



# Picking ‘Low-Hanging Fruit’ While the Orchard Burns: the Costs of Policing Humanitarian Actors in Italy and Greece as a Strategy to Prevent Migrant Smuggling

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## Abstract

Civil society organizations and individual volunteers were in many instances the first responders to the so-called ‘European humanitarian refugee crisis’. From 2015 onwards, they were celebrated by some as heroes. Meanwhile, during this same period, national and EU law enforcement agencies served to relabel civil society actors across a range of contexts as potential ‘migrant smugglers’—direct facilitators of conduits of irregular migrant flows, or a pull-factor by default through their services. The shift in rhetoric was met with a shift in policing practices: in Italy and Greece, among other EU member states, humanitarian acts were reframed from life-saving obligations to be met and commended, to administrative—and in some cases—criminal risks to be monitored, deterred and punished. This article builds on previous research to consider how since 2018, civil society actors in Italy and Greece have faced increasing demands and pressures for registration, coordination and financial transparency, and how these have profound repercussions on humanitarian and human rights work with, for and by refugees and other migrants. The article outlines four main opportunity costs of the policing of humanitarian actors as a strategy to prevent mobility of refugees and other migrants. Firstly, such measures pose a threat to civil society’s independence and impartiality from government interference; in doing so, they impact the efficiency of operations and disincentivize certain humanitarian actors from conducting life-saving work. Secondly, they have repercussions on trust between the law enforcement and civil society which may lessen the chances of migrants and those that serve them from sharing crucial information to stop and investigate ongoing violent crimes. Thirdly, this strategy leads to the politicization of the criminal justice system which undermines public faith in liberal democracy. Finally, resources channelled into investigating civil society actors funnel away resources from the focus on high-profile criminality. Given the pervasive human rights abuses committed against irregular migrants and asylum seekers, we argue that this misdirected policy equates to picking ‘low-hanging fruit’ while the orchard burns.

**Keywords** Policing · Humanitarianism · Refugee crisis · Smuggling · Search and rescue · Social trust · Civil society · Migrant smuggling · Irregular migration · Facilitation directive · EU law · International law · Human rights · Criminal justice · Rule of law · Democratic accountability

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## Introduction

This article explores the complex relationship between humanitarian assistance on the one hand, and political pressures to prevent irregular migration on the other. It does so in the context of the so-called ‘European humanitarian refugee crisis’ which began in 2015, and which continues until the time of writing in February 2020.

The fact of refugees and other migrants seeking to reach Europe via irregular means is not a new phenomenon. Their acute vulnerability and reliance on humanitarian rescue and aid are also not new, since state protection mechanisms remain insufficient.

Gallagher, among other scholars, has long pointed out that migration-related vulnerabilities that lead to migrant smuggling are intrinsically linked to the organisation of global migration regimes and the global economy (2002, 2015). This means that migrant smuggling occurs when there is a lack of humanitarian corridors to facilitate escape from ongoing conflicts, or when there is a lack of legal migration channels for family reunification or employment. Demand for migrant labour in certain sectors, including domestic work, hospitality and agriculture in higher-income countries, is also important (Basaran and Guild 2018). Nevertheless, these underlying drivers for irregular migrant work and related migrant smuggling have been scantily acknowledged within the UN Global Compact on Migration (Crépeau 2018) and, despite the introduction of international criminal justice instruments, a raft of vulnerabilities remain.

## Smuggling or Trafficking?

The UN General Assembly adopted The UN Convention on Transnational Organized Crime in November 2000 (United Nations General Assembly 2001). The convention clearly distinguished the constituting elements of migrant smuggling from human trafficking in two separate protocols. The UN Migrant Smuggling Protocol (United Nations General Assembly 2000a) defines the crime of smuggling as when smugglers profit from facilitating cross-border mobility in violation of border controls and when migrants consent to be smuggled. In the UN Trafficking Protocol (United Nations General Assembly 2000b) meanwhile, human trafficking is defined as using coercive or deceptive means; thus, there is no consent. Moreover, trafficking does not necessarily require border crossing or involve migrants (it can happen within the same country), and the trafficker seeks ongoing profit from labour, sexual or other exploitation. Thus, it has clear harm and profit motives.

In practice, smuggling and trafficking may be overlapping or difficult to distinguish. In the absence of institutions to ensure the contract, the migrant's initial consent may be violated. For instance, the smuggler may ask for more money, change the agreed means of travel and keep the migrant in debt bondage by using intimidation and force. In this case, migrant smuggling becomes human trafficking. Frequently, the two phenomena are blurred in approaches to migration management.

Migrant smuggling is described by EU policy makers as an ‘increasingly violent crime’ in a way that justifies its prioritisation and the allocation of resources for its investigations and prosecutions as a method of containment (Carrera and Guild 2016; Carrera 2019), and yet empirical research has observed how increased efforts to tackle migrant smuggling have resulted in more trafficking in human beings (Reitano et al. 2018). This article focuses on migrant smuggling as defined within the UN Migrant Smuggling Protocol.

EU policymakers took a different approach and departed from the UN Migrant Smuggling Protocol. The 2002 Facilitators’ Package creates a crime of ‘facilitation of irregular entry’ that

puts emphasis not on the 'financial or other material benefit' motive of smugglers, but on the violation of states' sovereign right to control their borders. This blurs the obligations of EU member states under the UN Migrant Smuggling Protocol. Academics commented at the time that these measures were adopted in an ad hoc and non-transparent way that entails high costs for refugees and other migrants (Carrera et al. 2016, 2018a, 2018b, 2018c; Militello and Spina 2019). The EU Facilitation Directive provides for an optional 'humanitarian exemption' clause, yet instead of being an effective safeguard, its vagueness opened possibilities for misuse which have led to the impingement on freedoms for civil society (Vosyliūtė 2019; Carrera et al. 2016, 2018c). The obtuseness of the EU's Facilitators Package regarding what is (not) a crime, when combined with the political salience of this issue, has led to an increase in the EU's political, operational support and funding for anti-smuggling activities (Carrera et al. 2018b). This has resulted in the policing of citizens and civil society in the countries of first arrival. Search and rescue (SAR) NGOs operating at sea and those providing assistance at land borders and spaces of transit have been placed under heightened scrutiny (Carrera et al. 2018a) in what Mitsilegas has termed a 'catch all' approach (2019).

Academics have proposed various ways to reduce the vulnerabilities of smuggled migrants within the limits of current political constraints (Gallagher 2015; Basaran and Guild 2018; Crépeau 2018; Carrera et al. 2018a; 2018b). For instance, Gallagher (2015 55–own italics) has identified the important role of 'promoting political and legal acceptance of basic rights for all migrants, developing quality control systems for international labour recruitment, eliminating recruitment fees and sponsorship schemes and *co-opting civil society in an effort to increase transparency and accountability of governments and business activities*', yet such calls have largely fallen on deaf ears. This article thus adds to a growing body of literature that shows that without effective human rights safeguards, attempts to regulate international migrant smuggling come at a high cost for civil society (Gallagher 2002), as well as for law enforcement and society as a whole. Crucially, such costs also fall heavily on the smuggled migrants and their families whose rights they seek to defend.

