

ACTIVIZENSHIP

CIVIC SPACE WATCH REPORT 2021 | STORIES OF HOPE IN DARK TIMES

**MIGRANTS'
RIGHTS
DEFENDERS**

Acting in solidarity with migrants in the EU has been difficult for decades. Over the past couple of years, several states adopted increasingly restrictive legal frameworks for NGOs, while others are trying new criminalisation tactics. At the same time, proposed legislation at the EU level would hinder even more the work of individuals and NGOs defending the rights of migrants. At the core of these trends, there is the criminalisation of migration itself – both in the language and narrative, and in the legal framework of several EU member states. Faced with lower protection for their rights, undocumented people stand up to demand Justice, supporting them is more urgent than ever.

CRIMINALISATION OF SOLIDARITY IS A POLITICAL ACT

The EU needs to stand up for human rights at home too

By Marta Gionco, advocacy officer, Platform for International Cooperation on Undocumented Migrants

Acting in solidarity with migrants in the EU has been difficult for decades. Nearly twenty years ago, three volumes of PICUM's Book of Solidarity highlighted "the alarming tendency to criminalise assistance to undocumented migrants".¹ Between 2015 and 2019, research shows that at least 171 individuals were criminalised in 13 EU Member States.² Far from slowing down, the criminalisation of solidarity with migrants in the EU is soaring. Over the past couple of years, several states adopted increasingly restrictive legal frameworks for NGOs, while others are trying new criminalisation tactics.³ At the same time, proposed legislation at the EU level would hinder even more the

work of individuals and NGOs defending the rights of migrants.

Increasingly, what we see is that all acts around the migration journey can be criminalised: from steering a boat which is going adrift, to rescuing people at sea, to providing essential services, information, a roof, assistance during the asylum procedure, denouncing human rights violations at borders, to helping people in return procedures (see infographic). At the core of these trends, there is the criminalisation of migration itself – both in the language and narrative, and in the legal framework of several EU member states.

A SHRINKING LEGAL SPACE: A RACE TO THE BOTTOM

A legal framework facilitating and protecting the role and functioning of civil society organisations is a vital element of a democratic state.⁴ However, it is well documented that an increasing number of legal reforms throughout several member states have had the opposite effect of shrinking civic space and hindering the work of NGOs. In a few countries, these legislative changes have directly or indirectly targeted migrants' rights defenders. In **Hungary**, a reform of the Tax Laws in 2018 imposed a special tax of 25% on financial support provided for any activities that support or promote immigration. Among the activities covered are "participating in a media campaign", "building and

WHAT WE SEE IS THAT ALL ACTS AROUND THE MIGRATION JOURNEY CAN BE CRIMINALISED

¹ PICUM, 2002, Book of Solidarity, Vol. 1.

² ReSOMA, 2020, *The criminalisation of solidarity in Europe*.

³ Amnesty International, 3 March 2020, *Europe: Punishing compassion: Solidarity on trial in Fortress Europe*.

⁴ OSCE/ODIHR, 2015, Guidelines on Freedom of Association, p.5.



THE AUTHORS

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ORGANISATION

PICUM, the Platform for International Cooperation on Undocumented Migrants, is a network of organisations working to ensure social justice and human rights for undocumented migrants.

operating a network”, “educational activities”, and “positive propaganda”.⁵

In Greece, the Ministerial Decision 3063/2020 issued on 14 April 2020 and the Ministerial Decision 10616/2020 of 9 September 2020 introduced new measures wherein all Greek or foreign NGOs as well as their members, staff and volunteers would have to register with the NGO Members Registry to work in the fields of asylum, migration or integration.

⁵ Financial Times, 20 July 2018, Hungary toughens migrants stance with ‘propaganda’ tax [checked on 27 August 2021].

NGOs working in Greece have expressed concern that this policy will further shrink the country’s already limited civil society space. These concerns were confirmed by an Opinion of the expert council on NGO law of the Council of Europe, which found that “onerous registration and certification requirements, coupled with the wide discretions on the competent authorities to refuse to register or certify applicant NGOs”, will further restrict civil society space in Greece, and increase “significantly and disproportionately the control of the State over the work of NGOs in the field of asylum, migration and social inclusion.”⁶

In Cyprus, Amendment 118 (I)/2020 of the 2017 Law on Associations and Foundations and Other Related Issues gives the Minister of Interior the power to start a dissolution process for NGOs if certain regulatory requirements were not met within a two-month notice period.⁷ Shortly after, this power was used to remove KISA, a leading non-governmental organisation fighting for equality in Cyprus, and many other civil society organisations, from the Register

⁶ Expert Council on NGO Law, 2 July 2020, Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration; Expert Council on NGO Law, 23 November 2020, Addendum to the opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration.

