Bad Samaritans: The Case for Decriminalizing Migrant Rescue

By “Coach Vance” Trefethen

***Resolved: The European Union should substantially reform its immigration policy.***

Case Summary: The well-known parable of the Good Samaritan teaches that it’s morally honorable to help someone you see suffering nearby. But what if the parable had ended with the Good Samaritan getting arrested because it was illegal to help someone dying on the side of the road? In the Status Quo, an EU policy called the “Facilitation Directive” contains an intentional loophole that says member states can criminalize humanitarian or rescue aid to illegal migrants or asylum-seekers. For example, it can be a crime to send a boat out to rescue a drowning migrant in the Mediterranean Sea, or to give him first aid if he swims to the shore. Making criminals out of Good Samaritans is evil, and numerous advocates, including the EU Parliament, recommend closing this loophole. We need to stop confusing humanitarian aid with human smugglers, who are paid to break the law, and leave the rescue volunteers alone. Lives depend on it, and so do human rights in the European Union.

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Bad Samaritans: The Case for Decriminalizing Migrant Rescue

The well known parable of the Good Samaritan teaches that it’s morally honorable to help someone you see suffering nearby. But what if the parable had ended with the Good Samaritan getting arrested because it was illegal to help someone dying on the side of the road? It’s not merely a hypothetical question, and it’s the reason my partner and I are happy to affirm that: The European Union should substantially reform its immigration policy.

OBSERVATION 1. DEFINITIONS

Substantial

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considerable in quantity **:**significantly great

Reform

Merriam Webster Online Dictionary copyright 2020 <https://www.merriam-webster.com/dictionary/reform>

to put or change into an improved form or condition

Immigration policy

Prof. Marc Helbling, Liv Bjerre, Friederike Römer and Malisa Zobel 2014 (Helbling - professor in political sociology at the Department of Political Science at the University of Bamberg. Bjerre – PhD student, WZD Berlin Social Science Center. Romer - doctoral researcher at the Berlin Social Science Center. Zobel - research assistant at Berlin Social Science Center) April 2014 Conceptualizing and Measuring Immigration Policies. A Comparative Perspective <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2423075>



OBSERVATION 2. INHERENCY, the structure of the Status Quo.

FACT 1. The “Facilitation Directive”

Rescue work and humanitarian aid to a migrant have been criminalized under the Facilitation Directive.

Sergio Carrera, Lina Vosyliute, Stephanie Smialowski, Dr. Jennifer Allsopp and Gabriella Sanchez 2018. (Study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs. Carrera, Vosyliute and Smialowski are with the Center for European Policy Studies. Allsopp – PhD; Postdoctoral Research Fellow, Migration Leadership Team, London International Development Centre, SOAS University of London. Sanchez and Carrera are both with the Migration Policy Centre – European University Institute) “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

So, only in Germany, Ireland, Luxembourg and Portugal do criminal proceedings require a proof of migrant smugglers obtaining financial or other material benefit for their actions. Interestingly, in these countries, media monitoring has not captured interferences with civil society free space, which is an indication that a good definition of ‘what is a crime?’ could by default prevent misguided prosecutions, when humanitarian actors are acting without profit motives. The ‘facilitation of residence’ does require financial or other material benefit. However, it does not exempt bona-fide service providers, such as, for instance, land-lords, hotels and AirBnB providers, that charge smuggled migrants the same amount as any other clients, without any ‘unjust enrichment’ motive. This means that companies or organisations whose business model is providing the service and not profiting from the vulnerable situation of migrants are at risk of being criminalised. However, even if the EU Facilitation Directive requires the profit motive to establish the crime for the ‘facilitation of residence and stay’, this is not the case in 13 out of 28 EU Member States, namely, in Belgium, Croatia, Denmark, Estonia, Finland, France, Greece, Latvia, Lithuania, Malta, Romania, Slovenia and the United Kingdom. When facilitation of residence and stay without a profit factor is sufficient to establish a crime or offence, non-profit civil society actors, including citizen movements, as well as family members and friends are at risk of criminalisation. It is illustrated in Chapter 4 and Annex 1 that indeed these have been the developments in Belgium, France, Greece, and the United Kingdom. In addition, the Facilitation Directive (Article1:2) suggests that each Member States can choose whether to criminalise civil society acting for humanitarian purposes for the facilitation of entry without profit motives, which is legally, politically and morally wrong.