## A Growing Humanitarian Need

Between 1993 and mid-2018, of the 34,361 recorded migrant fatalities in Europe, over 27,000 individuals were formally registered as having drowned at sea, often hundreds at a time when large ships capsized (The Guardian 2018c). Many more individuals are missing. Largely in response to acute instability in the Middle East and African regions, 2015 saw a record over a million asylum seekers and undocumented migrants arriving to Europe in search of international protection and/or a better life. Furthermore, 3771 were recorded as dead or missing. In subsequent years, in part as a response to a range of deterrence measures introduced by the EU Home Affairs agencies and governments, coupled with international externalisation deals, (e.g. the EU-Turkey statement, deals with Libya), the number of arrivals fell (to 373,652 in 2016; 185,139 in 2017; 141,472 in 2018 and 123,663 in 2019—UNHCR 2020). After spiking in 2016 at 5096, over the same period, the number of registered dead or missing also fell (to 3139 in 2017; 2277 in 2018 and 1319 in 2019; however, as Vosyliūtė (2018) has demonstrated elsewhere, during the same period, the risk of death for those migrating irregularly over land or sea increased exponentially). These statistics can be read in two ways, as evidence of a successful deterrence strategy on the one hand, and as a policy of abandonment on the other. Preventative policing and practices based on suspicion and intimidation, coupled with administrative sanctions, sit alongside criminal investigations and prosecutions as part of a raft of

deterrence measures which have served to dissuade humanitarian actors from conducting life-saving work. Meanwhile, many governments have drastically cut back on their provision of economic and social rights to undocumented and newly arrived migrant members of the community (Vosyliūtė and Joki 2018; Allsopp 2017).

Civil society organizations and individual volunteers were in many instances the first responders to Europe's 'refugee crisis' (Agustín and Jørgensen 2018), including in Greece (Micinski 2019) and Italy (Zamponi 2018). In 2016, the European Economic and Social Committee (EESC) awarded its Civil Society Prize to those 'who have demonstrated outstanding examples of solidarity towards refugees and migrants.' Among awardees were Hungarian NGO Artemisio Foundation, working at land borders, the German SAR NGO SOS Méditerranée, Greek baker Dionysis Arvanitakis, a branch of the Spanish NGO SOS Racismo and the Greek NGO Iliaktida (Sunbeam). Two years later, SAR NGOs operating in the Mediterranean were nominated for the Sakharov Prize for Freedom of Thought in 2018 (Gotev 2018).

At the same time as they were being celebrated by some as heroes, national and EU law enforcement agencies nevertheless served to relabel civil society actors across a range of contexts as potential 'migrant smugglers'—direct facilitators of conduits of irregular migrant flows, or a pull-factor by default through their services. A shift in policing practices followed: in Italy and Greece, among other EU member states, humanitarian acts were reframed from life-saving norms to be commended, to administrative—and in some cases—criminal acts to be monitored, deterred and punished.

This article builds on previous research to consider how since 2018, civil society actors in Italy and Greece have faced increasing demands and pressures for registration, coordination and financial transparency, and how these have profound repercussions. It outlines four key opportunity costs of the policing of humanitarian actors as a strategy to prevent migrant smuggling as they affect NGO operations, migrants and society as a whole. Firstly, such measures pose a threat to civil society's independence and impartiality from government interference; in doing so, they impact the efficiency of operations and disincentivize certain humanitarian actors from conducting life-saving work. Secondly, they have repercussions on trust between the law enforcement and civil society which may lessen the chances of migrants and those that serve them from sharing crucial information to stop and investigate ongoing crimes. Thirdly, this strategy leads to the politicization of the criminal justice system which undermines public faith in liberal democracy. Finally, resources channelled into investigating civil society actors funnel away resources from the focus on high-profile criminality: given what we know about the pervasive human rights abuses committed against irregular migrants, we argue that this misdirected policy equates to picking 'low-hanging fruit' while the orchard burns.

### **The Research Problem: Policing Humanitarianism as a Misguided Strategy to Combat Human Smuggling**

In a previous article, Carrera, alongside the authors, elaborates a theoretical framework that explains how in Europe, over the course of the 'humanitarian refugee crisis', policing humanitarianism escalated from suspicion, to intimidation and harassment, and/or disciplining before eventually resulting in criminal prosecutions Carrera et al. 2018b. In our book *Policing Humanitarianism: EU Policies Against Human Smuggling and their Impact on Civil Society* (2018a), we demonstrate how, as well as escalating in certain contexts as part of a continuum, these dynamics also co-concur in Hungary, France, the UK, Italy and Greece. In this article, we focus on how dynamics of suspicion, intimidation and harassment have evolved in Italy in

Greece. The case of Search-And-Rescue (SAR) NGOs is the most visible example of how the policing of humanitarianism can escalate from suspicion, intimidation and harassment to disciplining and formal criminalisation. NGOs conducting 'search and rescue' activities at sea were first commended for saving lives at sea, at a time when the EU and its member states were 'overwhelmed, unable or unwilling to do so'. In 2015, they were praised by the President of the European Commission, Jean Claude Juncker, as setting the example for the EU and its member states. Public opinion shifted in 2016, and the EU Common European Asylum System began to show its deficiencies. Member states at the EU frontier borders experienced new pressure on the weak hinge in its conflicting mandate (Guild 2009): to uphold security and prevent 'irregular' entries on the one hand, and to respect the 1951 Geneva Convention (United Nations General Assembly 1951) and its 1967 Protocol (United Nations General Assembly 1967) for protecting refugees and the right to asylum on the other (Carrera 2019; Lemberg-Pedersen 2018). While there are only very few regular channels for asylum seekers to enter the EU,<sup>1</sup> the majority have no choice but to come irregularly. In this context, Greece was found 'guilty' of having 'serious deficiencies at the external Schengen borders' for allowing asylum seekers to enter its territory (Carrera and Guild 2016; Carrera et al. 2018c). The lack of solidarity and loyal cooperation in responsibility-sharing over asylum seekers among the EU member states shifted attention to strengthening borders, externalising migration and offshoring responsibility over asylum seekers to third countries (Carrera 2019; Carrera and Cortinovis 2019c). Subsequently, humanitarian assistance, with a logic of 'welcoming', was relabelled as a 'pull factor' (as discussed by Cusumano and Villa (2019) in this special journal issue).

