

Cases of criminalisation of migration and solidarity in the EU in 2023



This briefing highlights cases of criminalisation of solidarity with migrants as well as criminalisation of people crossing borders in the EU in 2023. It is followed in the annex by an extensive list of media sources of the cases of individuals who were criminalised for providing solidarity as well as migrants who were criminalised.

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Executive Summary

In 2023, PICUM's media monitoring confirmed a concerning trend: at least 117 individuals faced criminal or administrative proceedings for acting in solidarity with migrants in the EU. Additionally, at least 76 migrants were subjected to criminalisation under counter-smuggling legislation. Furthermore, news articles highlighted fifteen instances of non-judicial harassment directed at human rights defenders and civil society organisations within the EU.

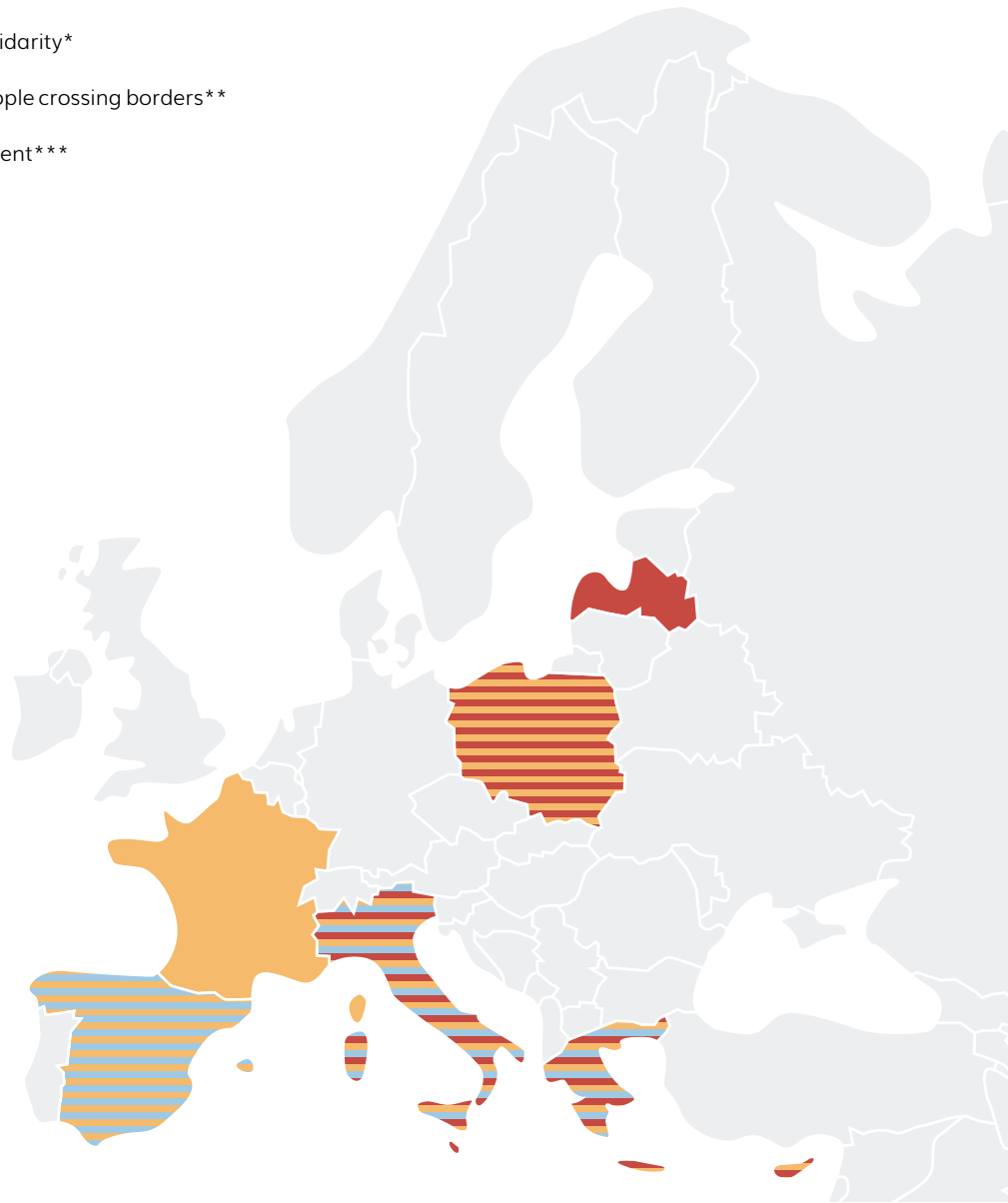
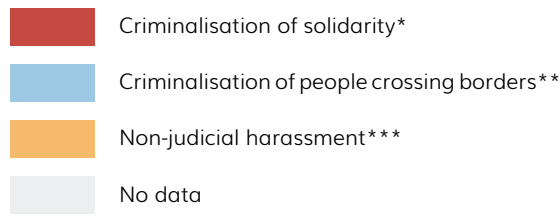
Due to the significant gap in statistical and official public data¹ regarding individuals accused, charged, or convicted for smuggling and related offenses, this briefing relies on a media alert system, which may not comprehensively capture all relevant incidents reported across EU countries. Consequently, the figures presented likely underestimate the true extent of such occurrences. In addition, it is likely that many cases, particularly regarding people who are migrants, go unreported by the media.²