**END QUOTE. What this means is that, while the goal was to prosecute and deter human smuggling, the Facilitation Directive was written so broadly that even giving humanitarian aid to a migrant can be considered helping someone immigrate illegally, and you can be prosecuted for it.**

FACT 2. Prosecutions

More and more people are being prosecuted for helping refugees in Europe

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets in original)

More and more people are being arrested across Europe for helping migrants and refugees. Now, civil society groups are fighting back against the 17-year-old EU policy they say lies at the root of what activists and NGOs have dubbed the “criminalisation of solidarity”. The 2002 policy [directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0090&from=EN) and [framework](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002F0946&from=EN), known as the “Facilitators’ Package”, establishes the parameters of European policy when it comes to tackling illegal immigration. The package leaves it up to individual member states to decide whether people providing humanitarian assistance should be exempt from prosecution for helping undocumented migrants enter or cross through EU states. It does not include a requirement that profit be a motive for a charge of human smuggling, nor is there an automatic exemption for humanitarians. Activists say the policy is too vague, and gives states too wide a berth to bring charges against NGOs performing search-and-rescue operations in the Mediterranean, [volunteers in Greece](https://www.thenewhumanitarian.org/feature/2019/05/02/refugee-volunteer-prisoner-sarah-mardini-and-europe-s-hardening-line-migration) and elsewhere, and people who have provided transportation, food, and shelter to asylum seekers. “People [are] being prosecuted just for sort of simple acts of decency,” Liz Fekete, director of the Institute of Race Relations in Britain, which has monitored the arrests, told The New Humanitarian.

OBSERVATION 3. We offer the following PLAN implemented by the European Commission, the European Court of Human Rights and any other necessary agencies of the European Union

1. The Facilitation Directive is reformed to no longer allow or mandate criminal charges for non-profit humanitarian aid or rescue of migrants.
2. European Court of Human Rights sets standards banning the criminalizing of such aid or rescue.

3. Funding from existing budgets and money saved from reduced police and court costs from eliminating needless prosecutions.
4. Enforcement through normal means. EU states not in compliance will be sanctioned under Article 7.
5. Timeline: Plan takes effect one day after an affirmative ballot.
6. All Affirmative speeches may clarify

OBSERVATION 4. ADVANTAGES

ADVANTAGE 1. Lives saved

A. Link: Prosecutions discourage life saving efforts

Eric Ready 2019 (journalist) Refugee, volunteer, prisoner: Sarah Mardini and Europe's hardening line on migration 2 May 2019 <https://www.thenewhumanitarian.org/feature/2019/05/02/refugee-volunteer-prisoner-sarah-mardini-and-europe-s-hardening-line-migration> (brackets in original)

According to Maria Serrano, senior campaigner on migration at Amnesty International, collectively the cases have done tremendous damage in terms of public perception of humanitarian work in Europe. “The atmosphere… is very hostile for anyone that is trying to help, and this [has a] chilling effect on other people that want to help,” she said. As for the case against Mardini and the other ERCI volunteers, Human Rights Watch [concluded](https://www.hrw.org/news/2018/11/05/greece-rescuers-sea-face-baseless-accusations) that the accusations are baseless. “It seems like a bad joke, and a scary one as well because of what the implications are for humanitarian activists and NGOs just trying to save people’s lives,” said Bill Van Esveld, who researched the case for HRW.