SAR NGOs were first covered with the veil of suspicion; then, they were intimidated and harassed, disciplined with various codes of conduct; eventually, several ended up being investigated and prosecuted for migrant smuggling-related crimes (FRA 2018a, 2018b and 2019). A statistical overview conducted by the European network ReSOMA shows that criminal investigations and prosecutions in this area were made mainly on the grounds of facilitation of entry, transit and residence and often accompanied with aggravating circumstances, such as 'membership in organised criminal groups' and 'financial gain' or 'fraud' (Vosyliūtė and Conte 2019a b; Conte and binder 2019). Some of the accusations have been construed as crimes against the state, such as 'espionage', 'endangering warship' and volunteers enlisted as a 'threat to public security'. This exemplifies the increasingly politicised nature of solidarity, and how hostile rhetoric (such as politicians referring to even well respected NGOs like Doctors Without Borders as 'taxis') has increasingly facilitated restrictive and increasingly repressive state policies towards refugees and other migrants alongside those who seek to assist them (Allsopp 2017; FRA 2019; Mitsilegas 2019). This policy issue remains high on the agenda for the new European Commission. On March 3, 2020, in response to Turkey reopening its border with Greece, the European Commission President, Ursula von der Leyen, affirmed: 'This border is not only a Greek border, it is also a European border...I thank Greece for being our European aspida [shield] in these times.' This article therefore presents a timely update of our prior research, presenting new evidence and drawing out new implications in the form of the four identified costs of this misguided strategy of policing.

<sup>1</sup> The Temporary Humanitarian Directive was never activated by the EU Council and the Directive on EU Humanitarian Visas is still pending. Humanitarian visas were not widely used at the national level either. Few church-led initiatives allowed for very limited 'protected entry' initiatives. Some asylum seekers meanwhile managed to use family reunion or other legal migration schemes. Resettlement from third countries into the EU Member States also remains limited.

## Methodology

This article reports on a follow-up study to prior research for which 89 interviews were conducted between 2016 and 2018 and two focus groups involving civil society, national law enforcement, border and coastguards, and EU Justice and Home Affairs agencies implementing anti-migrant smuggling policies (Carrera et al. 2018a). Our initial analysis has been updated with a state-of-the-art literature review. In addition to peer-reviewed scholarship, civil society reports were crucial for corroborating and updating the empirical data; these reports were cross-checked against the reports made by European agencies, such as FRA (2018a, 2018b, 2019) and various human rights bodies, such as Council of Europe, OSCE and the UN. Pursuant to this desk-based research, we conducted follow-up interviews with five NGOs in Greece and five in Italy who had been part of our previous research, in addition to corroborating certain factual matters with a wider network of lawyers who we had brought together for our initial study. We began our analysis with the following literature review.

### Literature Review: Would ‘Smuggling’ by Any Other Name Smell As Sweet?

This section reviews different elements of the phenomenon of policing humanitarianism—its causes and consequences for civil society actors, migrants and society; it also addresses its negative implications for the fight against serious organized crime.

Academics have used a range of conceptual frames to address the issue that we refer to as ‘policing humanitarianism’. These include: ‘criminalisation of solidarity’, ‘scapegoating the rescuers’; ‘shrinking civil society spaces’ and ‘humanitarian smuggling’. Critiques have focused on the two core functions of humanitarian actors in the migrants’ rights space: firstly, their function in upholding migrants’ rights; and, secondly, in a space in which liberal democratic values come under threat (in some cases twinned with rising xenophobia), their role in protecting core liberal democratic human rights which are central to social trust in society as a whole (such as freedom of assembly and expression). A final critical literature on this topic addresses the tension between these two functions of civil society and the politics of representation: to what extent does the public outrage about policing humanitarianism play into a ‘white saviour complex’ and distract attention away from those migrants who are most commonly the targets of criminal and immigration law (Stierl 2018)? It has been noted that while in media, it is often European activists who become the poster faces of this issue, many undocumented migrants have performed feats of daring humanitarianism assistance themselves, often at greater risk (e.g. of deportation) and without the same level of public support and the protection that this helps to assign. One example mentioned by various interviewees concerns the case of Ahmed T who spent four years in jail in Hungary under terrorist charges for a crime which many allege to have constituted no more than using a microphone to call for peaceful protest at the Hungarian-Serbian border (Amnesty 2019).

The theory of ‘policing humanitarianism’ (Carrera et al. 2018a, 2018b) explores how suspicion, intimidation and harassment are part of a continuum that can escalate to disciplinary actions and fully fledged criminal prosecutions of civil society actors for migrant smuggling. This helps to explain how criminal justice tools and, in particular, preventive policing methods, are routinely misused to track and infringe upon free civil society space. The academic research on ‘policing humanitarianism’ identifies the actors and their responsibilities at a national and EU level, pointing out that central pieces of the EU legislation to tackle migrant smuggling (known as the EU Facilitators’ Package) are riddled with ambiguities which lead to

confusion among a range of humanitarian and law enforcement actors at the international, national and local levels (Carrera et al. 2016, 2018c). Inconsistent implementation of anti-smuggling law is also identified as stemming from a tension between 'migrant smuggling' as understood at the UN Migrant Smuggling Protocol, and conceptualisations of crimes against the state (Conte and Binder 2019; Carrera et al. 2018c). The question of migrant smuggling is one that extends beyond traditional criminal justice. Legal analysis shows that even within EU treaties, 'facilitation' is placed under the migration management chapter. Meanwhile, at an operational level, the EU Justice and Home Affairs (JHA) agencies tasked to support this chapter have an increasingly broad and untransparent mandate. Policy and operational responses have led to increased 'predictive' policing of civil society actors that assist refugees and other migrants, including online surveillance and infiltration by secret agents (Carrera et al. 2018b). Others, as this article will explore, have faced new disciplining measures and criminal charges. Most of these criminal cases have ended with acquittals, illustrating the misguided nature of these prosecutions (Carrera et al. 2018c; Ferstman 2019).

Another cluster of research in this area has focused less on EU management and law and more on national political discourse and evolving policy norms. Work by Allsopp (2012; 2017) along with Ryngebeck (2015) and Fekete (2009, 2018); Fekete et al. (2017, 2019) on the 'criminalisation of solidarity' links attacks against NGOs to structural racism against migrants and the broader phenomenon of 'criminalisation of migration' (Provera 2015). This literature pays attention to racist and xenophobic rhetoric and attitudes promoted by politicians and state agencies, exploring how a 'hostile environment' was explicitly developed in certain countries (including the UK and Hungary, see article by authors, forthcoming, and also Kallius et al. 2016 and Fekete 2019) as a political communication method to deter migrants by denying their human rights and, in turn, punishing those who attempt to act 'in solidarity' with them. Civil society groups (and local authorities and private business) are discouraged from providing very basic services, starting from shelter and food and ending with those who attempt to uphold the right to life—search and rescue or anti-deportation activists. Such analysis calls for the protection of 'solidarity'—or 'fraternity' (Allsopp 2012) in national constitutional law and at the EU level as part of safeguarding fundamental principles such as non-discrimination and equality.