⁷ <http://www.moi.gov.cy/moi/moiup/moi.nsf/>

of Associations.⁸ The deregistration was carried out despite KISA indicating that all formal requirements would be met within a short time period and appealing against the Minister’s decision. KISA has, in the meantime, submitted to the Registrar of Associations all formal requirements of the Law, namely its audited accounts for 2019, the amended statutes and the names of the new Steering Committee, with their positions and contact details.⁹

In a letter to the Minister of Interior of Cyprus, the Council of Europe Commissioner for Human Rights Dunja Mijatović suggested that this action might be in violation of the principles of necessity and proportionality and international standards.¹⁰ Several UN special procedures further considered the deregistration of KISA “very troubling” and potentially in violation of Articles 19 and 22 of the International Covenant on Civil and Political Rights.¹¹

Despite these actions and international calls for solidarity with KISA¹², in June 2021 KISA’s recourse against the decision of the General Registrar was rejected. With this decision, the court considered that the Ministry of Interior had the right to deregister an NGO which has been active in the fields of migration and human rights for 23 years, simply because it did not inform the Registrar of Associations on

⁸ PICUM, 19 February 2021, Organisations across Europe call on Cypriot government to reinstate equality champion KISA.

⁹ Kisa, 20 January 2021, <https://kisa.org.cy/wp-content/uploads/2021/01/SLet-Eforos-20012021-1.pdf>.

¹⁰ Dunja Mijatović, 10 March 2021, Letter to Mr. Nicos Nouris, Minister of Interior of Cyprus, Commissioner for Human Rights and Council of Europe, Strasbourg.

¹¹ Mandates of the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; and the Special Rapporteur on trafficking in persons, especially women and children, 31 March 2021, Communication to the Cyprus Government regarding the deteriorating environment for civil society organizations in Cyprus (AL CYP 1/2021), Palais des Nations, Geneva, Switzerland.

¹² PICUM, 19 February 2021, Organisations across Europe call on Cypriot government to reinstate equality champion KISA [checked on 27 August 2021].

THE TERM
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MIGRATION” REFERS
TO POLICIES THAT
TREAT UNDOCUMENTED
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MIGRATION AS A CRIME

time that its constitution was compatible with the Associations and Institutions Law (104(I)/2017).¹³ As a consequence, KISA's bank accounts have been frozen since mid-February, leaving the organisation unable to pay costs related to salaries, rent, ongoing activities and other expenses, and to receive any funding from ongoing projects and other sources.

DOUBLE-DISCRIMINATION: THE CRIMINALISATION OF MIGRANT HUMAN RIGHTS DEFENDERS

As mentioned above, at the core of the criminalisation of solidarity with migrants is the criminalisation of migration itself. The term “*criminalisation of migration*” refers to policies that treat undocumented migrants as a potential security threat and irregular migration as a crime (e.g. by criminalising acts such as irregular entry and stay). As highlighted by the Special Rapporteur on the Human Rights of Migrants, this is intrinsically connected with the use of the word “*illegal*”, which denies migrants’ humanity.¹⁴ In 2014, at least 24 EU member states criminalised irregular entry and/or stay with imprisonment and/or a fine.¹⁵ Moreover, migrants who act in solidarity with other migrants are disproportionately hit by criminalisation policies. Indeed, criminal proceedings, including when they end in acquittals, can have a life-long impact on migrants’ human rights defenders’ possibility to live regularly in the EU. A first instance conviction, or even just reliable proof for suspicion, can have the effect of excluding them from the right to apply for asylum¹⁶ and from

¹³ KISA, 30 June 2021, KISA after the rejection of its appeal by the Administrative Court.

¹⁴ United Nations General Assembly, 3 August 2010, Report of the Special Rapporteur on the human rights

of migrants, Sixty-fifth session, A/65/222.

¹⁵ European Union Agency for Fundamental Rights (FRA), 27 March 2014, Criminalisation of migrants in an irregular situation and of persons engaging with them.

¹⁶ European Asylum Support Office (EASO), January 2016, Exclusion: Articles 12 and 17 Qualification

future applications for residence status. Even after an acquittal, migrants who have been accused of smuggling often have difficulties accessing asylum procedures, and they are often excluded from official reception centres.¹⁷

On 13 May 2021, a 27-year-old Somali asylum seeker was sentenced to 146 years in prison on the island of Lesbos for migrant smuggling from Turkey to Greece. Other migrants defended him in the Greek court, saying he started steering their boat to save lives after a

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capsizing.¹⁸ In April 2021, a Syrian man was sentenced in Greek court to 53 years in prison, accused of “*facilitating illegal entry*” and causing a shipwreck after Greek authorities accused him of having been at the helm of a boat that brought his family and as many as 40 people to safety.¹⁹ In May 2020, the Croatian Ministry of Interior revoked the refugee status of an Iraqi citizen volunteering for a Croatian organisation supporting migrants on allegations that he represents a “*threat to national security*”.²⁰ The move comes after

Directive (2011/95/EU), A Judicial Analysis, p. 42.