Beyond the continuously high number of people who have been criminalised in 2023, this report highlights different trends. Under the current legal system, charges of facilitation and smuggling can be used to criminalise migrants or people without regular residence and those acting in solidarity with them. Despite numerous and protracted judicial proceedings, actual convictions remain low. This report also looks at the several cases of people and organisations across Europe that have been victim of non-judicial harassment.

Moreover, the findings of our media monitoring seek to shed light on the criminalisation of people crossing borders irregularly, which remains a widespread, but relatively hidden phenomenon. A comparison between PICUM's findings and existing research reveals a tendency for the media to underreport the criminalisation of migrants. Yet, the majority of cases analysed by PICUM align with research indicating that migrants, including children, often face unfounded accusations and endure harsh legal processes for the sole fact of migrating.

117 people criminalised for acting in solidarity with migrants

76 people criminalised for crossing borders



*PICUM's media monitoring revealed that **Italy** and **Greece** had the highest number of people criminalised for solidarity (74 and 31 respectively),³ followed by **Poland**,⁴ **Malta**,⁵ **Latvia**,⁶ and **Cyprus**.⁷

All instances of criminalisation of people crossing borders were recorded in countries at the EU's external borders, such as **Italy (30),⁸ **Greece** (25),⁹ and **Spain** (21).¹⁰

***Most cases of non-judicial harassment and intimidation took place in **Italy**,¹¹ followed by **Poland**,¹² **France**,¹³ **Greece**,¹⁴ **Cyprus**¹⁵ and **Spain**.¹⁶

Introduction

In recent years, the criminalisation of solidarity with migrants and of people crossing borders irregularly has been on the rise in Europe.¹⁷ This represents a threat to civic space and the rule of law in the EU, and sanctions migrants based on the sole fact that they are crossing EU's borders irregularly.

Despite the seriousness of this phenomenon, statistical and official data are difficult to find.¹⁸ To fill this gap, PICUM has been regularly monitoring media sources across the EU, in order to track cases of individuals accused, charged, or convicted for smuggling and related offenses, both because they crossed a border irregularly, and for actions in solidarity with migrants.

For the second consecutive year,¹⁹ this briefing provides an overview of the results of PICUM's

media alert system based on different national news outlets over a period of twelve months, from January to December 2023. Our media monitoring has no claim of comprehensiveness, as some news may not be detected by our alert system. However, it provides a comparative overview of this trend across different member states, and it shows how it evolved through the years. In addition, these findings are consistent with the outcome of national-level research conducted by other civil society organisations, activists, scholars and experts.

In 2023, the analysis of PICUM's media monitoring revealed several interrelated conclusions, which paint a concerning picture of growing criminalisation touching hundreds of migrants and other civil society actors.