A related literature on 'scapegoating the rescuers' has analysed the very particular case of civil society saving lives at sea. It explores how their work has been re-framed a pull factor, as a 'migrant taxi' and 'collaboration' with and direct engagement in the migrant smuggling business model (Heller and Pezzani 2017; Gkliati 2016; Moreno-Lax et al. 2019; Cusumano and Villa 2019). This approach illustrates the scapegoating or 'blame-shifting' to SAR NGOs for the underlying political challenges in coming up with durable solutions for saving lives at sea. The key challenge is located in the lack of solidarity and inability to come up with fair responsibility-sharing among EU member states. The authors also challenge the labelling of sea rescues as a 'pull factor' (Cusumano and Villa 2019). In addition, this body of work highlights how SAR rescues have challenged externalisation arrangements with third countries, like Libya or Turkey (Moreno-Lax et al. 2019).

Literature on 'shrinking civil society space' focuses on the rule of law backsliding in countries including Hungary and Poland (Szuleka 2018; Youngs and Echague 2017). This approach helps to understand how civil society is being silenced through restrictions on funding, access to clients and/or attacks by politicians. Civil society actors are labelled as 'enemies of the state' for challenging human rights violations perpetrated by national authorities against refugees and migrants. Related to the literature on the 'criminalisation of solidarity', this research shows how pressures and attacks in the migrant support space limit more

generally civil society's role in safeguarding the rule of law and democratic institutions that are in line with fundamental rights. This approach hints at the need to resolve the Copenhagen Dilemma, the EU's and international organisations' capabilities to monitor and intervene to uphold civil society spaces in a timely manner when there are signs of rule of law backsliding (Bárd et al. 2016; Bárd and Carrera 2017).

Research on 'humanitarian smuggling' (Landry 2017) and critical analysis of 'migrant smuggling' (Sanchez and Achilli 2019; Reitano et al. 2018; Zhang et al. 2018; Micallef 2017; Carrera and Guild 2016) has revealed more complex and nuanced aspects of migrant smuggling, taking into consideration the personal and socio-economic situations of those labelled as smugglers. This scholarship challenges the oversimplified narrative of 'ruthless smugglers' who must be thwarted at any cost. The analysis identifies cases where family members have facilitated irregular entries of their children, spouses, as well as where friends and other individuals acted out of compassion (Sanchez and Achilli 2019; Zhang et al. 2018). This approach requires a thorough rethinking of what is (not) criminal in the 'area of migrant smuggling' and suggests that limited law enforcement resources could be better focused on issues of high criminality through accepting that grey areas should be excluded. In addition, it shows the implications for countries of residence and transit, when in absence of rule of law guarantees, they are tasked to fight migrant smuggling or rather, to prevent onwards migration. Empirical research in Libya, for example, reveals a worsening situation in which 'migrant smuggling' is transforming into 'human trafficking' and slavery, arguably as an outcome of EU policies and influences (Reitano et al. 2018).

While it is informed by thorough consultation of all the above literature, 'policing humanitarianism' is employed as the primary theoretical framework in this article. This is because this framework (i) allocates responsibilities to the EU and national actors which are the main source of the dynamics identified; and (ii) allows us to situate recent forms of policing in the context of pre-existing ones as part of a continuum of escalating policing of humanitarianism. While 'shrinking civil society space' highlights implications on the broader rule of law issues, it implies that it is something passively happening to civil society. In our analysis of the evolving policing of humanitarianism in Greece and Italy since our last study, we show how civil society is reacting and adapting to the (in)actions of government. The policing humanitarianism approach helps to analyse roles and responsibilities with, as a starting point, both European and national 'political masters'—European and national agencies that coordinate coast guards, border guards, police officers, prosecutors and independent judges.

## **From Suspicion to Formal Criminalisation: Civil Society in Italy and Greece**

In this second part of the article, we identify recent developments in the policing of humanitarianism in Italy and Greece at sea and on land and analyse these alongside those identified in past research. We then highlight four main opportunity costs of these practices as a strategy to prevent migrant smuggling as they affect NGO operations, migrants and society as a whole.

### **Search and Rescue at Sea**

As detailed above, the crackdown on NGOs conducting search and rescue (SAR) operations in the Mediterranean began in a context of increasing hostility towards migrants, and related



suspicion of the humanitarian intentions behind life-saving activities. EU member state authorities and EU Justice and Home Affairs (JHA) agencies, such as Frontex, started to criticise the work of civil society actors in the Central Mediterranean and Aegean in 2016. Among the accusations were that civil society may be assisting and even collaborating with smugglers. Our interviews back in November 2016 revealed that Frontex had 'knowledge of some volunteers' having an 'unclear past' (Interview Italy 2016). Subsequently, in December 2016, a leaked Frontex risk assessment was among the first elements of suspicion cast on the SAR NGOs. On that occasion, the agency collated separate statistics on how many people had been rescued by SAR NGOs. The analysis implied that civil society rescued 'too many, too quickly' (Carrera et al. 2018b). These data were reported by some media as 'civil society colluding with migrant smugglers.'

## Italy and the Mediterranean

In 2017, Catania prosecutor Carmelo Zuccaro claimed that he had intercepted communications between the SAR NGOs and Libyan smugglers. The hearing at the Italian Senate subsequently revealed that the prosecutor was not in possession of such evidence (La Repubblica 2017). This led the Senate to create the Ethics Code for Prosecutors when interacting with media. However, a conspiracy theory about SAR NGOs 'colluding with smugglers' started to spiral quickly. The Frontex risk assessment demonstrated how statistics are not 'neutral data'.<sup>2</sup>

The statistics, and various narratives about 'pull factors', were used to justify and legitimise the intimidation and harassment of civil society assisting refugees and migrants in Italy. In Italy, the situation deteriorated following the election of a new far-right government in 2018. The former Interior Minister Matteo Salvini, among other public figures, was the main protagonist of criticism of private rescue organisations and this criticism drew on pre-existing tensions in Italian society (Geddes and Pettrachin 2020). Since 2017, civil society has been put in a position of justifying their activities in front of public and media, proving that they are not the smugglers (see for example Reuters 2017; BBC 2018; Les Echos 2019).

UN human rights experts have expressed on numerous occasions their grave concerns about the 'continuing smear campaigns against civil society organisations engaged in search and rescue operations in the Mediterranean Sea...which have become more widespread in Italy' (UN Special Rapporteurs 2018, 2019a). Diego García-Sayán, the Special Rapporteur on the independence of judges and lawyers, expressed particular concern regarding political accusations directed at judges who, while fulfilling their duties, have ruled in favour of volunteers. The UN human rights expert recalled that:

'Politicians should refrain from commenting on judicial decisions, especially when legal proceedings are still ongoing. Public statements and personal attacks by high-ranking political figures are a serious interference with the autonomy of individuals judges, and may have the effect of hampering the authority of the judiciary as an autonomous branch of the State power' (UN Special Rapporteurs 2019b).

