

Protecting the Defenders

Ending repression of human rights defenders
assisting refugees, asylum seekers and
migrants in Europe



Recommendation



COMMISSIONER
FOR HUMAN RIGHTS

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COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Protecting the Defenders

Ending repression of human rights defenders assisting refugees, asylum seekers and migrants in Europe

Recommendation
by the Council of Europe
Commissioner for Human Rights

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Cover photo:
Aid workers from Spanish NGO Open Arms help refugees, asylum seekers and migrants to disembark from a rescue vessel, on 19 January 2018 at the port of Pozzallo, in Sicily, Italy. @Santi Palacios

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Introduction

Council of Europe member states have made commitments to protect civil society, including human rights defenders, who can be defined broadly as individuals, groups and associations that promote the protection of human rights, or contribute to eliminating human rights violations.¹ The *Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities* specifically calls on member states to:

“create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights.”²

The Declaration also calls on Council of Europe member states to take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities more generally, to prevent attacks on or harassment of human rights defenders, to provide effective remedies when their rights are violated, to ensure that their freedom of association, peaceful assembly and freedom of expression are safeguarded, and to ensure effective access to protection mechanisms.³

Despite this, human rights defenders in many Council of Europe member states face significant challenges. One particularly worrying trend in this regard is the increasing harassment, intimidation and criminalisation of people and groups who assist refugees, asylum seekers and migrants, including those in an irregular situation. This trend emerges clearly from the work that the Council of Europe Commissioner for Human Rights has carried out, over the course of her six-year mandate, on the human rights aspects of member states’ asylum and migration policies. This issue was signalled, for example, during the Commissioner’s round table on the situation of human rights defenders in times of crisis.⁴ It was also addressed

in her thematic work, including on the protection of the rights and lives of refugees, asylum seekers and migrants in the Mediterranean and on the prevention of pushbacks at Europe's borders.⁵ She has publicly warned against attacks on non-governmental organisations and others assisting refugees, asylum seekers and migrants on numerous other occasions,⁶ including in relation to specific situations in member states. She has included this issue in country visits to Hungary, Malta, the United Kingdom and Italy, and in her emergency visit to the Poland-Belarus border.⁷ She has also engaged in written dialogue with member states on restrictions on human rights defenders' work, including in letters to Cyprus, Germany, Greece, Italy, Latvia and Malta,⁸ while also having made several public statements on this issue, such as in relation to Hungary, Greece, Lithuania and Poland.⁹ Finally, issues faced by human rights defenders have been raised by the Commissioner in third-party interventions with the European Court of Human Rights in migration-related cases in regard of Croatia, Italy and Poland.¹⁰

The sheer number of occasions when the Commissioner felt compelled to intervene shows how the restriction of the work of human rights defenders assisting refugees, asylum seekers and migrants has proliferated. This can similarly be observed from the repeated concerns expressed by other bodies of the Council of Europe, the European Union (EU), the United Nations (UN) and other international organisations, civil society actors and academics, who have all documented numerous instances of member states curbing activities to defend the rights of refugees, asylum seekers and migrants across Europe.¹¹

This document aims to draw the attention of Council of Europe member states to the need for action to reverse the damaging trend towards repression of human rights defenders assisting refugees, asylum seekers and migrants. It does not aim to discuss country-specific situations or individual cases of human rights defenders already addressed by the Commissioner. Rather, it sets out a bird's eye view of key developments and policies contributing to this repression across Europe and provides recommendations to address these. In doing so, this document relies on the Commissioner's above-mentioned interventions and her frequent encounters with human rights defenders during her visits to member states and on other occasions, including her round table events. To complement these insights, online consultations with human rights defenders and other civil society actors were organised in the context of the drafting of this document.¹² While the document focuses primarily on human rights defenders, many of the issues set out below also impact on

others who may not strictly fall into this category, but come into contact with refugees, asylum seekers and migrants, either as part of their work or on an occasional basis, and whose human rights might also be affected by repressive measures.

Chapter 1

Developments contributing to increased repression of human rights defenders assisting refugees, asylum seekers and migrants

1.1 Lack of recognition of member states' obligations towards human rights defenders assisting refugees, asylum seekers and migrants

Too rarely is assistance to refugees, asylum seekers and migrants addressed by Council of Europe member states from a human rights perspective. Member states often do not recognise, in law, policy or practice, that many forms of assistance constitute activities to promote the protection of human rights or contribute to the elimination of violations in relation to refugees, asylum seekers and migrants, and thus fall within the scope of human rights defence. This includes search and rescue at sea, which directly impacts on the protection of the right to life. The provision of humanitarian assistance, including the provision of food, water, clothes and shelter, similarly protects the right to life and human dignity and helps to ensure the enjoyment of basic social and economic rights. Helping people to obtain access to legal processes, including asylum procedures, and providing them with expert advice and legal help are also clearly connected to ensuring the right to access to courts. The same goes for challenging non human rights compliant practices and policies by states, such as through litigation or advocacy. Ensuring transparency and accountability in relation to asylum and migration policies, including monitoring and reporting, are crucial activities to uphold human rights. In this respect, the work of journalists and others drawing public attention to human rights violations must

also be recognised as a key component of the human rights defence of refugees, asylum seekers and migrants. This list is by no means exhaustive. Many different activities may serve the protection and promotion of human rights of refugees, asylum seekers and migrants. It is therefore crucial that Council of Europe member states respect the rights of anyone who engages in activities to protect and promote human rights, in line with their explicit commitments in this regard.