Number of people criminalised for acting in solidarity with migrants

At least 102 in 2022



At least 117 in 2023

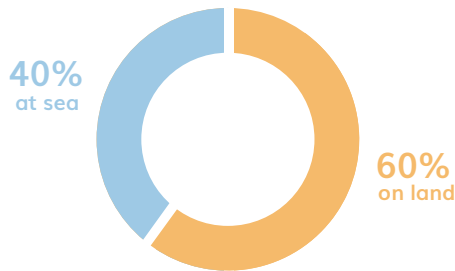


Criminalisation of solidarity confirms a growing trend in 2023

Between January 2023 and December 2023, at least **117 human rights defenders²⁰ faced judicial proceedings in the EU for standing in solidarity with migrants**. This data confirms a concerning, ongoing trend observed in previous years as well as an increase compared to the figures from 2021 and 2022.²¹

In 2023, people were criminalised for actions with a clear humanitarian purpose, such as trying to rescue people in distress, or providing them with shelter and livelihood (see table).

Cases targeting solidarity with migrants on land²² and at sea.²³



| Action | Number of people criminalised |
|--|-------------------------------|
| Search and rescue of migrants at sea ²⁴ | 46 |
| Providing shelter to migrants ²⁵ | 19 |
| Promoting inclusive policies at local level ²⁶ | 18 |
| Trying to stop a deportation ²⁷ | 17 |
| Providing migrants with food, water and clothes ²⁸ | 8 |
| Preventing an escalation on a boat in distress ²⁹ | 4 |
| Other actions related to their activities as human rights' defenders ³⁰ | 3 |
| Alerting the authorities about the arrival of people in need of asylum ³¹ | 2 |
| Total number of people criminalised for solidarity with migrants | 117 |

Case study

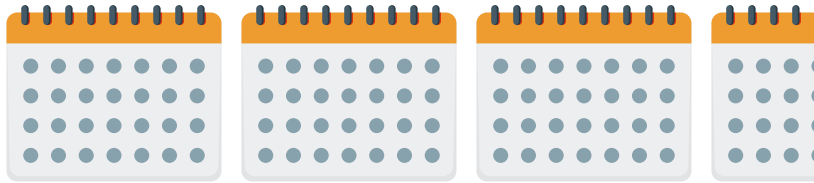
Latvia: Human Rights Defenders Face Legal Action for Assisting Asylum Seekers

In January 2023, Ieva Raubiško and Egils Grasmanis, members of the association "I Want to Help Refugees," helped a group of asylum seekers who were at risk of being returned to Belarus from Latvia. Upon the authorities' arrival, they were accused of facilitating the 'illegal movement of a group of persons across the state border,' as per the Latvian Criminal Code. Their criminalisation case was also raised by the UN Special Rapporteur on Human Rights Defenders and other UN experts.³²

Many human rights defenders are acquitted but face long and distressing proceedings

Most human rights defenders' trials last for several years. Of the 117 human rights defenders criminalised in 2023, 83%³³ were in proceedings which had continued from previous years.³⁴ The average length of the proceedings recorded by

our media monitoring is 3.5 years. In one of the cases that ended with an acquittal in 2023, legal proceedings for 17 of the 18 people involved lasted for almost eight years.³⁵



3.5 years average length of proceedings

Case studies

Greece: prosecutor lodged an appeal to prolong 24 human rights defenders' legal ordeal

On 13 January 2023, the Mytilene Appeals Court officially dropped the charges against 24 human rights defenders, including Sarah Mardini, Sean Binder, Nassos Karakitsos and Pieter Wittenberg. Their arrest in 2018 stemmed from their efforts in rescuing and aiding refugees and migrants arriving by sea on Lesbos Island. They faced multiple charges, such as membership in a criminal organization, espionage, and assisting third-country nationals in irregularly entering Greek territory. The charges were dismissed as Greek authorities failed to present substantial evidence supporting the accusations. After the Deputy Prosecutor from the Supreme Court appealed the acquittal in February 2023, the trial started again but was concluded in September 2023 with a further affirmation of the dismissal of the misdemeanour charges by the Supreme Court of Greece. However, the felony charges remain unresolved.³⁶

Poland: arrest of humanitarian aid worker

In September 2023, Polish authorities arrested a humanitarian aid worker for aiding migrants at the Poland-Belarus border. She has been charged with heading a criminal group organizing 'illegal border crossings to Poland', risking up to 10 years in prison. This is the first Polish case where the judge ordered pre-trial detention, which was appealed by her lawyers.³⁷

In 2023, judicial proceedings ended for 42 of the 117 people criminalised. Of these, 40 were acquitted.