<sup>2</sup> Back in 2015–2016, when saving lives was still celebrated as moral victory, Frontex statistics were different. Any rescue, conducted by Italian coastguards, Guardia di Finanza, EUNAVFOR MED, NGOs and private merchant ships, were counted as successes of Frontex Joint Operation Triton. Since everyone rescued technically had been disembarked in Operation Triton, they were also counted in JO Triton statistics as 'persons disembarked'. In many cases, SAR NGOs would transfer the rescued people to the vessels of Operation Triton that essentially were Italian and foreign vessels paid by the EU to do so within the European Migration Agenda.

Policing humanitarianism in Italy also took the form of disciplinary measures. At sea, authorities introduced new damaging regulations, submitted vessels to unreasonably long inspections and imposed administrative penalties such as withdrawal of the boat's flag, fines and vessel confiscation. In this regard, winter 2018 was a particularly difficult moment for NGO rescue activities. In 2018, the Aquarius vessel operated by MSF and SOS Méditerranée was de-flagged twice—Gibraltar and Panama flags were taken away—and they were blocked in the port due to alleged economic and political pressure by the Italian government in response to disembarkation standoffs. The justification from the maritime authority to revoke the boat's registration was due to 'a political problem against the Panamanian government and the Panamanian fleet that arrived to the European port' (The Guardian 2018a, b).

Sea Watch also had its SAR activities obstructed several times in the first half of 2019. In January, Dutch and Italian authorities blocked the vessel Sea-Watch 3 at the port for inspections that lasted 21 days due to 'technical irregularities'. This measure came right after the Catania Prosecutor had cleared the NGO of any criminal charges following the rescue and disembarkation of 47 persons in Italy (Sea Watch 2019a). According to Sea Watch, these unreasonably long inspections had no legal foundation (ECRE 2019a). Two months later, the flag state prevented the vessel from leaving the port again owing to new safety requirements. Dutch courts later found the blockage unlawful and contrary to the principle of proportionality as life-saving activities outweighed the purpose of these new regulations (Sea Watch 2019b).

It is noteworthy that these attacks against the Aquarius and Sea-Watch 3 in winter 2018 befell in the context of an absence of civil rescue capacity in the Mediterranean because of political and judicial pressure on other NGOs (Euractiv 2019). The blockage of Sea-Watch 3 left a gap in SAR until Alan Kurdi, a vessel operated by Sea-Eye and Proemaid, started its activities in February (Sea Watch 2019c; ECRE 2019c). Moreover, as we will see, both NGOs became subject of criminal investigations a few months after. These developments show the costs of policing humanitarianism as a strategy of smuggling deterrence on the efficiency of human rights operations. In multiple instances, humanitarian actors were explicitly blocked from conducting life-saving work at a time of acute need.

In addition, NGOs continued to experience attacks and hindrances from the Libyan coastguard. EU-led operations Triton and EUNAVFORMED Sophia began training the Libyan coastguard, including about human rights (Carrera et al. 2018b). Then, with funding from the EU Trust Fund for Africa, the Italian government went on to equip the Libyan Coastguard to take over their mandate in the SAR zone (Carrera and Cortinovis 2019b). Italian authorities kept increasingly outsourcing border controls to Libya, by sharing the EUROSUR and other surveillance and reconnaissance findings about boats attempting to leave Libya (Fekete et al. 2017; Carrera et al. 2018b; Fekete et al. 2019; Cusumano 2019).

The GLAN lawyers, who submitted the *legal case* S.S. and others v Italy (application no. 21660/18–ongoing) before the European Court of Human Rights argued that Italy had effective control, and that without the Italian authorities such 'pull-back' operations could not have happened. Therefore, they claimed that Italy should be held responsible, including when SAR NGOs were attacked, or physically blocked from performing the rescue operations. The supporting evidence (and video reconstruction of Forensic Oceanography—Heller et al. 2018) shows how Libyan Coastguard Ras Jadir also starts to throw big items aiming to hit a SAR NGO inflatable motorboat with rescued people on-board. These strategic litigation instances offer some consolation in showing that authorities can be held accountable and become subject to investigations for breaching international and regional human rights standards. The reality of these cases nevertheless contributes to a climate of mistrust between

law enforcement and civil society, as well as impacting public faith in the Italian government's ability to uphold human rights standards more broadly—what Gattinara (2017) calls 'a crisis of legitimacy'.

Meanwhile, another development concerns the use of predictive policing methods such as the tracing of the location of SAR NGOs and the infiltration of undercover agents by national authorities. For example, in the Save the Children ship *Vos Hestia*, there was an Italian undercover agent (PRI 2018). He had been posing as a security guard appointed by the ship owner. His task was to gather evidence of misconduct of the crew so that the ship could be seized. Subsequently, Matteo Salvini called to assign 3 million EUR for undercover agents to supervise SAR NGOs (Politico 2019).

## Formal Criminal Charges

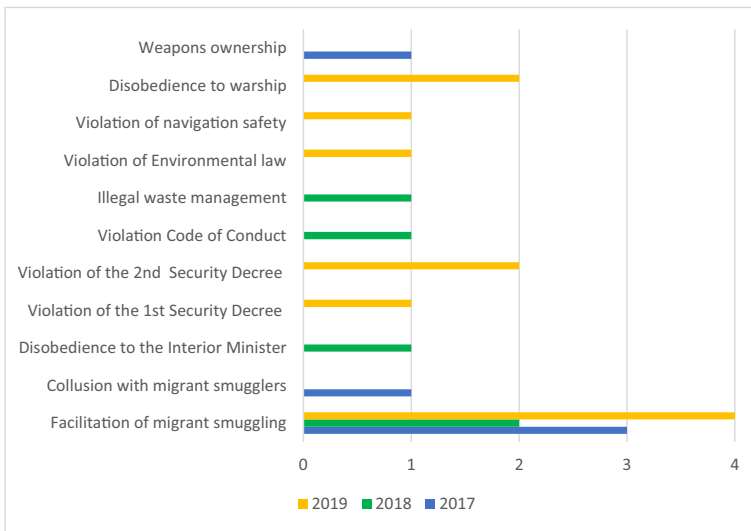
Since summer 2017, attempts to obstruct the activities of SAR organizations in Italy through intimidation, harassment and disciplining were increasingly coupled with formal criminalisation. This is illustrated by the decrease in the number of NGOs and boats operating in the area. Since 2016, fifteen different NGOs have conducted SAR operations, while as of December 2019, only five organizations remained, operating three vessels (Cusumano 2019; FRA 2019).<sup>3</sup>

Legal proceedings initiated against private rescue organizations rose from three in 2017, to four in 2018 and there were a record seven new cases in 2019. Three investigations concerned Sea Watch, three cases involved the organisation Mediterranean Saving Humans and one case opened against Mission Lifeline (FRA 2019; ECRE 2019b; Sanderson 2019). The consequences for volunteers ranged from online threats, financial pressure and the risk of at least 10-years imprisonment (Les Echos 2019; Sanderson 2019). Moreover, the seizure of vessels has left the Mediterranean at times with very limited rescue capacity.