This does not imply that member states' obligations only extend to those who can be categorised as human rights defenders. Anyone engaging with refugees, asylum seekers and migrants or with wider issues in relation to them, in whatever way, and whether under the umbrella of an organisation or individually, should benefit from the protection of the law and should not be subject to unnecessary prosecution or judicial or other forms of harassment.

1.2 Overall regression in human rights compliance of asylum and migration policies

The current trend towards repression of human rights defenders assisting refugees, asylum seekers and migrants coincides with what the Commissioner has identified as progressively more restrictive and non human rights compliant asylum and migration policies in Europe.¹³ These policies have often been characterised by their strong focus on preventing irregular arrivals, restricting access to asylum procedures, and the externalisation of member states' responsibilities to third countries. They have also been marred by the abandonment of people at borders or in distress at sea, pushbacks and border violence, practical and legal barriers to accessing asylum procedures, widespread use of detention, restrictions on access to medical services, housing and other basic needs in order to deter irregular stay, as well as ethnic profiling and discriminatory practices in the enforcement of migration laws. The criminalisation of irregular entry and stay, including activities that are seen as facilitating such acts, has become a key tool to address issues of migration. Additionally, the last few years have seen the emergence of an approach in which migration issues are increasingly addressed by member states from a security perspective, which has led to the building of fences and the use of barbed wire, the deployment of military personnel or equipment in border areas, and increased surveillance. These physical obstacles deny asylum seekers the chance to seek protection and the right to a fair and efficient asylum procedure. Contributing to this approach is the current focus on what is often referred to as the instrumentalisation of the movement of asylum seekers and migrants by third countries, which has led some governments to frame arrivals of migrants in terms such as 'hybrid warfare'. All this has

not stopped people from migrating or seeking protection. Instead, these policies have often diverted them to longer, more dangerous routes.

This approach has also created an extremely difficult environment for human rights defenders. Those who assist refugees, asylum seekers and migrants may be seen by states as an obstacle to the implementation of asylum and migration policies focused on deterrence and security, and therefore faced with hostility. The rolling back of human rights which is often part and parcel of states' policies in this area also leads to measures explicitly or implicitly targeting those helping refugees, asylum seekers and migrants to access and realise these rights.

Furthermore, as the net of restrictive measures is cast ever wider, more and more people who interact with refugees, asylum seekers and migrants are impacted. Apart from NGOs, activists, lawyers and journalists, independent bodies acting as human rights defenders, such as National Human Rights Institutions (NHRIs), may also face a backlash from the authorities for addressing asylum and migration issues.¹⁴ Furthermore, people or groups who might not normally be seen, or see themselves, as human rights defenders, such as teachers, medical or social care providers, firefighters, sports clubs, neighbours, friends, and many others may face situations in which they have to decide whether to follow the rules or step up in defiance of those rules to protect human rights. In many cases, people simply extend a helping hand to fellow human beings without realising that this may put them in conflict with increasingly broad-ranging rules on the prevention of irregular entry or stay. In this way, even everyday acts of humanity are at risk of becoming the subject of harassment or criminalisation.¹⁵ The latter is also true for those helping family members, or for refugees, asylum seekers and migrants themselves who provide mutual support. Human rights defenders who are themselves refugees, asylum seekers or migrants may be in a particularly vulnerable position, including because of the risk that their legal status in the country is leveraged against them to repress their work.¹⁶

1.3 The impact of hostile rhetoric

Closely connected to the overall policy swing towards deterrence is the proliferation of anti-refugee and anti-migrant rhetoric in Council of Europe member states.¹⁷ When it comes to the way that human rights defenders are approached by the authorities, media and society more broadly, language matters deeply. One area in which this is particularly visible is in the use of the term 'illegal migration', used by many states to refer to situations in which persons have entered or stayed in circumvention of migration rules.¹⁸ This language is increasingly used even in relation to persons using irregular

means to reach member states' territories in order to access asylum, even though seeking asylum cannot be an illegal act.¹⁹ Such language then also implicitly associates human rights defenders and others helping asylum seekers or migrants in an irregular situation with such 'illegality'.²⁰

More generally, high-level public figures in several member states have talked about refugees, asylum seekers and migrants as security threats, as an 'invasion' or in even worse terms, which also paints those defending these groups as complicit in threats to the nation. Lawyers representing asylum seekers or migrants, or otherwise litigating existing laws or policies, may be disparaged as acting against the interest of the state, undermining the government's efforts to control migration, rather than as professionals engaging in the entirely legitimate practice of bringing legal challenges in the interest of their clients.²¹ NGOs engaged in search and rescue at sea continue to be accused of being a 'pull factor' or otherwise encouraging arrivals, despite several studies not having found any factual evidence of such an effect.²² There is a mutually reinforcing effect of such narratives between government representatives or elected officials on the one hand, and certain sectors of the media on the other. Certain media eagerly report this language, while public officials may feel compelled or emboldened by media narratives to adopt increasingly derogatory or inflammatory language against human rights defenders.