Even if they end in an acquittal, trials still have heavy consequences on human rights defenders' finances, personal life, and psychological wellbeing.

Among the cases covered by our media review, two persons were convicted but had their sentences reduced or charges dropped (see below). Both of these cases were highly controversial and mediatised, demonstrating how trials are often based on an improper use of the legal framework to sanction solidarity and actions committed without criminal intent.

Case studies

Man sentenced after trying to save the lives of fellow boat passengers

M. H. is a Somali refugee arrested in 2021 following a shipwreck during which he tried to save the lives of those on board.³⁸ M. H. was initially condemned to 142 years in prison in Greece, despite testimonies stating that he was also a boat passenger and that the people on the boat were abandoned by smugglers at sea. In January 2023, the appeals court judge reduced his sentence to eight years and ordered his release.

Former mayor Mimmo Lucano accused of irregularities for the way he promoted migrant inclusion in the town of Riace

In 2021, Mimmo Lucano, former mayor of Riace, was sentenced to over 13 years on charges of criminal association, fraud, embezzlement, and abuse of office. In October 2023, the most serious charges were dropped by the Court of Appeal except for one case of fraud, and he was given a suspended sentence of one year and six months.³⁹

Human rights defenders and NGOs face sanctions and several other forms of non-judicial harassment

Our media monitoring recorded at least fifteen cases of administrative sanctions and non-judicial harassment, concerning seventeen individuals⁴⁰ and twelve NGOs.⁴¹ These cases are in addition to the 117 individuals criminalised for solidarity with migrants described above. In the cases of non-judicial harassment, based on the information available, no investigation or judicial proceedings were started against the individuals or NGOs concerned.

In one third of the cases,⁴² the individuals or the organisation concerned were issued an administrative fine for their actions in support to migrants. Other non-judicial forms of harassment included confiscation of material,⁴³ police harassment or detention,⁴⁴ threats by private groups,⁴⁵ restrictions of access to certain locations and to people of concern,⁴⁶ and defamation.⁴⁷

Eight cases of harassment took place following acts of solidarity on land, and seven cases of harassment were targeted at search-and rescue activities at sea.

Legislative developments in Italy and Germany restrict NGOs' search and rescue operations

Since January 2023, **Italy** imposed limitations on search and rescue operations, allowing vessels to conduct only one rescue at a time.⁴⁸ Several search and rescue NGOs, such as Emergency, Sea-Eye, Sea Watch, and Open Arms faced detention and fines for consecutive rescue operations.⁴⁹

In **Germany**, an amendment to the Residence Act expanded criminal liability for assistance to entry into member states, raising concerns about the criminalisation of humanitarian aid. While it was clarified this would only concern activities 'at land', legal experts warned of loopholes potentially criminalizing rescue operations for unaccompanied children at sea.⁵⁰



At least 17 people and 12 NGOs concerned

Case study

Threats, violence, harassment and smear campaigns against Cypriot NGO KISA

KISA, a leading non-governmental organisation fighting for human rights and equality for all in Cyprus, continued being object of harassment and attacks in 2023. KISA and its members reported multiple episodes of physical and verbal violence, harassment and smear campaigns linked to their work in defending the rights of migrants and refugees. Despite multiple reports, authorities and police failed to take any steps to protect KISA. In January 2024 the situation further escalated as KISA's offices were targeted by a bombing attack.⁵¹

Criminalisation of people crossing borders irregularly is widespread, yet underrepresented in the media

In 2023, at least **76 migrants⁵² were criminalised on grounds of facilitation of irregular migration, smuggling and other charges**. Of these cases, half were initiated in 2023, and half were ongoing cases.

Criminal proceedings that are launched against migrants accused of being 'smugglers' are often absent from official data and less visible in the media. Therefore, data collected in this briefing is likely to underrepresent the reality.