All investigations were triggered by suspicion of abetting irregular migration and/or colluding with migrant smugglers, with only one accusation of facilitation of irregular entry with aggravation on grounds of criminal organization (see Fig. 1). Some cases between 2017 and 2019 also included charges for disobedience to the Interior Minister, disobedience to warship, illegal waste management, violation of environmental law, violation of the code of conduct and violation of the two Italian security decrees (FRA 2019).

The Italian Migration Law of 1998 (Legislative Decree of 18/08/1998) allows the criminalisation of facilitation of irregular entry, even if there is no intent to profit from it. Although politicized prosecutions were possible under these charges, Italian judges have upheld the exemption to humanitarian assistance protected by International Maritime Law under Article 54 of the Criminal Code and Article 12, paragraph 2 of Italian Migration Law. So far, volunteers and captains have been cleared from accusations or cases have been discontinued due to lack of evidence. As of December 2019, there were seven ongoing investigations involving members from Mediterranean Saving Humans, Sea Watch, Mission Lifeline, MSF, Jugend Rettet and Open Arms (FRA 2019).

<sup>3</sup> In December 2019, the active NGOs in the Mediterranean were Sea-Eye and Proemaid which operated the vessel *Alan Kurdi*, MSF and SOS Méditerranée with the vessel *Ocean Viking*, as well as Proactiva Open Arms operating the boat *Open Arms*. The vessel *Sea-Watch 3* was released by an Italian Civil Court in December, although it has not yet resumed activities. Two NGOs who were active throughout 2019, *Mediterranea Saving Humans* and *Mission Lifeline*, were recently impeded from continuing their work by Italian authorities. Meanwhile *Reqship*, operating the vessel *Josepha*, stopped its activities in October to be resumed in Spring 2020.



**Fig. 1** The basis of accusations against SAR NGOs by year

We would argue that the different manoeuvres against Sea Watch make an emblematic case of the systematic harassment of life-saving organisations. On three different occasions, prosecutors started legal proceedings under migrant smuggling in response to emergency disembarkations that defied Matteo Salvini's ban to enter Italian waters. It is also noteworthy that in the three situations, the NGO was entirely or partially cleared. In January, Catania prosecutor, Carmelo Zuccaro, started investigations which also included violation of environmental laws and navigation safety. Nonetheless, he had to clear the crew for lack of evidence (Serrano-Conde 2019). In May, Sea-Watch 3 was seized for three weeks and Captain Arturo Centore became subject to an ongoing investigation (FRA 2019; DW 2019a). Finally, after a dramatic and urgent disembarkation in June, the vessel Sea-Watch 3 was impounded and released by a civil court only in December. In January 2020, Captain Carola Rackete was cleared by Italy's highest court for the accusation of abetting irregular migration (FRA 2019; DW 2019b; Les Echos 2019).

The far-right government facilitated judicial harassment of SAR NGOs as part of the closed ports policy by adopting the first security decree in 2018. Nonetheless, independent judge Alessandra Vella ruled against Captain Rackete's arrest as her disobedience to the ban was justified by the duty to protect human life. The judge also added that the security decree was only applicable to smugglers and not to rescuers (FRA 2019). Salvini, who strongly criticised the judgement in disregard of separation of powers, was triggered to continue the 'lawfare' against judges. In response to this ruling, he toughened the existing security decree of 2018 through an amendment that enables authorities to directly target non-governmental organisations disembarking migrants in Italy without permission.<sup>4</sup>

The new amendment, in force since August 2019, allows authorities to seize vessels, prosecute and fine commanders of the ship up to one million euros, and impose a fine of 5500 euros for each person rescued (Fekete et al. 2019; Reuters 2019). The so-called, 'Security Decree Bis' has been widely criticized by the UNHCR (2019) who expressed its concern on

<sup>4</sup> The new amendment, so-called Security Decree Bis, came into force in the second half of 2019.

imposing financial or other penalties on shipmasters' as 'it could deter or impede sea rescue activities', potentially leaving the Mediterranean without any rescue capacity or safe port for disembarkation.

Even when Salvini was replaced by the somewhat more moderate Lamorgese for Interior Minister, it did not prevent the Decree Bis from assigning its first victims (ANSA 2019). The Eleonore and Mare Jonio vessels operated respectively by NGO Mission Lifeline and Mediterranean were seized at the end of the summer after being allowed to disembark rescued people using ad-hoc arrangements (Carrera and Cortinovis 2019a). Moreover, the captains and heads of mission received a fine of 300.000 euros and prosecutors in Ragusa opened an investigation against Mission Lifeline (The Local 2019; FRA 2019). The judges are likely to be pressured even further, since the Malta Declaration agreed in September has maintained the narrative that SAR NGOs are a 'pull factor' (Carrera and Cortinovis 2019b). Such scapegoating of SAR NGOs as key smugglers is shifting away the limited resources and attention of law enforcement from investigating cases with clear criminal intent by following the harm, or high turnover by 'following the money'—to simply 'following the rescuers'.

### Greece and the Aegean

Formally, Greece has declared humanitarian exemption from crimes of facilitation. Recent years have nevertheless seen repeated prosecutions and escalations targeted at certain civil society actors. Most at risk are those who have been the most outspoken or visible actors monitoring Greek and EU SAR activities and challenging policies related to the treatment of asylum seekers and other migrants that are stranded in Greek hotspots. This raises concerns over possibilities for civil society to play a crucial 'watchdog' function in monitoring EU and international standards.

In the Aegean Sea, civil SAR NGOs, such as MOAS, continue to handle difficult and life-threatening situations (Interviews in Greece 2017). As Greek authorities have been assigned increasing responsibility for intra-Schengen border controls, this has led to more restrictive and repressive policies towards asylum seekers, and consequently towards those who help them.

The first SAR policing case happened on the Greek island of Lesbos. Although it finished with acquittal, it has produced chilling effects among other volunteers operating on the island (ReSOMA Transnational Feedback Group discussion 2018 in Vosyliūtė and Conte 2018, 2019a). Violations of fair trial guarantees during the arrest of volunteers are also indicative of the politicised nature of the case.

### Team Humanity and PROEM-AID Volunteers

On January 14, 2016, two volunteers from Danish organisation Team Humanity, Salam Kamal-Aldeen and Mohammad Abbassi and three Spanish Proem-Aid volunteers from Spain, Enrique Rodríguez, Manuel Blanco and Julio Latorre, were taken into custody by the Hellenic Coast Guard (Aljazeera 2016). The rescuers were charged with attempted migrant smuggling from Turkey to Greece, despite the fact they were arrested in the Greek rescue zone, and had no rescued people on board; moreover, they had informed Greek authorities that they were embarking on their rescue mission. The prosecutor added a charge to volunteers for carrying knives—a crime of carrying 'illegal weapons'. The volunteers argued that 'the knives were the minimum blade length required to cut through ropes, nets or other material when rescuing people from the sea'. The volunteers were arrested for 68 hours and released on a 5.000 EUR bail. Salam-Kamal Aldeen, as the captain of the boat, had a higher bail—of 10.000 EUR, he

also was not allowed to leave Greece for 1 year and 8 months; in addition, his boat was confiscated.