B. Impact: Tens of thousands of lives at lives at stake

Paul Hockenos 2018 (Berlin-based journalist) Europe Has Criminalized Humanitarianism 1 Aug 2018 FOREIGN POLICY <https://foreignpolicy.com/2018/08/01/europe-has-criminalized-humanitarianism/>

Hungary has even taken the step of formulating a law [making the aid](https://www.nytimes.com/2018/06/20/world/europe/hungary-stop-soros-law.html) of refugees in the country a punishable offense. But on no single issue has the prickly humanitarian quandary over the fate of migrants and refugees—and Europe’s responsibility for them—been as sharply formulated as in the raging debate about NGO-linked rescue ships that have been active in the Mediterranean, primarily between Italy and Libya. For the past three years, the vessels—as many as 12 in 2017, now just five—have picked up refugees largely in international waters and delivered them to European ports, where they can apply for asylum. The group SOS Méditerranée says that during its two years of emergency sea rescues, it alone has rescued more than [29,000](https://reliefweb.int/report/world/aquarius-returns-central-mediterranean-humanitarian-assistance-sea-desperately-needed) migrants.

ADVANTAGE 2. Civilization and Human Rights

A. Link: Criminalizing humanitarian rescue puts European civilization on the path to barbarism

Paul Hockenos 2018 (Berlin-based journalist) Europe Has Criminalized Humanitarianism 1 Aug 2018 FOREIGN POLICY <https://foreignpolicy.com/2018/08/01/europe-has-criminalized-humanitarianism/>

In the daily Süddeutsche Zeitung, the journalist Wolfgang Luef [weighed in](https://sz-magazin.sueddeutsche.de/abschiedskolumne/der-untergang-85837) by expressing shock that there was divided opinion in Germany on the matter of whether to help dying people or just leave them to perish. This is the “first step to barbarism,” he opined ominously, “the beginning of the end of the European idea. We cannot appeal to human rights, the Enlightenment, and humanism while at the same time criminalizing the rescue of drowning people.”

B. Impact: Decriminalizing humanitarian aid is needed to protect democracy, freedom and human rights

*Laura Schack 2020. (PhD researcher in Politics and Information Security at Royal Holloway, University of London) 6 July 2020 “*Humanitarian Smugglers? The EU Facilitation Directive and the Criminalisation of Civil Society” <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/humanitarian>

The widespread targeting of people and organisations helping migrants and refugees in Europe is a very concerning practice. It not only further limits the already scarce sources of support available to migrants and refugees, it is an attack on the freedom of civil society, a foundation of liberal democracy. While the prosecution of humanitarians for migrant smuggling is only one part of a bigger picture, a reform of the Facilitation Directive which decisively prevents this method of criminalisation would send a clear message to European authorities: that saving lives and protecting the fundamental human rights of others must not be criminalised.

ADVANTAGE 3. Better law enforcement

If they stop prosecuting Good Samaritans, law enforcement could more effectively go after real crime

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

This study relates the fact that criminal investigations and prosecutions can be started without having to gather and prove any evidence of ‘criminal intent’, but only ‘intentional assistance to enter/transit/stay and reside’ to someone who is not in possession of valid travel documents in the EU. Criminal investigations of activities without any profit motives, violence or without belonging to an organised crime group at once infringe upon the presumption of innocence and distract the time and resources of national authorities from other more harmful crimes. Going after the ‘low-hanging fruit’ of humanitarian actors distracts from the advancement of the intended public goal – dismantling organised criminal groups. It can be seen as a waste of public and limited resources to fight crime.

2A Evidence: Decriminalize Rescue

INHERENCY

Humanitarian aid to refugees has been made illegal

Paul Hockenos 2018 (Berlin-based journalist) Europe Has Criminalized Humanitarianism 1 Aug 2018 FOREIGN POLICY <https://foreignpolicy.com/2018/08/01/europe-has-criminalized-humanitarianism/>

Italy has banned the aid organizations from operating rescue vessels in its territorial waters, and Malta denies them entry to its harbors when refugees are on board. Three ships are currently impounded in Malta, several more in Italy. In June, the EU joined in, saying that the rescue boat operators could be breaking the law and would do better to remain in dock, which until now they have done. Austria’s former interior minister called them “so-called helpers,” who he claimed were in cahoots with human traffickers.