This kind of language can become a driving force for further restrictions and criminalisation, including by empowering lower-level authorities, prosecutors and judges to crack down on those assisting refugees, asylum seekers and migrants. Importantly, it also fans the flames of anti-refugee, anti-migrant or racist sentiments in society at large, significantly increasing the risks of attacks on human rights defenders (see below). These narratives also sometimes have implicit or explicit racist connotations and can particularly also impact on refugee and migrant community organisations. Human rights defenders working with refugees and migrants against whom strong societal prejudices may exist, such as Muslims, people of African descent, Roma or other groups, can also be at additional risk. This has been particularly evident in the largely positive attitudes towards individuals and organisations assisting Ukrainian refugees, including in member states where human rights defenders working with other groups of refugees, asylum seekers and migrants face very high levels of hostility.²³ The same is true for those whose work overlaps with other issues where discrimination or hostile attitudes are prevalent in certain member states, such as supporting LGBTI refugees and migrants, or addressing domestic or sexual violence against refugee and migrant women or issues related to their sexual and reproductive health and rights.

1.4 Threats and violence

Securing the physical safety of human rights defenders is undoubtedly the most fundamental aspect of ensuring respect for their human rights and securing an enabling environment for their work. Nevertheless, there have been many instances in which human rights defenders have come under physical attack. Organisations and people assisting refugees, asylum seekers and migrants have been subjected to beatings, had their vehicles or equipment destroyed, or have been targeted by vandalism of their property, and even by arson or bomb attacks.²⁴ In her work, the Commissioner has specifically addressed several situations in which the physical safety of human rights defenders was at risk.²⁵ But this is only the tip of the iceberg, as media reporting and monitoring by civil society organisations show.²⁶

Violence against human rights defenders assisting refugees, asylum seekers and migrants may come from private individuals or groups, including those who feel emboldened by official rhetoric which may lower the threshold for violent conduct by the public. The presence of paramilitary-style or vigilante groups (including those associated with the far right) in some member states is a particular concern.²⁷ It is particularly reprehensible when acts of violence or threats to physical safety come from those who are charged with upholding the law, such as border guards, police or other official authorities. The Commissioner has observed in certain member states how these authorities have engaged with human rights defenders in an aggressive or intimidating manner, including holding them at gunpoint and physically manhandling them.²⁸ In countries where civilian ‘volunteers’ take part in policing of borders there are further concerns about how this may impact on the safety of persons operating in border areas to aid refugees, asylum seekers and migrants.²⁹ Human rights defenders such as sea rescuers have also faced violence, including the use of firearms in their direction, from actors from non-European countries with which Council of Europe member states co-operate on external migration control.³⁰

Apart from physical violence and intimidation, people helping refugees, asylum seekers and migrants often experience extremely high levels of online hate speech, bullying, and even death threats. Human rights defenders who are themselves refugees, asylum seekers and migrants, or of ethnic minority background, may also receive racist abuse, online and offline. Similarly, women working in this area often face misogynistic abuse, and some have reported being subjected to rape threats.³¹ As these are often anonymous, and online platforms might not regulate such issues well, there is a lot of impunity for such actions. Some human rights defenders consulted for this document have noted that online threats

and harassment have become so commonplace that these are now just a 'fact of life', and they often only report the most serious threats. Others have withdrawn from social media. Violence and intimidation in both the offline and the online world have a severe impact on the security, as well as the psychological well-being, of human rights defenders. Many of the human rights defenders the Commissioner met throughout her mandate are paying a high personal toll for their work, including in terms of their family life and mental health. Such actions, when left unaddressed, also contribute considerably to the chilling effect on human rights work.

Despite well-established obligations of states, including under human rights law, human rights defenders and other assistance providers have reported concerns that their national authorities may not be properly investigating violence, threats or abuse. Some told of being faced with indifference when reporting such incidents to the police, or even encountering the same hostile narratives as described above when trying to engage with law enforcement. Such experiences significantly increase the insecurity for human rights defenders and foster impunity for violence and threats.

1.5 Application of smuggling and 'facilitation' laws to human rights defenders

Rules and policies aimed at combating smuggling, or more generally relating to the facilitation of irregular entry, transit and stay, have significantly impacted on human rights defenders and other civil society actors in many Council of Europe member states. There have been numerous instances of people providing humanitarian assistance or engaging in human rights work being accused of, charged with, and prosecuted for aiding, abetting or facilitating irregular migration in various forms.³² In many cases, human rights defenders who have been charged with smuggling-related offences have acted in immediate response to the risk of loss of life or serious harm, at sea or on land. Others have been charged with facilitation-related offences for offering food, clothes or shelter, or just for giving someone in an irregular situation a lift in their car. Such proceedings often fail to make an appropriate distinction between those acting with criminal intent and those acting to defend human rights.³³ The Palermo Protocol on Smuggling, which sets out obligations of states to criminalise smuggling as a transnational crime, only relates to activities related to irregular entry when done to obtain, directly or indirectly, a financial or other material benefit.³⁴ However, this distinction is not clearly made in the laws of all member states.