In May 2018, after a 2.5-year prosecution, all volunteers were cleared of all charges and acquitted by a court in Lesbos (The New York Times 2018). Although Greek courts proved to be independent from political pressures, the circumstances of arrest and violations of fair trial guarantees indicate that the law enforcement was not. For example, Salam Kamal Aldeen in his testimony at the European Parliament on September 27, 2018, described how they were not given an independent interpreter and that the paper given for them to sign was a guilty plea (EP LIBE Committee 2018). Mann (2020: 598) argues cases such as this can be seen as a form of ‘maritime civil disobedience among rescue volunteers, which may provide the link for eliminating migrant rightlessness at sea.’

As with any case of ‘civil disobedience’, acquittal does not necessarily mean effective justice, and prosecution can be itself a form of persecution (ReSOMA Transnational Feedback meeting, discussion with lawyers and criminalised individuals, 4.10.2019, in Vosyliūtė and Conte 2019 b; Vosyliūtė 2019). In this case, the unprecedented prosecution produced wider chilling effects on various volunteers operating in Greece and elsewhere. It also entailed high personal costs for volunteers involved. For instance, volunteers shared testimonies of experiencing anxiety throughout the 2.5 year pending prosecution, in which they faced the threat of prison sentences of 10 years or more, as well as painful incidences of family separation.

After the acquittal, only the founder of Team Humanity, Salam Kamal Aldeen, came back to volunteer on Lesbos island. His boat remained confiscated by the Hellenic Coast Guard; thus, Team Humanity also re-oriented from rescue operations to establishing a day centre for women and children. In April 2019, the Global Legal Action Network supported Salam to start a case at the European Court of Human Rights. The case aimed to challenge Greece’s crackdown on NGOs rescuing refugees at sea on the grounds of private and family life, freedom of speech and association (GLAN 2018). The court declared his case inadmissible, most likely because the initial case ended in acquittal. Salam nonetheless remained in Greece, resuming his work as a humanitarian worker on the ground. At the time of writing, Team Humanity was running a day centre near Moria camp that was used by approximately 1500 women and children. It is reported that the Greek authorities have continued to harass him on several instances. In December 2019, Salam Kamal-Aldeen was arrested by the Greek authorities in Lesbos and threatened with deportation on the grounds of public security. Upon arrest, he discovered that he had been enlisted in the Hellenic Database for Unwanted Aliens (EKANA). He was not notified nor was he provided with information on why he was enlisted as a ‘persona non grata’. The case shows that a range of routes exist for formal criminalisation outside of the Facilitators’ Package. It also shows elements of consistency in policing humanitarianism practices at sea and on land.

### **Trial of ERCI Volunteers**

Another prominent case of formal criminalisation in Greece is that of ERCI volunteers, Sean Binder and Sarah Mardini. Just like Team Humanity volunteers, neither of them were Greek nationals. Sean Binder is a London School of Economics graduate and experienced humanitarian worker. His father was a Vietnamese refugee who fled to Germany after the Vietnam War. Sarah is a Syrian refugee. They were arrested by the police authorities in Lesbos, Greece on February 9, 2018. Seán and Sarah took part in SAR operations at sea helping asylum seekers within European waters. As Conte and Binder (2019) explain,

'This ongoing prosecution is the largest case of criminalisation of solidarity in Europe, at its outset involving 37 persons of interest in the investigation, while 24 humanitarians are now being prosecuted, five of whom were already in pretrial detention. They have been charged with several felonies including espionage, assisting human-smuggling networks, membership of a criminal organisation, and money laundering.'

The volunteers have shared their testimonies about their traumatizing experiences in Greece's highest security prison, where they were initially held for 3 months pending their trial (Conte and Binder 2019). Their court hearing will take place in October 2020. If found guilty, both volunteers face 25 years in prison. After release from prison, both volunteers left Greece and stopped their humanitarian activities, although they have remained vocal about the situation in Greece. According to the public statement of their lawyer, the evidence base is slim. For instance, communications via WhatsApp were used as a proof of 'secrecy' and defined as 'end-to-end encrypted communication'.

The systematic intimidation and harassment against SAR NGOs by authorities have proven to be as damaging as formal criminalisation. It causes serious financial pressure, reputational harm, exposes volunteers to danger, forces temporary suspension of activity and ultimately the termination of the organizations' rescue work (Carrera et al. 2018a; Fekete et al. 2017, 2019).

## On Land

Besides SAR NGOs, a wide range of actors, as Salam Kamal-Aldeen and Team Humanity came to, have been assisting refugees and other migrants in Italy and Greece once people are on the shores of Europe.

## Italy

While the majority of attention on Italian NGOs has focused on the sea and point of arrival, on the mainland, civil society groups providing assistance to asylum seekers and other migrants have faced ongoing intimidation and administrative fines, and increasing demands and pressures for registration, coordination and financial transparency (Zamponi 2018). Many of these dynamics have stayed the same from our previous research (see Carrera et al. 2018a); however, participants report a growing concern with vigilante far-right groups, and the police's unwillingness to protect them from violence and threats.

Access to 'hotspots'—designated areas for the separation of those deemed as economic migrants from 'genuine asylum seekers'—also remains a contested issue. Interviews conducted in 2016–2017 in Italy and Greece revealed the high level of leverage by local authorities and especially, by camp guards in controlling who can enter the hotspots and conduct activities (Carrera et al. 2018a). As D'Angelo (2019) reports, while some have argued that the Italian hotspots can be seen as relatively 'well managed' in contrast to chaotic scenes which have drawn attention elsewhere, including in Greece, the hotspots also present a range of new human rights issues including detention of minors, forced fingerprinting and intimidation of lawyers seeking to reach clients. By the end of 2019, four hotspots were operating in Italy: in Apulia (Taranto) and Sicily (Lampedusa, Pozzallo and Messina).

Outside of hotspots, Italian civil society also faces issues of access and accountability. In Rome, the Baobab civil society network which has assisted over 60,000 migrants since 2015 is still not recognised by the city's administration as a legitimate partner. After being evicted

more than 20 times, they currently operate ad hoc out of a car park. Negotiations have stalled with three different administrations, and the promise to support the establishment of a migrant hub in the city has been abandoned on the grounds it would be a ‘pull factor’ (interview Italy 15/01/2020; European Civic Forum 2018). Other reasons given for not collaborating are fear that the network could be harbouring terrorists. The group has expanded its activities to include campaigning against new discriminatory measures among the private sector, such as landlords refusing to rent property to foreigners and banks refusing to open bank accounts for migrants. The incursion of the private sector into the policing space and the state’s unwillingness to provide anti-discriminatory protections is a development we have explored at length in the United Kingdom (Allsopp 2017; Carrera et al. 2018a).