Arrests of humanitarian volunteers is happening all across Europe. Some are successfully prosecuted

Eric Ready 2019 (journalist) Refugee, volunteer, prisoner: Sarah Mardini and Europe's hardening line on migration 2 May 2019 <https://www.thenewhumanitarian.org/feature/2019/05/02/refugee-volunteer-prisoner-sarah-mardini-and-europe-s-hardening-line-migration>

In 2016, five other international volunteers were arrested on Lesvos on similar charges to Mardini. They were eventually acquitted, but dozens of other cases across Europe fit a similar pattern: from Denmark to France, people have been arrested, charged, and sometimes successfully prosecuted under anti-smuggling regulations based on actions they took to assist migrants.

Barrier to change: EU Commission won’t change the Facilitation Directive because they like the harsh policy

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets in original)

“I believe this refusal… to change the facilitation directive… is deliberate [on the part of the European Commission],” said Fekete, of the Institute on Race Relations. “I think they want to leave it there. It’s almost like this is a tap… for the member states to turn on and off because civil society is a threat to this very, very harsh border management policy that we’re seeing.”

Reason for the problem: Loopholes in EU laws and policies that allow EU member states to criminalize rescue operations

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets in original)

More and more people are being arrested across Europe for helping migrants and refugees. Now, civil society groups are fighting back against the 17-year-old EU policy they say lies at the root of what activists and NGOs have dubbed the “criminalisation of solidarity”. The 2002 policy [directive](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002L0090&from=EN) and [framework](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32002F0946&from=EN), known as the “Facilitators’ Package”, establishes the parameters of European policy when it comes to tackling illegal immigration. The package leaves it up to individual member states to decide whether people providing humanitarian assistance should be exempt from prosecution for helping undocumented migrants enter or cross through EU states. It does not include a requirement that profit be a motive for a charge of human smuggling, nor is there an automatic exemption for humanitarians. Activists say the policy is too vague, and gives states too wide a berth to bring charges against NGOs performing search-and-rescue operations in the Mediterranean, [volunteers in Greece](https://www.thenewhumanitarian.org/feature/2019/05/02/refugee-volunteer-prisoner-sarah-mardini-and-europe-s-hardening-line-migration) and elsewhere, and people who have provided transportation, food, and shelter to asylum seekers. “People [are] being prosecuted just for sort of simple acts of decency,” Liz Fekete, director of the Institute of Race Relations in Britain, which has monitored the arrests, told The New Humanitarian.

Europe is banning refugee rescue boats in the Mediterranean Sea

Paul Hockenos 2018 (Berlin-based journalist) Europe Has Criminalized Humanitarianism 1 Aug 2018 FOREIGN POLICY <https://foreignpolicy.com/2018/08/01/europe-has-criminalized-humanitarianism/>

Over the course of June and July, through a patchwork of frantic stopgap measures and pledges, European leaders fortified Europe’s borders along its southern perimeter in another push to restrict migration to the continent. This clampdown now also includes efforts to beach the last of the charity-run rescue boats that scoop up refugees out of the Mediterranean Sea—where more than [10,000](https://missingmigrants.iom.int/region/mediterranean) have perished since 2014.