Approaches in many Council of Europe member states are impacted by EU rules on the facilitation of irregular entry, transit and stay, especially the Facilitation Directive, which sets out obligations to criminalise intentional

assistance to such acts.³⁵ There has been long-standing criticism that the rules contained in the Directive fail to provide adequate protection against the criminalisation of human rights defenders.³⁶ In particular, in contrast to the facilitation of irregular residence,³⁷ the criminalisation of facilitation of irregular entry or transit is not subject to the requirement that this is done for financial or material gain.³⁸ Some steps have been taken in an attempt to mitigate the impact of this gap,³⁹ although their efficacy may be limited by increasingly restrictive views of member states as to what they see as assistance in line with the law.⁴⁰ A new proposal for an EU Directive to replace the existing Facilitators Package was published in November 2023,⁴¹ which does link criminal offences to financial or material gains, whether in relation to assisting entry, transit, or stay,⁴² while also making more explicit that its purpose is not to criminalise humanitarian assistance or assistance provided by family members.⁴³ However, some commentators have raised concerns about other aspects of the proposal that could still negatively impact on human rights defenders.⁴⁴

Clear humanitarian exceptions in smuggling laws may offset some of the potentially negative impact on human rights defenders assisting refugees, asylum seekers and migrants. However, in the current EU Directive, which contains a humanitarian exception in relation to the criminalisation of facilitation of irregular entry or transit, this is not mandatory, leading to the inconsistent application of this exemption across different member states. In non-EU Council of Europe member states, human rights defenders also report missing or limited humanitarian exemptions, which lead people to doubt if they would risk being subjected to criminal procedures for providing food, water, clothing, shelter, health care or other help.

However, comprehensive data on criminalisation in member states is lacking, and outcomes are difficult to assess, as cases may become extremely protracted, sometimes taking years.⁴⁵ In some instances, cases are opened, then closed, and subsequently reopened. Even the charges levelled against human rights defenders, or the evidence on which this is done, may remain vague for a considerable period. Nevertheless, there are some indications that the overwhelming majority of cases of human rights defenders charged with smuggling or facilitation are eventually dropped or the defendants acquitted.⁴⁶ Additionally, domestic bodies, like the French Constitutional Council and the Italian Constitutional Court, have delivered judgments which call into question broad-ranging approaches to the criminalisation of smuggling or facilitation used by member states.⁴⁷ Even if criminal proceedings for smuggling or facilitation of irregular migration rarely lead to convictions, their practical effect is often to sap the energy, time, financial resources and will of human rights defenders, and forcing them to devote significant efforts to their case, thus preventing them from

fully continuing their human rights work. In this way, criminal proceedings in relation to smuggling or facilitation have become one of the most blatant and visible forms of harassment of human rights defenders helping refugees, asylum seekers and migrants in Europe.

1.6 Other forms of legal or administrative repression

Beyond criminalisation in relation to smuggling or facilitation laws, human rights defenders and other civil society actors are faced with criminal or administrative proceedings on a wide range of other grounds.⁴⁸ These may be used alongside accusations of smuggling or facilitation, or separately, with different measures under criminal and administrative law closely intertwined. Criminal proceedings have been as diverse as being connected to offering assistance with an asylum application, photographing law enforcement objects or staff, being involved in organised crime or money-laundering, or endangering national security, espionage or terrorism charges.⁴⁹ In addition to criminal charges, administrative requirements can be used to impede the work of human rights defenders, including on such issues as fire safety (which could be used to temporarily close down offices) or food safety (which has sometimes been used to prevent the distribution of food to refugees, asylum seekers and migrants). Local by-laws may also be used to prevent the provision of assistance. Some forms of harassment have even included imposing special taxes on organisations that 'support immigration'.⁵⁰ Human rights defenders have furthermore been faced with legal proceedings from third parties, some of which can be characterised as strategic lawsuits against public participation (SLAPPs), when reporting on activities that negatively impact on the human rights of refugees, asylum seekers and migrants.

One category of common administrative restrictions which the Commissioner has often addressed are administrative or technical requirements on search and rescue ships run by civil society organisations, which has repeatedly led to these ships being detained in ports and thus taken out of circulation for prolonged periods, impeding their life-saving work.⁵¹ While port controls should not be used arbitrarily against NGOs,⁵² administrative detention of rescue vessels continues regularly, both on the basis of technical requirements not being met and in relation to the non-observance of rules on how rescue operations should be carried out, even if such rules conflict with human rights and maritime law obligations.⁵³

In some European countries, associations protecting or promoting the rights of refugees, asylum seekers and migrants have faced significant challenges to get officially registered, including in the face of restrictive registration rules. In other cases, changes in legal frameworks have led

to the de-registration and threat of dissolution of non-governmental organisations, which had reportedly failed to comply with several formal requirements within applicable time limits.⁵⁴ Freedom of association is an essential component of a democratic society protected by article 11 of the ECHR, and several safeguards must be observed when issues of restriction arise. Any dissolution of a civil society organisation should only be used as a measure of last resort for serious misconduct,⁵⁵ and never for minor infractions.⁵⁶

Nevertheless, the Commissioner has on several occasions raised concern that registration rules and reporting duties were unfairly deployed against associations assisting refugees, asylum seekers and migrants.⁵⁷ Such administrative steps may be abused to fuel attempts to discredit the work of human rights defenders and weaken their organisations' structures.

The type of criminal and administrative proceedings or obstacles faced by human rights defenders is therefore extremely varied. Furthermore, they are often highly case-specific, which makes it complicated to assess their legitimacy in each situation. However, as others have also noted, there is a clear trend towards using such proceedings against human rights defenders working with refugees, asylum seekers and migrants specifically.⁵⁸ Again, this means that human rights defenders are tied up addressing charges, faced with fines or even imprisonment, and thus unable to carry out their work effectively.