Meanwhile, at the internal border zone between Italy and France in Ventimiglia, the major continues to order routine clearings of migrant camps and NGO facilities, despite in several instances the prefecture itself objecting because they did not know where to relocate the people (European Data Journalism Network 2019). Civil society continues to play an important monitoring role in the context of systemic expulsions of migrants from the area. These include the use of pepper spray to force people onto trains, arbitrary detention, the return of unaccompanied minors from France to Italy in breach of EU law and the humiliating branding of migrants with red stickers saying ‘accès interdit’ [access denied] (interviews by authors).

## Greece

As in Italy, a key turning point in Greece for dynamics of policing humanitarianism on land, as at sea, was the EU-Turkey deal: along with the creation of hotspots in the south of Italy, this turned five Greek islands into ‘hotspots’ in which asylum seekers became warehoused during the processing of their claims and established border controls between these islands and the Greek mainland. Many NGOs chose to work outside the hotspots in disagreement with the EU-Turkey ‘statement’. Asylum seekers hence got stuck in the island camps and these became overcrowded. The dominant attitude of locals changed; from welcoming, over time, they became desperate. There are an estimated 40 NGOs on Lesbos alone. The authorities saw them as ‘not well coordinated’ and called for the registration of all NGOs and all volunteers. Such requests for registration became a pretext to ban non-registered NGOs and to investigate those that were registered against anti-money laundering laws.

The new ‘transparency registry’ was proposed in November 2019 and approved via Ministerial Decree in February 2020. It requires both Greek and foreign-based NGOs whose activities are related to ‘international protection, immigration and social inclusion’ to register to a ‘soon to be created’ registry of members of NGOs. It casted suspicion over NGO activities and has stirred a number of controversies, including inciting verbal and physical attacks against the staff and volunteers. At the time of writing, the most essential piece of legislation establishing the registry is still pending. Once it happens, NGOs will have 3 months to register their members, employees and partners who are active in Greece. The law follows registration practices which were already introduced by the Greek Ministry of Labour and the Ministry for Migration Policy. Confusion over how to register and stay above the law in this changing context is a distraction for NGOs performing vital life-saving work. Moreover, interviewees reported that they were unclear about how the information could be used or shared. The two ministries are barred from sharing databases due to the purpose limitation and various data privacy requirements, especially on who can access it and under what circumstances. Law enforcement can obtain the specific data on



a case-by-case basis, however, for ongoing investigation. Within the law, the Greek authorities have included some vague justifications (The Hellenic Parliament 2019). In line with Article 22 of the ICCPR, Greek authorities would need to prove that measures are not only legitimate (as passing the new law has established), but also that they are proportionate and necessary within a democratic society. In addition, in order to comply with the EU General Data Protection Regulation, authorities would need to include purpose limitation, explaining who can access the registry and for what purpose they will access the registry since 'the more effective supervision' is not sufficiently concrete to establish legal certainty (EU Observer 2019). Again, the law raises a broader question about the independence of civil society in democratic society. While some may argue that the new regulation serves to strengthen the capacity of more equipped NGOs and dissuade less robust ones for the good of service provision, we also know that in the desperate conditions, much important work is being done by informal aid groups and volunteers who are not organized by larger NGOs. The role of churches and schools and other community groups is also ambiguous.

If such a database is rendered operational, it risks opening a new form of control by the Ministry of Migration and Asylum which could threaten freedom of assembly, among other values. We would argue that in a democratic society, NGOs should be bound by the general laws and not special tailored decrees, especially by the Ministries of Interior/Migration and Asylum which some NGOs disagree with on human rights grounds. Such decrees and especially potential misuse of the database put human rights defenders and watchdog NGOs in a particularly difficult position.

## Conclusion

This article has built on previous research to consider how since 2018, civil society actors in Italy and Greece have faced increasing demands and pressures for registration, coordination and financial transparency, and how these have profound repercussions. We have identified four key opportunity costs of the policing of humanitarian actors as a strategy to prevent migrant smuggling as they affect NGO operations, migrants and society as a whole. Firstly, we have seen how such measures pose a threat to civil society's independence and impartiality from government interference; in doing so, they impact the efficiency of operations and disincentivize certain humanitarian actors from conducting life-saving work. Secondly, they have been shown to have repercussions on trust between the law enforcement and civil society which may lessen the chances of migrants and those that serve them from sharing crucial information to stop and investigate ongoing crimes. Thirdly, we have documented how this strategy leads to the politicization of the criminal justice system which undermines public faith in liberal democracy. And finally, it has been noted how resources channelled into investigating civil society actors funnels away resources from the focus on high-profile criminality. Given what we know about the pervasive human rights abuses committed against irregular migrants, we argue that this misdirected policy equates to picking 'low-hanging fruit' while the orchard burns.

Among general trends, we have seen a worrying rise in criminal charges against civil society actors in Italy and Greece, a trend which we foresaw in our previous work as part of a continuum of policing humanitarianism (Carrera et al. 2018a). Meanwhile, a range of new and established intimidatory and non-criminal disciplinary measures is being enacted, including surveillance, infiltration and new administrative requirements such as NGO lists and codes of conduct. Furthermore, we have seen that once civil society actors are criminalised, it is often

too late to reverse a process that leads to mistrust in civil society, in criminal justice systems and a broader polarisation of societies. In both sites, NGOs are being prevented from conducting life-saving work. The Mediterranean and Aegean have become more deadly. Meanwhile, in in-land areas such as hotspots and at internal EU border zones, new types of rights struggles continue to evolve.

There is evidence to suggest that dynamics of policing humanitarianism will continue to evolve, including through the use of social media and new technology. In September 2019, for example, Frontex launched a public tender for private companies and consultancies for ‘the provision of social media analysis services concerning irregular migration trends and forecast (as part of prewarning mechanism)’ (Frontex 2019). The terms of reference foresee that the aim for this tender is to allocate resources for the attention of border guards and law enforcement (Frontex 2019: 3): while this is a legitimate goal, the following passage shows that suspicion is casted on civil society along with migrants and their communities (Frontex 2019:4, emphasis added):

‘The report should be focused on analysing and understanding the current landscape regarding (inter alia) internet and social media use among demographics and in regions of the world most commonly associated with large and sustained irregular movements of persons towards the EU and SAC. The report will thus need to include data and analysis of relevant actors using social media: migrants; traffickers/smugglers; *civil society and diaspora communities in destinations (EU)*.’

Despite the hurdles, civil society across the EU is showing solidarity and support. For example, the European Civic Forum (2020), which is monitoring the ongoing intimidation and harassment of civil society, has nominated the Mediterranean Network for an award in recognition of their protection of civic space in the Mediterranean.

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## Compliance with Ethical Standards

**Ethical Approval** Queen Mary's University of London, CEPS.

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