More examples and quantifications of arrests and prosecutions in Greece, Denmark and Italy

*Laura Schack 2020. (PhD researcher in Politics and Information Security at Royal Holloway, University of London) 6 July 2020 “*Humanitarian Smugglers? The EU Facilitation Directive and the Criminalisation of Civil Society” <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/humanitarian>

Humanitarian actors helping refugees and migrants in Europe have repeatedly faced accusations and charges of migrant smuggling in the last years. The 2019 [arrest of Carola Rackete](https://www.bbc.co.uk/news/world-europe-48853050), the Sea Watch captain, is perhaps the most well-known example, but it is only one of many. For example, at least nine volunteers in Greece conducting search and rescue activities on Lesvos island were arrested and charged for human smuggling, five in [2016](https://www.nytimes.com/2018/05/07/world/europe/greece-migrants-volunteers.html) and four in [2018](https://metro.co.uk/2019/12/10/i-dragged-my-migrant-boat-to-safety-now-i-face-decades-in-jail-for-helping-others-11245438/). In Denmark, almost 300 people were [prosecuted and fined for human smuggling](https://www.independent.co.uk/news/world/europe/denmark-criminalising-decency-with-crackdown-on-helping-refugees-says-woman-prosecuted-for-giving-a6927676.html) in 2016 for helping refugees who were passing through the country. And in 2017, the Iuventa, the search and rescue ship belonging to the NGO Jugend Rettet, was [confiscated in Italy](https://forensic-architecture.org/investigation/the-seizure-of-the-iuventa) while its crew continue to face charges for human smuggling which could result in over 20 years in prison.

Trend of prosecuting rescuers is increasing across Europe

*Laura Schack 2020. (PhD researcher in Politics and Information Security at Royal Holloway, University of London) 6 July 2020 “*Humanitarian Smugglers? The EU Facilitation Directive and the Criminalisation of Civil Society” <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/humanitarian>

Accordingly, criminal smuggling-related investigations and charges against NGOs, volunteers and individuals (such as those helping family members) have dramatically increased since 2015. A [recent report by the Research Social Platform on Migration](https://www.migpolgroup.com/wp-content/uploads/2020/03/ReSoma-criminalisation-.pdf) states that as of December 2019 there have been at least 60 cases, involving at least 171 individuals in 13 Member States: Belgium, Croatia, Denmark, France, Germany, Greece, Italy, the Netherlands, Norway, Spain, Sweden, Switzerland and the UK. The majority of cases are in Greece, Italy and France. According to the report, 44 cases were based on the crimes of facilitation of entry or transit, 10 were based on the crime of facilitation of residence, and six were based on multiple grounds in which smuggling charges were accompanied by accusations of other crimes including money laundering, membership of a criminal organisation and espionage.

Some EU countries are prosecuting people solely for giving humanitarian aid

Sergio Carrera, Lina Vosyliute, Stephanie Smialowski, Dr. Jennifer Allsopp and Gabriella Sanchez 2018. (Study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs. Carrera, Vosyliute and Smialowski are with the Center for European Policy Studies. Allsopp – PhD; Postdoctoral Research Fellow, Migration Leadership Team, London International Development Centre, SOAS University of London. Sanchez and Carrera are both with the Migration Policy Centre – European University Institute) “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

In addition, the Facilitation Directive does not cover humanitarian assistance in situations of residence and stay (in paragraph 1(b)). In countries, where such exemptions are declared, they are drafted overly narrow, as only covering situations of life and death that are already covered by international maritime law. In other countries, this leads to a discussion on what is genuine humanitarian assistance. Some forms of explicit exemption were found in Belgium, Greece, Spain, Finland, Italy, Malta and the United Kingdom. Nevertheless, formal prosecutions occurred in countries where humanitarian exemptions were declared. The subsequent analysis in Section 3 and Annex 1 indicates that formal prosecutions of humanitarian actors were launched in Belgium, Greece, Italy, Malta and the United Kingdom.

HARMS / SIGNIFICANCE

A/T “Arrested, but they aren’t being convicted for aid, so no harm” – The arrests themselves are harming aid efforts

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets in original)

“The [European] Commission keeps saying that there is no evidence because there are no convictions,” Stephanie Smialowski, a researcher at CEPS, a think tank involved in the ReSOMA project, told TNH. “The problem is that the number of prosecutions is increasing [but not necessarily the number of convictions], and this makes the work of NGOs and volunteers a lot harder.”