¹⁷ Patane, F., Bolhuis, M., van Wijk, J., & Kreienschiek, H., 2020, *Asylum-Seekers Prosecuted for Human Smuggling: A Case Study of Scafisti in Italy*. Refugee Survey Quarterly, 39(2), 123-152.

¹⁸ Info Migrants, 14 May 2021, Greece: Migrant accused of smuggling sentenced to 146 years in prison [checked on 27 August 2021].

¹⁹ ECRE, 30 April 2021, Greece: Scandalous Sentence for Young Refugee, Request to Commission, Legal Action Before ECtHR and Ombudsman Report on Pushbacks [checked on 27 August 2021].

²⁰ Frontline Defenders, 21 July 2021, Pressure on family member of migrant rights defender Tajana Tadić [checked on 27 August 2021].

several episodes where he and his partner, who also works for the same organisation, were intimidated by the police and questioned about their work.

In Malta, three teenagers, known as *El Hiblu 3*, who resisted pushbacks to Libya in 2019 are now accused of terrorism. The three teenagers, who at that time were 15, 16 and 19 years old, acted as translators during a collective protest against an attempted pushback of 108 people from Malta to Libya, where they would be facing torture and ill-treatment. Upon arrival in Malta, they were immediately detained for seven months and are now on parole. The case against them is still ongoing, with the first witness summoned only in March 2021.²¹

THE EU PACT ON MIGRATION AND ASYLUM: MORE POLICING AND FEWER CIVIC RIGHTS

The EU Pact on Migration and Asylum is a policy document setting out the EU's agenda on migration and a package of legislative proposals and recommendations for the years to come.²² The European Commission presented the Pact in September 2020, allegedly with the purpose of “*offering a fresh start*” and “*providing a comprehensive approach, bringing together policy in the areas of migration, asylum, integration and border management*”.²³

The Pact has been broadly criticised for its impact on fundamental rights, increasing

²¹ BBC, 9 August 2021, Malta: The teenagers pulled from the sea and accused of terrorism [checked on 27 August 2021].

²² European Commission, 23 September 2020, Migration and Asylum Package: New Pact on Migration and Asylum documents adopted on 23 September 2020.

²³ European Commission, 23 September 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum; European Commission, 23 September 2020, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum.

detention, including for children outside of the legal framework, and curtailing safeguards.²⁴ In addition, a number of provisions would risk further stiffening the criminalisation of solidarity with migrants.

First of all, the Commission Guidance on the implementation of EU rules on the definition and prevention of the facilitation of unauthorised entry, transit and residence²⁵ only invites member states not to criminalise acts that are “*mandated by law*”, which are very different from acts “*permitted by law*”. Activities like providing food, shelter, car lifts or information, all remain excluded, particularly when they are not carried out by an official NGO that is “*mandated*” to carry out such activities. The almost exclusive focus on search and rescue (SAR) also risks leaving out activities on the territory and activities that are not directly lifesaving. Search and rescue operations are only considered legitimate when they “*observe the instructions received from the coordinating authority*” and while “*complying with the relevant legal framework*”, which leaves the door open to the prosecution of NGOs under (often trumped-up) accusations of breaching national legislation or instructions on disembarkation.²⁶

Secondly, the Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities further imposes a number of (not so hidden) obligations on SAR NGOs. These include “*safety and health requirements*”, reporting obligations on the administrative structure

²⁴ European Parliament, August 2021, The European Commission’s New Pact on Migration and Asylum Horizontal substitute impact assessment.

²⁵ European Commission, 23 September 2020, Commission Guidance on the implementation of EU rules on definition and prevention of the facilitation of unauthorised entry, transit and residence.

²⁶ PICUM, October 2020, More detention, fewer safeguards: How the new EU Pact on Migration and Asylum creates new loopholes to ignore human rights obligations.

WHEN INDEPENDENT JUDGES ARE CALLED TO DECIDE, THERE IS HOPE FOR JUSTICE TO BE ACHIEVED

of the NGO, and verification of “*compliance with migration management rules*”.²⁷ The Recommendation reinforces the link between migrant smuggling and SAR NGOs, suggesting that “*it is essential to avoid a situation in which migrant smuggling or human trafficking networks, including criminal organisations trafficking people or engaging in forms of exploitation assimilated to slavery, take advantage of the rescue operations conducted by private vessels in the Mediterranean*”.

