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The case of *Are You Syrious?* volunteer, **Dragan Umičević** serves as an example of formal criminalisation of solidarity in Croatia. Dragan approached the police control near the Croatian border and drew their attention to the frightened and lost family of refugees in a field near Strošinci, already on Croatian soil. Days after alerting the police, Dragan faced charges of aiding and abetting the asylum seekers' "illegal crossing" of the border. However, Dragan was at no point in the direct communication with the family, nor he guided them with the light signals, as it was stated in the indictment submitted by the Ministry of Interior (MOI). Furthermore, the content of the indictment shows that MOI explicitly targeted the organisation Dragan was volunteering for. The indictment calls for the prohibition of work in Croatia for the legal entity, and this prohibition is asked just in the time when *Are You Syrious?* together with other organisations warned about violent push backs happening on the borders of Croatia. Dragan was found guilty of "unwitting negligence" and fined with 60,000 kunas.<sup>7</sup>

#### · **Disciplining**

Whereas formal criminalisation of solidarity relies on the criminal prosecution due to deliberate lacks in definition of smuggling, disciplining, on the other hand, relies on **sanctioning of organisations and individuals who provide food, information, medical assistance or safety**. The nature of disciplinary measures is often disproportionate and with an aim of deterring organisations and individuals while categorising their activities as an offense against the public order.

Disproportionate nature of disciplining measures can be portrayed through the **testimonies of local communities who live on the borders** with Bosnia and Herzegovina. Local population fears giving food, and water to refugees and migrants because of the police officers who threaten them with disciplinary measures. Although Croatia did not criminalise giving food and water to refugees and migrants, these oral threats build the atmosphere of fear within the local communities who are now forced to be silent observers of illegal practices conducted by Croatian police.

#### · **Intimidation and harassment**

Intimidation and harassment can **manifest on several levels; individual, organisational and societal**.<sup>8</sup> These can be **perpetuated through threats** made either by the politicians, officials

<sup>7</sup> Statewatch.org. (2018). *Statewatch News Online: Croatia: Criminalising solidarity: Are You Syrious? statement on politically motivated, unjust guilty verdict for our volunteer*. [online] Available at: <https://www.statewatch.org/news/2018/sep/croatia-ays-case.htm> [Accessed 23 Oct. 2019].

<sup>8</sup> Carrera, S., Vosyliūtė, L., Smialowski, S., Allsopp, J. and Sanchez, G. (2019). *Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 update*. Bruxelles: PETI Committee of the European Parliament, p. 24.



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or authorities. Depending on the circumstances and political climate, intimidation and harassment can vary in their level of discretion. Consequently, organisations and individuals who support refugees face **systematic disabling of their work**.

**Centre for Peace Studies** has been warning about restrictions to access to asylum and continuous violent push-backs conducted by the Croatian police for the last three years. After escorting refugees to police stations for the purpose of applying for international protection, employees and volunteers testified receiving threats from police officers that the next time legal procedures would be initiated against them and against the organisation. In the time of a press conference where the CPS, AYS staff and lawyers were supposed to address the misconduct of Croatian police, they were all called to attend a police interview right at the time of a press conference. The culmination of harassment and intimidation happened when the Minister of Internal Affairs publicly stated that CPS smuggles migrants from Serbia, and gives them money, phones, and directions on how to enter Croatia. The Minister publicly accused the CPS of conduct of illegal activities without due process, which turned out to be completely unfounded and blatant defamation of the CPS' work.

#### **POSSIBLE SOLUTIONS:**

**The law of the European Union should be aligned with the standards set within international law. Therefore, the Facilitators' Package should include the criteria of "financial gain or other material benefit" to differentiate between criminal acts of smuggling and acts of humanitarian assistance or acts of solidarity.**

**Facilitator's Package should oblige the Member States to implement the clause that would exempt humanitarian assistance and acts of solidarity from criminal prosecution.**

**The European Union should invoke infringement procedure against Member States who criminalise organisations who solidarise with refugees and migrants, even when this criminalisation is not formal as in the case of Croatia.**

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Ana Čuča  
Centre for Peace Studies Zagreb  
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