A/T “Arrested, but not convicted” – Arrest destroys people’s lives – takes 2 years to resolve the case, costs all their money

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets and ellipses in original; Mr. “Aldeen” was the rescuer who got arrested by the Greek government for rescuing migrants)

“It’s absolutely inexplicable how the Greek authorities dared… to crack down on [Team Humanity] the way they did,” said Violeta Moreno Lax, legal advisor to the Global Legal Action Network (GLAN), an international team of lawyers that brought the case on Aldeen’s behalf. “The organisation has been released of every charge possible on the domestic level, but [only]… after being put through an ordeal that lasted for more than [two] years and having endured a number of human rights violations [along] the way.” GLAN is seeking restitution for the moral and material damages that Aldeen suffered during the course of the criminal proceedings in Greece. “Greece destroyed my life,” Aldeen told TNH in a recent phone call. “I was stuck here for almost two years. I was fighting every day to survive here because I didn’t have [a] job… I lost everything I had. All my money, I lost it because of the case. I gave it to the lawyers, to the court, to my stay, to my food… I think somebody should be [held] responsible for that.”

Arrests, even if they’re later acquitted, are still harmful

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 (brackets added) https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf

This study shows that, once initiated, criminal cases serve to discourage CSAs [civil society actors] from pursuing their mission and diminish their operational capacity as well as cause reputational harm. This is the case even where such arrests result in acquittal. In this study, we therefore assess several well-known cases that were opened against humanitarians (including in countries that officially exempted humanitarian actors under the letter of the law).The study takes the view that all initiated criminal proceedings, even if they eventually led to acquittal or were dropped – should be assessed not on the basis of the outcome, but on the basis of their societal and individual impacts. These include their ‘chilling effect’ on EU citizens’ freedoms of association, assembly and conscience as well as societal mistrust (see section 4).

Trend is going up: Humanitarian rescue arrests are increasing. 104 arrests in 2018 was double the year before

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees>

But now a man arrested for his volunteer work is challenging the “criminalisation of solidarity” at the European Court of Human Rights, and a coalition of civil society groups is upping the pressure to amend or replace the Facilitators’ Package. The push includes [a new report](http://www.resoma.eu/node/194), timed to correspond with 20 June – World Refugee Day – showing that despite a drop in arrivals to Europe, at least 104 people were investigated or formally prosecuted for providing humanitarian assistance in 2018; double the number of cases from the year before.

Unnecessary prosecutions harm individuals and society

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

A prosecution can cause damages to the individual erroneously accused, thus it should be avoided at all costs according to the harm principle. The risk of criminalisation of humanitarianism and service-providers besides individual harms also include societal costs and hence have broader implications. National authorities have often proven to be incapable of determining at early stage which cases should be taken forward.

Prosecuting humanitarian workers harms human rights, democracy, freedom, and threatens the future of EU societies

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 (brackets added) [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

We link interference with humanitarian and other CSAs [civil society actors] with the broader issues of the rule of law, democracy and fundamental rights. First, in our view, attacks on humanitarian actors are possible because of a lack of respect for fundamental rights and democratic deliberation based on facts and because of a lack of rule of law oversight in different EU Member States. Attacks on CSAs negatively affect not only the question of upholding human dignity and saving the lives of refugees and other migrants, but also the future of EU societies. The impacts on freedom of assembly and freedom of speech are of particular concern, as they affect possibilities to defend human rights and to oppose certain political ideas via democratic and legal avenues, public discourse and civic action. In addition, the rule of law requires legal certainty that persons who do not have criminal intentions and who act within their mandate will not be prosecuted under an over-stretched concept of crime. Criminal justice safeguards, such as the presumption of innocence and proofs of criminal intent are other impacted areas.