Thirdly, the Screening Regulation²⁸ does indicate that EU member states “*may*” authorise relevant NGOs to provide information and monitor fundamental rights at borders. Yet, there is no clear obligation to grant NGOs access to border facilities, which means states might also decide to exclude them.²⁹

Last but not least, the same Regulation foresees that, at the end of the pre-entry screening, authorities fill in a debriefing form (art. 13). While the information included in the briefing will remarkably impact individuals’ future options, this is provided in the absence of a lawyer and with no adequate information. Individuals have no right to see the briefing, do

²⁷ European Commission, 23 September 2020, Commission Recommendation on cooperation among Member States concerning operations carried out by vessels owned or operated by private entities for the purpose of search and rescue activities.

²⁸ European Commission, 23 September 2020, Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL introducing a screening of third country nationals at the external borders and amending Regulations (EC) No 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817 COM/2020/612 final.

²⁹ PICUM, April 2021, PICUM recommendations on the screening regulation.

not have to sign it, and cannot appeal it. Importantly, the briefing includes “*information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information in cases of suspected smuggling*”. **This information could be used to initiate criminal proceedings against human rights defenders, NGOs and migrants themselves.**

However, if information on migrant smuggling is collected in the context of the application for asylum or the provision of information on individuals’ asylum application, individuals might feel psychologically constrained to provide information on any assistance received, including by family and friends, in order to support their asylum application. Moreover, this information would be collected while individuals are in situations of deprivation of liberty.

The use of this evidence would risk violating the right not to be compelled to incriminate oneself.³⁰ Considering the high number of European Court of Human Rights cases which found that the conditions in border detention centers amount to a violation of article 3 of the European Convention of Human Rights,³¹ the evidence collected during this process should be deemed inadmissible as it is extracted as a result of psychological coercion, in situations of fundamental rights violations, and without the defence counsel present.

THE JUDICIAL POWER: ROOM FOR HOPE?

After almost two years, on 19 May 2021, the Public Prosecutor of Agrigento, Sicily, dismissed the case against Carola

³⁰ Council of Europe: European Commission on Human Rights, 27 August 1991, Murray v. The United Kingdom, 18731/91; ECHR, 5 February 2003, Allan v. United Kingdom, App. no. 48539/99.

³¹ ECtHR, 29 April 2013, Case of R.R. and Others v. Hungary, Application no. 19400/11; ECtHR, 11 September 2009, S.D. v. Greece, App. no. 53541/07; ECtHR, 22 July 2010, A. A. v. Greece, App. no. 12186/08.

Rackete.³² The facts date back to the night of 29 June 2019, when Carola Rackete, the Sea Watch 3 ship commander, entered the Port of Lampedusa, invoking the state of necessity as she could no longer guarantee safety on board to the 42 people rescued 17 days before. A police patrol boat tried to stop her twice, and she was arrested on charges of “*resistance or violence against a warship*”, a crime that includes a sentence of between three and ten years.³³ The prosecutor of Agrigento maintained that she acted out of a state of necessity and had the duty to bring the migrants to a safe harbour.

Equally, after four years, on 31 March 2021, the French Court of Cassation dismissed the case against Cédric Herrou, a farmer who was charged in 2017 with facilitation of irregular entry for guiding nearly 200 migrants through the mountains between France and Italy.³⁴ In 2018, the French Constitutional Council upheld the “*principle of fraternity*” and overturned his first conviction, sending the case back to the Court of Appeal in Lyon. In May 2020, the Lyon Court of Appeal discharged him, but the prosecutor appealed the decision. By rejecting the prosecutor’s appeal and acquitting Cédric Herrou, the Court of Cassation finally put a halt to years of judicial harassment.

These two examples seem to indicate that, when independent judges are called to decide, there is hope for justice to be achieved. Indeed, in most cases, judges have found no sound evidence for convictions.³⁵

While this gives hope for the independence of the judiciary system, it also highlights how trials against migrants’ rights

defenders are, from the very beginning, merely political acts. And even when they end in acquittals – which, sadly, is very far from being always the case – the impact of lengthy processes, often lasting years and characterised by repeated appeals by the prosecutor against first-instance acquittals, is extremely harmful. Ample research has shown that even after the acquittal, irreparable harm is done to the reputation of NGOs and their volunteers, who have to bear the social, economic and psychological costs of the trial.³⁶ Indeed, the trials’ length and the slug-

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gishness on the prosecutors’ sides often seem to suggest that, in many cases, the end goal seems not to be actual conviction, but a wider chilling effect on life-saving activities.

RECOMMENDATIONS

As analysed in the previous paragraphs, the criminalisation of migration and people acting in solidarity with migrants is a complex, deep-rooted phenomenon. At the source is the criminalisation of migration itself, and for this reason, the first step to work towards its end would be embracing a different narrative and approach of migration through legal changes which do not criminalise undocumented people and people crossing borders irregularly. This also includes refraining from xenophobic discourse, which foments a climate of suspicion

against migrants and NGOs and volunteers helping them.