1.7 Lack of consultation and constructive engagement with human rights defenders

The work of human rights defenders can also be obstructed in a number of less visible and more indirect ways. One such way is the lack of constructive engagement or co-operation by the authorities of member states with human rights defenders. Such co-operation is often key to realising the rights of refugees, asylum seekers and migrants effectively. During her mandate, the Commissioner has repeatedly seen the need to stress this importance, and to warn against increasingly hostile attitudes of authorities towards human rights defenders.⁵⁹

During the consultations with human rights defenders in preparation of this document, participants spoke of increasingly being ignored or sidelined by authorities, both at the national level and locally. This has included being left out of consultations on laws or policies in relation to issues within the scope of their experience and expertise. While human rights defenders also continue to play a key role in service delivery to refugees, asylum seekers and migrants, and have been at the forefront of this in situations

of large-scale challenges, authorities may also be less inclined to include human rights defenders that have been critical of government policies in planning and policy-design exercises. In this way, human rights defenders' effectiveness may be undermined simply by being deliberately ignored.

Lack of constructive co-operation may also infringe on the ability of human rights defenders carrying out life-saving work, as is evident from the extensive work of the Commissioner on search and rescue activities by NGOs in the Mediterranean. This has often been marked by lack of information sharing by national authorities with NGOs who may have been in the best position to assist people in distress at sea.⁶⁰

1.8 Restrictions on access to places, people and information

Beyond lack of co-operation and engagement, human rights defenders may find authorities specifically hampering their work by imposing a range of restrictions to relevant places, people and information. Such restrictions include prohibitions on entering certain areas, such as border zones, including exclusion zones set up in emergency situations, often justified by state authorities as necessary for security reasons. However, such restrictions prevent human rights defenders from making contact with people in need of humanitarian or legal assistance, or from carrying out human rights monitoring.⁶¹ They may also face restrictions in accessing government-operated or -controlled facilities, such as camps, reception centres or detention places.⁶² This may also be the case if the management of such facilities is outsourced to private actors or international organisations. Some of these restrictions were tightened during the Covid-19 pandemic, but were not always relaxed after the pandemic abated. While there may be specific reasons for access limits, including safeguarding the well-being and privacy of persons staying in those places, undue restrictions significantly impede necessary human rights work, including providing legal representation to people who have lodged asylum claims, or those who would want to do so, but cannot without support. This may also prevent effective work with victims of torture, victims of trafficking in human beings, or other vulnerable groups.⁶³ Similarly, limits on access to border zones, camps and other places may prohibit media from reporting on issues related to human rights, which may undermine more general attempts to increase transparency and ensure public accountability.

In addition, member states' authorities may restrict access to information to impede the work of human rights defenders. Restrictions on access to

official files, for example, have even been imposed on independent bodies, including NHRIs, with a specific mandate to investigate human rights abuses.⁶⁴ Restrictions on access to court documents, including on security grounds, have also impeded the work of lawyers to effectively represent their clients.⁶⁵ Freedom of information requests by human rights defenders in relation to human rights issues in the area of asylum and migration may be left without a timely (or indeed any) response, or provided only in heavily redacted form. Journalists who have been critically reporting on human rights issues related to refugees, asylum seekers and migrants may also experience difficulties in getting access to official press conferences or in having interview requests approved.

1.9 Surveillance of human rights defenders

During discussions for the preparation of this document concerns were raised that, in some member states, pervasive surveillance activities created mounting challenges for human rights defenders, including lawyers and journalists. It has already been noted that some member states are increasingly framing issues of asylum and migration as national security issues. This also brings human rights defenders assisting refugees, asylum seekers and migrants within the scope of the attention of security services. Governments, in the name of national security concerns, often employ advanced surveillance tools to intercept communications and monitor online activities, including human rights defenders' social media. The Predator and Pegasus spyware scandals show how surveillance may happen without any transparency and without clear accountability mechanisms being in place.⁶⁶ Even when human rights defenders know they are being subjected to surveillance measures, secrecy rules may prevent them from accessing information in relation to their case. Legal remedies may also be difficult to access because of national security exceptions in law. Invasive surveillance practices, whether through physical surveillance, phone and internet tapping or by using spyware not only infringes on the personal security and privacy of individual human rights defenders, but also threaten the confidentiality between human rights defenders and the refugees, asylum seekers and migrants they assist, which is often crucial to working effectively. Human rights defenders reported, for example, how such practices make them afraid to reach out to people they assist by phone or email. As such, these practices may stifle dissent, instil fear, and impede efforts to expose human rights abuses or effectively represent clients.

1.10 Issues related to funding and financial transparency

In several European countries, civil society organisations working with refugees, asylum seekers and migrants are experiencing barriers in accessing public funding, affecting the quality and the quantity of support they can provide to people in need of administrative, legal or humanitarian assistance. While this reduction in funding for civil society organisations is not confined to those working with these populations, the Commissioner is particularly worried about the correlation between the growing anti-migration political and media discourse and the wider impacts on reducing the capacities of NGOs protecting human rights. Such obstacles to accessing funding are silent attacks on human rights defenders' essential services not only to refugees, asylum seekers and migrants, but also to democratic societies.⁶⁷

In some cases, other funding issues, which are not used to restrict human rights defenders, nevertheless impact negatively on their work. For example, cuts to public funding of legal aid to asylum seekers and migrants in some member states have severely undermined the ability of lawyers to represent those groups effectively. Human rights defenders have also noted that grassroots or smaller organisations often have more difficulty accessing funding from international (including EU and member state) donors. The structure of funding, which is becoming increasingly project-based, and therefore of limited duration and sometimes not covering core costs, may also undermine the continuity of their work, which is an important precondition for effective human rights activities. Human rights defenders who receive state or international funding may also find themselves faced with implicit or explicit conditionalities impacting on their human rights related activities, and may self-censor in relation to public communication on human rights violations for fear of losing funding.