Criminalisation raises suspicion and reduces trust in law enforcement, which is harmful to society

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 (brackets added) [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

The Carrera et al. (2016) study concluded that all of these forms of policing and criminalisation negatively affect not only migrants, but also actors providing humanitarian assistance, service providers, family members, and society as a whole. In addition, Jennifer Allsopp in 2016 argued that such policing sends a strong message that interacting with undocumented migrants can be a criminal offence; this may consequently foster the rise of discrimination (based on race, ethnic origin or religion), xenophobia and hate crimes, which have the effect of disrupting social cohesion in society as a whole. Also, the logic of criminalisation spreads fear and affects trust in public institutions, especially in the criminal justice system. CSAs [civil society actors] and migrants may, for example, be less willing to approach police and other law enforcement agents with evidence of harmful crimes committed by violent organised smugglers and other nefarious groups. Again, this has consequences for society as a whole.

SOLVENCY / ADVOCACY / ADVANTAGES

Widespread citizen advocacy for decriminalizing humanitarian assistance

Sergio Carrera, Lina Vosyliute, Stephanie Smialowski, Dr. Jennifer Allsopp and Gabriella Sanchez 2018. (Study, commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs. Carrera, Vosyliute and Smialowski are with the Center for European Policy Studies. Allsopp – PhD; Postdoctoral Research Fellow, Migration Leadership Team, London International Development Centre, SOAS University of London. Sanchez and Carrera are both with the Migration Policy Centre – European University Institute) “Fit for purpose? The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

The cases of criminalisation of solidarity has mobilised citizens at the European and national levels. The European Citizens’ Initiative (ECI) called “We are a welcoming Europe – let us help!” (#WelcomingEurope) reflects increasing concerns among citizens and volunteers offering assistance to immigrants and asylum seekers in the EU. The ECI is supported by more than 170 organisations. The petition aims to gather a million signatures. It calls upon the European Commission to decriminalise humanitarian assistance across the EU and to support EU citizens who want to offer safety to people seeking international protection.

Advocacy: EU Court should legalize humanitarian assistance. Inherency: But they’re moving too slowly

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets in original)

The case also has another aim: GLAN argues that the ambiguity of the Facilitators’ Package enabled Greek prosecutors to charge the members of Team Humanity, and the group is hoping to set a legal precedent that would pressure the EU to reevaluate the law and discourage other EU countries from prosecuting humanitarians. “It could be really an unprecedented occasion for the European Court of Human Rights to clarify that humanitarian assistance is not a crime,” said Carmine Conte, a legal policy advisor at the Migration Policy Group (MPG), a Brussels-based think tank involved in the ReSOMA advocacy effort. “The impact of that judgement could be huge.” But the European Court of Human Rights moves slowly. “We are looking at a horizon of four, five years from now [before there is a judgement],” Moreno Lax added.

Advocacy: European Parliament advocates the plan, but the European Commission blocks it

*Laura Schack 2020. (PhD researcher in Politics and Information Security at Royal Holloway, University of London) 6 July 2020 “*Humanitarian Smugglers? The EU Facilitation Directive and the Criminalisation of Civil Society” <https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/07/humanitarian>

Following an NGO-led campaign, the European Parliament adopted a resolution to end the criminalization of humanitarian aid in July 2018. They called for Member States to implement the humanitarian exemption and for the European Commission to provide clearer guidelines for Member States. In response, the Commission again stated that there was not enough evidence showing that the Facilitation Directive was the cause of criminalisation to justify legislative change.

A/T “More study needed” – RESOMA did the study in 2019. Results show we need the plan

Eric Ready 2019 (journalist) 20 June 2019 “European activists fight back against ‘criminalisation’ of aid for migrants and refugees” <https://www.thenewhumanitarian.org/news-feature/2019/06/20/european-activists-fight-criminalisation-aid-migrants-refugees> (brackets added; ellipses in original)