Secondly, national legal frameworks should be amended in line with the OSCE’s Office for Democratic Institutions and Human Rights (ODIHR) Guidelines on Freedom of Association³⁷ and the Opinions of the expert council on NGO law of the Council of Europe.³⁸ The European Commission should monitor this in the Rule of Law report and initiate infringement proceedings when relevant. Thirdly, as several migrants’ and human rights’ defenders are unfairly accused of migrant smuggling, it is pivotal to narrow the interpretation of the crime of migrant smuggling in line with the UN Migrant Smuggling protocol and fundamental rights, by limiting it to acts carried out to obtain unjust profit and in connection with transnational organised crime. The interpretation of the crime of migrant smuggling should not prevent the realization of the fundamental rights of undocumented migrants, including access to housing, services and collective organising.

The European Parliament and the Council should propose and adopt amendments to the Screening Regulations aimed at clarifying that national, international and non-governmental organisations and bodies shall be allowed to participate in the fundamental rights monitoring and the provision of information (recital 23, article 7 and 8) and should delete the inclusion of “*information on assistance provided by a person or a criminal organisation in relation to unauthorised crossing of the border, and any related information*”

³⁷ OSCE/ODIHR and Venice Commission, 2015, Guidelines on Freedom of Association.

³⁸ See, for instance, ODIHR, Council of Europe – Expert Council on NGO law (2 July 2020) “Opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration”, and Council of Europe – Expert Council on NGO law (23 November 2020) “Addendum to the opinion on the compatibility with European standards of recent and planned amendments to the Greek legislation on NGO registration”.

³² La Repubblica, 19 May 2021, I pm: “Niente processo per Carola Rackete, aveva il dovere di portare i migranti in porto”. E il gip archivia [checked on 27 August 2021].

³³ Ibid.

³⁴ Le Monde, 21 March 2021, Symbole de l’aide aux migrants en France, Cédric Herrou relaxé définitivement [checked on 30 August 2021].

³⁵ ReSoma, June 2019, *Crackdown on NGOs and volunteers helping refugees and other migrants*.

³⁶ ReSoma, December 2019, How could strategic litigation prevent policing of humanitarianism.

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in cases of suspected smuggling” in the debriefing form.³⁹

And last but not least, the European Union, which presents itself as a leading actor in the protection of human rights defenders in its relation with third countries,⁴⁰ should promote the same principles in its internal action, including by developing clear guidelines, monitoring early signs of policing of solidarity as well as all cases of criminal investigations, promote a clear internal legal framework to prevent the risk of abuses, and dedicate EU funding to strategic litigation and support of human rights defenders in Europe. ■

³⁹ PICUM, April 2021, PICUM recommendations on the screening regulation.

⁴⁰ European Union External Action (EEAS), 2008, Ensuring protection - European Union guidelines on human rights defenders.

AT THE CORE OF THE CRIMINALISATION OF SOLIDARITY WITH MIGRANTS IS THE CRIMINALISATION OF MIGRATION ITSELF

1 MIGRATING IRREGULARLY



In 2014, 24 of the 27 EU Member States sanctioned irregular entry and/or stay with imprisonment and/or a fine.¹

¹ European Union Agency for Fundamental Rights (FRA), 26 March 2014, *Criminalisation of migrants in an irregular situation and of persons engaging with them*.

2 RESCUING PEOPLE AT SEA



In March 2021, 21 individuals and 3 organisations were accused of aiding and abetting irregular migration and risk up to 20 years of prison for search and rescue operations conducted between 2016 and 2017.² Among them are crew members of the Iuventa ship, Vos Hestia and Vos Prudence rescue ships, operated by NGOs Jugend Rettet, Save The Children International (STC), and Médecins Sans Frontières (MSF).³

² Iuventa, 4 March 2021, *Italian prosecutor presses charges against the Iuventa crew* [checked on 27 August 2021].

³ Italy: *A slippery slope for human rights: The Iuventa case* [checked on 27 August 2021].

5 HOSTING AN ASYLUM SEEKER



On 13 June, Ingeborg Beugel, a correspondent for the Dutch magazine De Groene Amsterdammer, was arrested on the island of Hydra, Greece, for hosting a 23-year-old Afghan during the appeal against a negative asylum decision.⁵ The journalist now risks up to one year imprisonment and at least 5,000 euro in fines on charges of facilitating the stay of a person in an irregular situation on the Greek territory.

⁵ The Guardian, 24 June 2021, *Greek police arrest Dutch journalist for helping Afghan asylum seeker* [checked on 27 August 2021].