In addition to being identified as the alleged boat or car drivers, actions on the basis of which people were accused of facilitation, smuggling and other charges included their mere presence on a boat, resisting a pushback, or collecting evidence with a mobile phone. The accusations fail to capture the underlying motivations behind these actions, which often include reuniting with family members, covering the cost of the passage, seeking livelihoods, and supporting others.

The criminalisation of solidarity with migrants is deeply tied with the criminalisation of migration itself. These are not two separate issues, but should be considered in a continuum with restrictive migration policies that make border crossing unsafe and create a hostile environment against those who are considered to have entered in an irregular manner.

| Action | Number of people criminalised |
|--|-------------------------------|
| Driving a boat or a car transporting other undocumented people ⁵³ | 53 |
| Being on a boat that irregularly crossed a border ⁵⁴ | 12 |
| Resisting a pushback at sea ⁵⁵ | 9 |
| Recording videos to collect evidence ⁵⁶ | 1 |
| Putting fuel in the engine's tank ⁵⁷ | 1 |
| Total number of people criminalised for crossing EU borders | 76 |

Despite the scarcity of official data, research by civil society organisations and activist groups paints a deeply concerning picture. Within Italy, the organization 'ARCI Porco Rosso' reported that as of January 2024, it is supporting 107 individuals accused of 'smuggling', the majority of whom are currently held in criminal detention.⁵⁸ The organisation also reports that at least 177 people have been arrested following their arrival by boat in Italy in 2023.⁵⁹ In Greece, a recent report looking at the situation in the country's prisons found that, as of February 2023, people convicted of smuggling formed the second largest group by crime, with 1,897 (almost 90%) being third-country nationals.⁶⁰

Trials against boat drivers characterised by procedural rights violations and faulty evidence

PICUM media monitoring features many examples of cases of people who have been accused on the basis of faulty evidence, riddled with procedural irregularities, or where defendants were acquitted in appeal phase after spending years in prison. **Among the cases of alleged boat drivers that ended in 2023, nine people⁶¹ were convicted.** In three additional cases, defendants were convicted but are in the process of appealing the decision.⁶²

The number of people who received an acquittal (21)⁶³ is much higher. In a case involving ten persons criminalised as boat drivers in Italy despite acting under duress, proceedings lasted seven years.⁶⁴ In two landmark cases, the Greek court of Mytilene awarded compensation to a person who was unjustly arrested for almost three years, and the court of Syros ruled in favour of two men charged with 'facilitating illegal entry' into Greek territory, acquitting them due to their refugee

status (see textbox below).⁶⁵

Boat drivers are often identified on the basis of faulty evidence or unreliable testimonies.⁶⁶ Convictions are often issued after procedures characterized by lack of fair trial guarantees, such as lacking or inadequate access to legal aid and translation.⁶⁷ Research also shows that migrants face harsh treatment during legal proceedings.

A study that monitored 48 different smuggling trials in Greece between 2016-2019 found that the average length of each trial was 38 minutes.⁶⁸ Non-nationals also frequently encounter prolonged pre-trial detention due to challenges in accessing alternative measures such as house arrest.⁶⁹ Criminal proceedings, including when they end in acquittals, can also have a life-long impact on the possibility of living regularly in the EU.⁷⁰

Case studies

Court in Greece awards €16,000 for unjust imprisonment

Akif Rasuli was arrested in 2020 on charges of 'facilitating illegal entry' into Greece and 'causing a shipwreck', after the Greek coast guard tried to push the boat on which he was travelling back to Turkish waters.⁷¹ Although not found guilty of causing the shipwreck, Rasuli was convicted of smuggling, resulting in a 50-year prison sentence. In 2022, he was acquitted of all charges on appeal, leading to his release after nearly three years of wrongful imprisonment. In September 2023, the Mytilene court acknowledged the injustice of Mr. Rasuli's imprisonment and granted €15,920 in compensation.⁷²

Court sets precedent by exempting two refugees from charges of 'facilitating illegal entry'