Additionally, the Commissioner has witnessed an increasing discussion about introducing so-called 'foreign agent' laws in Council of Europe member states. These problematic laws stipulate that non-profit organisations receiving foreign funding must register under a special regime declaring them as agents of foreign influence. Such laws may also affect the work of associations assisting refugees, asylum seekers and migrants, and could be mobilised to create negative public perceptions of those associations. The Commissioner has stressed that reporting requirements should always be set up on an equal and non-biased basis regardless of the source of income, and that any interference in this field should fully comply with the case law of the European Court of Human Rights.⁶⁸

Chapter 2

Consequences of repression of human rights defenders assisting refugees, asylum seekers and migrants

The developments described above, which all contribute to the overall trend towards increasing repression of human rights defenders assisting refugees, asylum seekers and migrants in Europe, have a number of worrying consequences.

Firstly, it has already been mentioned that the activities of human rights defenders have been crucial to protect the right to life, to ensure that people on the move can have their basic needs met, to access protection and justice, and to advocate for systemic changes to uphold human rights more generally. As member states continue to undermine the work of human rights defenders, they worsen the backsliding on the human rights of refugees, asylum seekers and migrants, which is already at a deeply worrying level across Europe.

Secondly, several of the actions of states outlined above violate the rights of those individuals and groups assisting refugees, asylum seekers and migrants. Some have seen their right to physical integrity threatened, whilst freedom of association, fair trial principles, freedom of expression, and a range of other rights have also come under attack. In this way, member states are increasingly threatening the security and rights of everyone under their jurisdiction, including their own citizens.

Thirdly, the ongoing crackdown on human rights defenders working with refugees, asylum seekers and migrants has important implications for upholding the rule of law and democracy in Europe. Human rights defenders play a key role in upholding the standards and values to which Council of Europe member states have bound themselves. By undermining this role to implement restrictive asylum and migration policies, member states risk doing long-term damage to the key principles underpinning their societies.⁶⁹

Finally, by repressing the work of human rights defenders, member states are depriving themselves of a key partner to implement both humane and effective asylum and migration policies. In many states, civil society organisations, as well as private individuals, play a key role in ensuring that the national asylum and migration system can function. The role of human rights defenders becomes even more visible in emergency or crisis situations. It is unimaginable that European states would have been able to cope with the increase in arrivals in 2015-2016, or of Ukrainians in 2021, without the proactive involvement of numerous organisations and hundreds of thousands of citizens who all chipped in to help states overcome challenging situations.⁷⁰ In many cases, human rights defenders have also stepped in to fill gaps that member states have left, such as in the Mediterranean or at inhospitable border areas, often saving countless lives in the process.⁷¹

Conclusions and recommendations

Human rights defenders, in all their diversity, play a crucial role in upholding the human rights of individual refugees, asylum seekers and migrants, and in maintaining humane and effective asylum and migration policies in Europe. Rather than seeing them as adversaries, to be restricted in various forms, Council of Europe member states should recognise and welcome the work of these human rights defenders as key partners, and acknowledge the enormously important work that they carry out. Even when human rights defenders challenge state authorities, this must be recognised as being part and parcel of open, democratic societies based on the rule of law.

The Commissioner for Human Rights therefore urges Council of Europe member states to take all necessary action to reverse this trend and to ensure that their commitments to the protection of human rights defenders are upheld in all areas, including asylum and migration policy. To this end, she calls upon member states to take the following actions:

- **Reconsider overall asylum and migration policies that contribute to a hostile environment** for human rights defenders, especially those that are focused on preventing safe arrival and access to asylum, that use criminal (rather than administrative) law to address irregular migration, and that have an overly securitised or militarised approach.
- **Reform laws, policies and practices potentially preventing or interfering with the activities of human rights defenders** assisting refugees, asylum seekers and migrants, and bring them into compliance with requirements and guidance set out by the Council of Europe, the UN and other international bodies. In this respect, they should particularly take note of and ensure conformity with:
 - the Council of Europe [Declaration](#) on action to improve the protection of human rights defenders and promote their activities and the [UN Declaration on Human Rights Defenders](#);

- the Committee of Ministers' Recommendations [CM/Rec\(2018\)11](#) on the need to strengthen the protection and promotion of civil society space in Europe, and [R\(2000\)21](#) on the freedom of exercise of the profession of lawyer;
 - the case law of the European Court of Human Rights;
 - relevant resolutions of the Parliamentary Assembly of the Council of Europe;⁷²
 - the *Guidelines on Freedom of Association* of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the European Commission for Democracy through Law (Venice Commission);
 - the *Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants* of the Expert Council on NGO Law of the Council of Europe Conference of INGOs;
 - [General Policy Recommendation No. 16](#) of the European Commission against Racism and Intolerance (ECRI) in regard of establishing firewalls between service providers and immigration enforcement;
 - and other relevant instruments and guidance on protecting human rights defenders, including the ODIHR *Guidelines on the Protection of Human Rights Defenders*.
- Government and elected representatives should **refrain from derogatory, inflammatory or stigmatising rhetoric** about the role of human rights defenders assisting refugees, asylum seekers and migrants, and publicly communicate that challenging government policies, including advocacy, public campaigning and litigation, are entirely legitimate activities in an open, democratic society.
 - **Publicly acknowledge the invaluable contribution of human rights defenders** in a democratic society at large, and in particular in relation to ensuring effective and human rights compliant asylum and migration policies, and to promote a narrative that enables seeing them as constructive partners – even when they criticise government policy – rather than as adversaries.
 - Invest in appropriate **training on and awareness raising of standards** on human rights defenders, and the broad scope of activities that may fall within human rights defence with all relevant authorities, including for law enforcement agencies and the judiciary.
 - Establish **effective safety procedures** for human rights defenders to engage with law enforcement and prosecutorial authorities when faced with violence or threats.