4 PROVIDING FOOD



In Spain, an NGO risked fines up to 60'000 EUR for having distributed food to undocumented migrants during the COVID-19 pandemic.⁴

⁴ El Salto, 1 April 2020, *Aplican la Ley Mordaza a una red de apoyo mutuo que reparte comida a migrantes en Barcelona* [checked on 27 August 2021].

3 PROVIDING ESSENTIAL SERVICES



On 23 February 2021, the Italian police raided the house of Lorena Fornasir, a 68-year-old psychotherapist and Gian Andrea Franchi, an 84-year-old retired teacher, founders of the organization “La Linea d’Ombra”, and confiscated their mobile phones and laptops as well as the archives of their organization and other material. Since 2015, they have been providing medicine, clothes, water and food to migrants in front of Trieste’s main train station, washing and curing the feet of those who have walked barefoot for miles. They are now accused of aiding and abetting irregular immigration.

6 MONITORING FUNDAMENTAL RIGHTS VIOLATIONS



On 24 April 2020, 4 members of the organisation Utopia 56 were arrested for one day for having filmed the evacuation of a migrants’ camp in Grande-Synthe in northern France.⁶

⁶ Utopia56, 28 April 2020, *L’état d’urgence sanitaire autorise-t-il les violences envers les exilé.e.s et les intima-*

7 SUPPORTING PEOPLE IN RETURN PROCEDURES



In the UK, the “Stanstead 15” group of human rights defenders were charged with aggravated trespass and “endangering safety at aerodromes” – a charge which carries a maximum penalty of a life sentence – for stopping a charter deportation flight in March 2017. Some of the people on the flight were facing threats of death and serious danger over deportation, and 11 of them were granted a regular status in the UK afterwards.⁷

tions envers les bénévoles? [checked on 27 August 2021].
⁷ Amnesty International, 3 March 2020, *Europe: Punishing compassion: Solidarity on trial in Fortress Europe*, p.84.

L'USPR represents a movement of undocumented people in Belgium, who started occupying the Béguinage Church and sites at ULB and VUB Brussels universities in January 2021. From 23 May 2021 to 21 July 2021, over 400 undocumented workers have been on hunger strike to demand clear regularisation criteria, and the establishment of a commission to process regularisation requests. Despite large mobilisations around the strike, demonstrations, petitions and international pressure, national authorities failed to start a dialogue. In July 2021 the government promised to add new clarification elements in the assessment of the regularisation files and the hunger strike came to an end. More than 400 applications have been sent, but the majority were rejected. The movement continued the mobilisation and brought a case against the Belgium state, which was rejected by the court. The story of the Sans-Papiers is a symbol for how underrepresented communities do not have access to civic space. Nevertheless, they are determined to continue standing up for their rights.

MAKING THEIR VOICES HEARD

The undocumented workers' call is yet to be heard

By Ahmed Manar, spokesperson, L'Union des sans-papiers pour la régularisation (UPSR)

How did the undocumented worker's movement for regularisation start?

The undocumented worker's movement is an informal movement that started 6 years ago. We have as a project to organise ourselves by creating a more permanent structure through registering the association to strengthen our credibility. We started with small demonstrations without much impact on government policies. Undocumented workers were not heard. We needed to establish a balance of power, mobilise the media, the public opinion and work with academics to make politicians accountable. One of the most significant events was the opportunity that the collective created to challenge the Minister of Employment. Activists presented a report that explained how undocumented workers



could fill the structural shortage in certain sectors of the economy. When the Minister did not react, activists demonstrated in front of his office and met with him to question the lack of action. He replied that he was not prepared to shock public opinion. This clearly meant that he did not want to alienate a part of the electorate that supports racist views. It is important to distinguish between people and ideology. People who hold this type of opinion and refuse, for example, to support the regularisation of undocumented workers are themselves victims of such ideology. These people must be given the opportunity to understand the situation of undocumented workers, and for this to happen they must meet with them, listen to them and speak to them.

A second important moment in the history of the movement is the health

crisis that we are experiencing. Undocumented workers have been particularly affected as the pandemic was the channeling event that pushed and abandoned them into extreme precariousness. Yet they were at the forefront of the response to the COVID-19 crisis. They made and distributed masks on a voluntary basis for

THERE IS A REAL PARADOX: AUTHORITIES AND SOCIETY IN GENERAL APPRECIATE THE WORK OF UNDOCUMENTED WORKERS AND BENEFITS FROM IT, BUT THEY DO NOT RECOGNISE THEM

example. Additionally, most of their jobs that required them to continue working, exposing them to higher sanitary risks (personal assistance, delivery, construction, etc.). However, this did not change the government's position.