In 2023, the court of Syros ruled in the case of two men charged with 'intentionally and serially facilitating the illegal entry into Greek territory of third country nationals', which could result in imprisonment for up to 10 years and a minimum fine of 20,000 euros under Law 4251/2014. However, both were acquitted of all charges as the Court found they could not commit the offence of facilitation of illegal entry, and do not fall within the scope of the law due to them receiving refugee status.⁷³

Counter-smuggling legislation is the most used tool to criminalise acts of solidarity and crossing of borders

Charges of migrant smuggling or facilitation of entry, transit or stay (depending on how the crime is defined in the national legislation) were used to criminalise the majority of the people acting in solidarity (59,8%)⁷⁴ as well as of the migrants crossing EU borders (61%).⁷⁵

In addition to charges for smuggling and facilitation, people also faced other charges and/or aggravating circumstances such as conspiracy,⁷⁶ abuse of office,⁷⁷ fraud,⁷⁸ extortion,⁷⁹ embezzlement,⁸⁰ falsifying documents,⁸¹ money laundering,⁸² espionage,⁸³ illegal procession of personal data without permission from the person concerned,⁸⁴ conspiracy to commit an offence,⁸⁵ manslaughter,⁸⁶ endangering the life of others,⁸⁷ belonging to a criminal organization,⁸⁸ irregular entry,⁸⁹ and unauthorised transport,⁹⁰ trafficking⁹¹ and causing a shipwreck.⁹²

Most of these cases end up being deemed unfounded by courts and tribunals (see pages 8-9 and 12). This shows to what extent **counter-smuggling policies have been based on misconceptions about what constitutes migrant smuggling, and end up harming rather than protecting, the rights of migrants and of people acting in solidarity.**⁹³

Criminalisation likely to increase with the revision of the EU's 'Facilitators' Package'

In November 2023, the European Commission published a [proposal for a new Facilitation Directive](#).⁹⁴ The proposal for a new Facilitation Directive fails to adequately address the risk of criminalisation of migration and solidarity, while adding new, controversial grounds for criminalisation. The proposal was published without an ex-ante impact assessment, which is required by the [Commission's Better Regulation Guidelines](#) for all cases which are likely to have significant economic, environmental or social impacts and where the Commission as a choice of [different policy options](#).

For a more detailed analysis of the proposal, see [PICUM's website](#).

Children are also accused of being smugglers

Of all the cases of criminalisation recorded in 2023, at least seven people criminalised were children at the time when the facts happened.⁹⁵

This is the case of **Ablaye**, who turned eighteen after spending one year and eight months in pre-trial detention in Spain, before being granted parole. His lawyer is still in the process of challenging an incorrect age assessment, so that he will not be tried as an adult.⁹⁶

Moha arrived in the Canary Islands when he was 15 years old. He did not correctly state his age because he wanted to be able to work to support his family rather than being held in a centre for unaccompanied minors. However, when he was accused of being the boat driver by other passengers he ended up in jail. He spent three months there before his lawyer was able to prove his real age.⁹⁷

Bangura and Ousaineu were arrested before they turned eighteen and tried as adults in Italy, as a result of an incorrect age assessment. Their cases are still pending, with severe consequences on their mental health and their life projects.⁹⁸

M., a 15-year old child, embarked to Europe with his father in November 2022. The father, a fisherman, reluctantly agreed to take on tasks on board to be able to afford the journey. Both were charged with smuggling upon arrival to Greece. The father was placed in pre-trial detention and sentenced to 280 years in prison. Not only M. was separated from his father but faces the same charges in juvenile court.⁹⁹

In 2019, **Abdalla, Amara, and Kader** – known as 'El-Hiblu 3' – fled Libya on a rubber boat. Once rescued, despite being instructed to return to Libya, the ship headed to Malta after those on board protested. Upon docking, the trio was arrested for allegedly hijacking the vessel. Witnesses claim they were mediating between migrants and crew. Despite being 15 and 16 at the time of the facts, Amara and Kader were treated as adults and held for several months in an adult prison.¹⁰⁰ After over four years, in November 2023, the Attorney General formally indicted them for terrorist activity and violence. They are currently facing a potential 30-year sentence.¹⁰¹

At least
7 children
were criminalised



Endnotes

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