- Ensure that all incidents of violence or threats against the physical integrity of human rights defenders are **promptly and effectively investigated**, and that perpetrators are subjected to appropriate sanctions to prevent reoccurrence and dissuade others from engaging in the same actions. The authorities should also publicly condemn any such incidents in order to send a clear message about their unacceptability.
- Step up **action against offline and online hate speech**, both against refugees, asylum seekers and migrants, and against human rights defenders and others assisting them, in line with Council of Europe standards on combating hate speech, in particular Committee of Ministers' Recommendation [CM/Rec\(2022\)16](#), the case law of the European Court of Human Rights, and ECRI [General Policy Recommendation No. 15](#).
- Ensure that **laws on smuggling or the facilitation of irregular entry, transit or stay clearly prevent the criminalisation of human rights defenders assisting refugees, asylum seekers and migrants**, including by ensuring that the 'financial or material' gain criterion is central to any definition of criminality. Such laws should also ensure sufficiently broad 'humanitarian' exemptions that unequivocally cover not only search and rescue and the provision of aid in relation to people's basic needs, but all activities aimed at the promotion, protection or realisation of the human rights of refugees, asylum seekers and migrants.
- Reform **other criminal and administrative laws and requirements** that could interfere with the legitimate activities of human rights defenders assisting refugees, asylum seekers and migrants, in order to ensure that clear safeguards are in place to prevent the criminalisation of their activities and the abuse of laws or requirements to harass or intimidate human rights defenders.
- When there are credible allegations of criminal or administrative offences by human rights defenders, ensure **fair, transparent, prompt, adversarial proceedings** which effectively allow human rights defenders to challenge relevant evidence and have full access to it, and ensure that such proceedings are not unnecessarily prolonged.
- Establish working practices that **recognise human rights defenders as partners** and allow for constructive co-operation. This includes ensuring that human rights defenders are consulted on legislative and policy developments related to the human rights of refugees, asylum seekers and migrants, and establishing transparent mechanisms for dialogue and consultation that are accessible to all human rights defenders.
- Ensure that human rights defenders do not face **undue restrictions on access** to places where they can interact with and assist

refugees, asylum seekers and migrants, and ensure effective access to information, including in relation to human rights monitoring, legal representation, and media reporting.

- End the use of **surveillance measures** to intimidate human rights defenders and disrupt their work. When there are legitimate reasons for surveillance, ensure transparency (including access to evidence, notification and effective remedies) and full observance of the ECHR and the case law of the European Court of Human Rights.
- Ensure fair, non-discriminatory and sufficient **access to public funding** for activities in relation to the promotion, realisation and protection of the human rights of refugees, asylum seekers and migrants, which should not contain explicit or implicit conditions that individuals or organisations receiving public funding refrain from speaking out on human rights issues.

Endnotes

1. See, among others, the [UN Declaration on Human Rights Defenders](#) (1999); Council of Europe Committee of Ministers, Recommendation [CM/Rec\(2007\)14](#) on the legal status of non-governmental organisations in Europe; the Council of Europe [Declaration on action to improve the protection of human rights defenders and promote their activities](#) (2008); Recommendation [CM/Rec\(2018\)11](#) on the need to strengthen the protection and promotion of civil society space in Europe.
2. Council of Europe Declaration, note 1 above, paragraph 2(i).
3. *Ibid.*, paragraph 2.
4. Commissioner for Human Rights, [Human rights defenders in the Council of Europe area in times of crisis](#), round-table with human rights defenders, Dublin 24-25 October 2022, CommHR(2023)2, 23 March 2023.
5. Commissioner for Human Rights, [Lives saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean](#), Recommendation, June 2019, chapter 3; [A distress call for human rights: the widening gap in migrant protection in the Mediterranean](#), follow-up report to the 2019 Recommendation, March 2021, chapter 3; [Pushed beyond the limits: four areas for urgent action to end human rights violations at Europe's borders](#), Recommendation, April 2022, chapter 3
6. See, in particular, Commissioner for Human Rights, '[Commissioner calls on member states to cooperate with NGOs assisting migrants](#)', 19 June 2018.
7. Commissioner for Human Rights, [Report](#) following her visit to Hungary from 4 to 8 February 2019, CommDH(2019)13, 21 May 2019, chapter 2; [Report](#) following her visit to Malta from 11 to 16 October 2021, CommDH(2022)1, 15 February 2022, chapter 2; [Report](#) following her visit to the United Kingdom from 27 June to 1 July, CommDH(2022)27, 18 November 2022, part 1.1; [Report](#) following her visit to Italy from 19 to 23 June 2023, CommHR(2023)37, 21 November 2023, part 1.2; [Statement](#) following her emergency visit to Poland, 19 November 2021.
8. Commissioner for Human Rights, [letter](#) to the Minister of Interior of Cyprus, 10 March 2021 (published 18 March 2021); [Letter](#) to the Chairwoman of the Committee on Internal Affairs and Community of the Parliament of the Federal Republic of Germany, 16 May 2019 (published 23 May 2019); [Letter](#) to the Greek Ministers of Citizens' Protection, of Migration, and of Shipping and Island Policy, 3 May 2021 (published 12 May 2021); [Letter](#) to the Minister of Interior of Italy, 26 January 2023 (published 2 February 2023); [Letter](#) to the Minister of Interior of Latvia, 29 July 2022 (published 9 August 2022); [Letter](#) to the Minister of Interior of Latvia, 27 January 2023 (published 6 February 2023); [Letter](#) to the Prime Minister of Malta, 5 May 2020 (published 11 May 2020).
9. Commissioner for Human Rights, '[Hungary: Commissioner concerned at further planned barriers to the work of NGOs assisting migrants](#)', 1 June 2018; '[Greek authorities should reverse the trend undermining the work of human rights defenders and journalists](#)', 12 January 2023; '[Lithuania: human rights should be at the centre of](#)