There is a real paradox: authorities and society in general appreciate the work of undocumented workers and benefits from it, but they do not recognise them. When undocumented workers are employed on a construction site they are exposed to accidents as any worker. However, contrary to other workers, if they have an accident, they are not

THE IMPACT OF THE CRISIS ON UNDOCUMENTED WORKERS WAS MADE INVISIBLE. THIS IS ONE OF THE REASONS WE DECIDED TO MAKE OUR CAUSE VISIBLE

covered by the health system. Another situation that illustrates the precarious situation of undocumented workers is in case of forced return to their country of origin. When authorities take these decisions, they do not take into account the life that undocumented workers created in Belgium, their personal situation, their relationships and the roots they have developed.

Another key step of the movement is the beginning of the occupation of the Saint Jean Baptiste au Béguinage church, the campus of Université Libre de Bruxelles, as well as the national theatre together with artists and sex workers.

What was needed to mobilise people to join the movement?

During the global health crisis, authorities and media did not question the fate of the most vulnerable, including undocumented workers. The impact of the crisis on undocumented workers was made invisible. This is one of the reasons we decided to make our cause visible.

The 2009 regularisation did not provide the expected results. Undocumented workers were given a 1-year residence permit and a special work permit that requires the person to work for the same employer for 5 years. The fate of the person is therefore linked to the fate of the company. For that reason, many were unable to keep their residence permit.

These are some of the reasons we mobilised. We are 475 people, and we created an electroshock that alerted international press about the situation of undocumented workers in Belgium. 475 people remains a small number, however we manage to stir the media and the public which helped to mobilise people for our actions.

In general, were members of the movement active in civic actions? What motivated them to act, and do they consider themselves to be human rights defenders?

In the occupations the majority of people were not militants before joining the movement, simply undocumented workers. The occupiers became activists out of necessity. Joining the movement was a question of survival for them. We carried out awareness-raising work with activists. These past few months really

WE ARE 475 PEOPLE, AND WE CREATED AN ELECTROSHOCK

THE OCCUPIERS BECAME ACTIVISTS OUT OF NECESSITY. JOINING THE MOVEMENT WAS A QUESTION OF SURVIVAL FOR THEM

taught them to see themselves as activists and rights defenders.

A question about your personal background, how did you join the occupation organised by the Union of Undocumented Workers for Regulation movement? What was the most difficult part?

I also became an activist despite myself. I was an undocumented worker for 10 years with no experience in activism. I have a job but whenever I have time, I answer calls from collectives. After hearing about the occupation, I joined the activists. I started as a simple occupier, then organically others asked me to take part and represent the movement at meetings with supporters. A lot of this representation work is done alone, but the consultation process for the decision making is very important for the movement. Indeed, decisions have always been taken democratically by the occupiers. Finally, I continued to respond to calls from activists from other causes such as sex workers, health workers because I believe in the convergence of struggles.

Did you see any negative narratives circulating about undocumented workers especially at the level of political parties and the media?

We have suffered several forms of blasphemy, insults, slander from individuals



on social media but it has been minimal in terms of numbers.

Moreover, some media identified us as homeless people looking for a roof over our heads, to delegitimise our cause and our political demands. However, after our actions, the media relayed our message in a pragmatic and honest manner. We managed to be very present in the media as our struggle was mentioned in the media in 32 countries.

How did you experience demonstrations? Have you seen any forms of repression during the mobilisations, if so, what were they and by whom?

The first thing to say is that the declaration to submit in order to lawfully demonstrate was a simple procedure. We only had to respect the health protocol and declare the route of the demonstration

OUR STRUGGLE WAS MENTIONED IN THE MEDIA OF 32 COUNTRIES

and in the majority of cases the declaration was approved.

Regarding the repression, the only ones we have experienced were from the police forces, which implement instructions and techniques that constitute a hindrance to our right to protest. We have suffered excessive use of violence and tear gas. There have been arbitrary arrests, notably at the end of April 2021, 66 people were arrested at the end of the demonstration when they tried to join the occupation location. Indeed, Brussels police implemented techniques to make demonstrators take different a route to access the occupation in order to encircle them via the “nasse” technique and arrest them.

How would you describe your relationship with the authorities, in particular the national government? How did the negotiations with the government go? What arguments did they put forward to refuse your demands?

From the beginning, our demands were not welcomed. At the beginning of April 2021, we handed over our demands to

the Secretary of State on asylum and migration but unfortunately, he did not follow up. He was stubbornly attached to a case-by-case policy which maintained the blockage. This is the reason that the occupiers decided to start our hunger strike. The government has called this action a suicidal act, yet in our view this hunger strike is a form of struggle and militancy to make our voice heard against a deaf government. Indeed, this hunger strike follows 6 months of demonstrations and 7 months of occupation which did not convince the government to open a discussion with us.