As ReSOMA [Research Social Platform on Migration and Asylum] works towards the reform or replacement of the Facilitators’ Package it is trying to address the 2016 EU Commission's evaluation that there isn’t enough data. Its [new report](http://www.resoma.eu/sites/resoma/resoma/files/policy_brief/pdf/Final%20Synthetic%20Report%20-%20Crackdown%20on%20NGOs%20and%20volunteers%20helping%20refugees%20and%20other%20migrants_1.pdf) includes what it calls the “most in-depth list of cases of criminalisation of solidarity to date”, showing that at least 158 people were investigated or formally prosecuted for offering humanitarian assistance to migrants and refugees in 11 European countries between 2015 and 2019. Most cases were in France, Greece, and Italy. A statement accompanying the report highlights that “despite a drop in migrant arrivals, more Europeans are being criminalised for their solidarity”. MPG’s Conte said the overall goal of the database is to provide evidence that these cases are not just related to individual country’s policies, but are “also related to the European law framework, so the European Commission should… draft guidelines to clarify that humanitarian assistance cannot be criminalised.”

Refugee rescuers should be celebrated as heroes

[Paul Hockenos](https://foreignpolicy.com/author/paul-hockenos/) 2018 (Berlin-based journalist) Europe Has Criminalized Humanitarianism 1 Aug 2018 FOREIGN POLICY <https://foreignpolicy.com/2018/08/01/europe-has-criminalized-humanitarianism/>

As recently as a year ago, there was little fuss about the ships operated by charity groups such as Refugee Rescue (Northern Ireland), SOS Méditerranée and Médecins Sans Frontières (France), Jugend Rettet and Sea-Watch (Germany), Boat Refugee Foundation (Netherlands), and Save the Children (United Kingdom), among others. Many Europeans seemed to see them as high-minded Samaritans saving the lives of helpless seaborne migrants. “The NGOs are present to fill a lifesaving gap in the absence of a state-led response to reduce the loss of lives,” Federico Soda, Italy’s director of the International Organization for Migration, said earlier this year. In 2017, the German Protestant pastor Joachim Kretschmar said, “The Lord God rejoices in the real heroes who volunteer, courageously and selflessly stand up for life.”

DISAD RESPONSES

A/T “More aid = more crime/ illegal immigration” – Turn: Less aid increases crime, reduces security, harms rights and freedoms

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

The study finds that preventing civil society actors from fulfilling their humanitarian and human rights missions is likely to have assorted negative consequences affecting a range of actors, including citizens and society as a whole. These not only include well-documented negative impacts on the lives and human dignity of asylum seekers and immigrants, but also on the rights and freedoms of EU citizens as well as democratic rule of law principles at the EU and national levels. Quite paradoxically, removing access to basic service provision and assistance from irregular migrants in the name of ‘combatting human smuggling’ leads to more insecurity for all actors and individuals involved, and even increased opportunities for various criminal groups in the EU and in third countries.

A/T “Blocks efforts to combat human trafficking” – There’s a clear difference between humanitarian aid and human trafficking

Sergio CARRERA, Lina VOSYLIUTE, Stephanie SMIALOWSKI, Dr Jennifer ALLSOPP, Gabriella SANCHEZ 2018. (Carrera – scientific coordinator, Center for European Policy Studies and the Migration Policy Centre, European University Institute. Vosyliute – Center for European Policy Studies. Allsopp – post-doctoral research fellow, Migration Leadership Team, London International Development Centre, SOAS Univ. of London. Sanchez - Migration Policy Centre – European Univ Institute) study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs “Fit for purpose?The Facilitation Directive and the criminalisation of humanitarian assistance to irregular migrants: 2018 Update” Dec 2018 [https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL\_STU(2018)608838\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2018/608838/IPOL_STU%282018%29608838_EN.pdf)

Fourth, there is some albeit limited statistical evidence on the overuse of anti-smuggling grounds in investigations and prosecutions against individuals who do not have criminal intent – humanitarian organisations, family members and friends, bona fide service providers or smuggled migrants themselves. Where there is a wide gap between the people being suspected, arrested and convicted for the facilitation of migration, for example, it might indicate that a disproportionate number of innocent people are being investigated and prosecuted with no good grounds. This stands in contrast to human trafficking, which is a well-defined crime, the definition of which captures different elements of the criminal intent.

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