The effects of the hunger strike have been devastating for many and irreversible for some. We suffered neurological and psychological disorders, fainting,

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post-traumatic syndrome, kidney failure, depression, suicide attempts... All this happened as a result of the government’s declarations. When we made a step towards the Prime Minister by sending a letter in order to open channels of discussion and negotiation, he referred us to the Secretary of State despite the seriousness of the situation. Following this second rejection, the activists decided to close the doors of the occupations and to start a thirst strike. When we reached an agreement with the Secretary of State on the elements of clarification it was very



WE NEED TO GIVE HOPE TO OTHER UNDOCUMENTED WORKERS AROUND THE WORLD

undocumented workers around the world and show that it is necessary to take the issue in our hands and make the change we want to see.

On the basis of these clarification elements, we are creating the files for each undocumented worker wishing to ask for regularisation. We then submit them to the authorities and wait for the answers.¹ It was planned that we would evacuate the church on 15 August, but we convinced them to let us stay until the end of September.² Indeed, we decided to maintain the occupations until the files were answered. This allows us to retain a certain political pressure and nurture the solidarity that developed among activists. We hope that the occupiers will not have to resume the hunger strike which has only been suspended.³

The mental health aspect was especially difficult when it came to the creation of the files. Emotionally and psychologically, it was the most difficult part as it

¹ Update: more than 400 applications have been sent. On 5 November, the Foreign Office announced it had sent a first package of replies. Of these 22, only 5 are positive, and the majority relate to applications for medical reasons, rather than residence and work permits under the mechanism of article 9bis of the 15 December 1980 law. The responses indicate that several of the government's assurances around how the applications would be treated have not been respected. People whose applications have been refused have been given an obligation to leave the territory.

² The Béguinage church asked the activists to vacate the space before the 28 February 2022.

³ Five former hunger strikers took legal action against the Belgian state, represented by the Secretary of State for Asylum and Migration, Sammy Mahdi, before the Brussels Court of First Instance. They argued a breach of the agreement reached on 21st July 2021 regarding the clarification elements. On the 2nd of February 2022 their claim was rejected by the court.

Despite the political context and the reluctance of the government we obtained a discussion. The fact that we were able to secure these clarification elements is an important victory. Moreover, if we had continued the hunger strike there would have been deaths among the activists and our movement is not there to bury people but to help them live decently though regularisation. Our movement has shown bravery despite the constraints. We hope that the people who will take over the movement will be able to continue on this basis to reinforce these gains and obtain further improvements for the situation of undocumented workers. We need to give hope to other

IN OUR VIEW THIS HUNGER STRIKE IS A FORM OF STRUGGLE AND MILITANCY TO MAKE OUR VOICE HEARD AGAINST A DEAF GOVERNMENT

difficult to convince the activists in each occupation to stop their thirst and their hunger strike as they wanted to continue the fight. They finally decided to stop their thirst strike and suspend their hunger strike.

What concessions did the government make on 21 July 2021? What are you planning now?

Our discussion with the government took place with a facilitator who unfortunately was specialised in issues relating to migrants and asylum seekers and not in the regularisation of undocumented workers. For this reason, the volunteer lawyers decided to approach the Immigration Office, with whom they were able to negotiate the inclusion of clarification elements in the regularisation files as well as the admissibility of claims made from Belgium's territory and not the origin country. These clarification elements aim at showing the roots built in Belgian society. While non-exhaustive, these elements include familial and social ties, integration, the person's abilities and potential.

is an impossible task to summarise and prove a person's life on paper. This paper file system does not express the reality of a person's life, and the government does not understand this. While going through a difficult recovery journey both physically and psychologically, activists had to compile their file and get various documents from numerous administrative bodies. We were able to mobilise two coordinators to help us with the workload that was involved in carrying out initial checks of the documents before sending them to the volunteer lawyers. We were also available to answer the many questions that activists had (administrative, legal, etc.). Therefore, the creation of the files came in on top of the rest of the activities we were leading which led to a period of increased stress.

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What kind of support did you receive from organisations at local, national or European level? Can you identify supports at European level that could help to move the cause of undocumented workers forward?

During the 5 months of the occupation, we had mostly local support and some support at regional level. When we had received media attention, we also secured some support at national and European level (France, Spain, Italy).

Undocumented workers are confronted with measures of repression and expulsion. The discussion often results in a

dead end. We need to join forces with institutional support because, ultimately, the problem is structural, and all institutions need to be involved and take a stand on this problem.

People such as MEP Pietro Bartolo which has shown great solidarity with undocumented workers, can make things happen. He made an important step by coming to the church and standing with undocumented workers. His position as an MEP can help move forward the national discussion and pass this political blockage by working at a European level as it is a European struggle.

If we succeed, all our supporters succeed with us in advancing the undocumented workers cause. ■

The interview was carried out on 16 September 2021.