the parliamentary debate on migration and asylum', 24 April 2023; 'New legislation perpetuates restrictions and obstacles to protection of human rights on Poland's eastern border', 1 December 2021.

10. Commissioner for Human Rights, [Third party intervention](#) with the European Court of Human Rights in the cases of *S.B. v. Croatia*, *A.A. v. Croatia*, and *A.B. v. Croatia* (Nos. 18810/19, 18865/19 and 23495/19), CommDH(2020)33, 22 December 2020, paragraph 25. [Third party intervention](#) in the case of *S.S. and others v. Italy* (No. 21660/18), CommDH(2019)29, 15 November 2019, paragraphs 14-15; [Third party intervention](#) with the European Court of Human Rights in the case of *R.A. and others v. Poland* (no. 42120/21), CommDH(2022)3, 27 January 2022, section I.
11. See, among many other sources, Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2356 \(2020\)](#) on the rights and obligations of NGOs assisting refugees and migrants in Europe, 4 December 2020, and its accompanying [report](#) (doc. 15161); the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, [Using criminal law to restrict the work of NGOs supporting refugees and other migrants in Council of Europe member states](#), thematic study, CONF/EXP(2019)1, December 2019; Report of the UN Special Rapporteur on the human rights of migrants (UNSR on migrants), [Right to freedom of association of migrants and their defenders](#), presented at the forty-fourth session of the Human Rights Council, 15 June-3 July 2020, A/HRC/44/42, 13 May 2020; Report of the UN Special Rapporteur on the situation of human rights defenders (UNSR on HRDs), [Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers](#), presented at the seventy-seventh session of the General Assembly, A/77/178, 18 July 2022; EU Fundamental Rights Agency, [Fundamental rights considerations: NGO ships involved in search and rescue in the Mediterranean and criminal investigations](#), 1 October 2018, and the subsequent [updates](#) that the agency has regularly published; L. Vosliūtė & C. Conte, [Crackdown on NGOs and volunteers helping refugees and other migrants](#), final synthetic report, Research Social Platform on Migration and Asylum (ReSOMA), June 2019; Amnesty International, [Punishing compassion: solidarity on trial in Fortress Europe](#), 2020; International Commission of Jurists (ICJ), [Criminalization of humanitarian and other support and assistance to migrants and the defence of their human rights in the EU](#), briefing paper, 22 April 2022; OMCT/FIDH Observatory for the Protection of Human Rights Defenders, [Europe: Open season on solidarity – a study on the patterns of criminalization of solidarity through the voices of migrants' rights defenders](#), November 2021; Platform for International Cooperation on Undocumented Migrants (PICUM), [More than 100 people criminalized for acting in solidarity with migrants in the EU in 2022](#), briefing 2023.
12. The Commissioner would like to thank all participants in these discussions, who will remain anonymous, for their invaluable contributions.
13. See, for example, Commissioner for Human Rights, [Tolerance of human rights violations against refugees has reached alarming levels in Europe](#), 19 June 2023; Commissioner for Human Rights, [Annual Activity Report 2022](#), CommHR(2023)11, 24 April 2023, p. 3; [Presentation](#) of the 2023 Annual Activity Report to the Council of Europe Parliamentary Assembly, speech, 22 January 2024.
14. On the recognition of NHRIs as human rights defenders, see Council of Europe Committee Recommendations CM/Rec(2018)11, note 1 above, and [CM/Rec\(2021\)1](#) on the development and strengthening of effective, pluralist and independent national human rights institutions. NHRIs furthermore play a key role in defending human rights defenders, see, for example, Global Alliance of National Human Rights Institutions (GANHRI), [The Marrakech Declaration](#) "Expanding the civic space and promoting and protecting human rights defenders, with a specific focus on women: the role of

national human rights institutions”, 12 October 2018; European Network of National Human Rights Institutions (ENNHRI), *Gaps in human rights accountability at borders*, 14 December 2018, p. 18.

15. UNSR on HRDs, note 11 above, at paragraph 8: “many human rights defenders helping migrants, refugees and those seeking asylum come to this work not because they intended to establish a career in human rights, but decided to act when confronted with families, including children, dying in their localities.”
16. UNSR on HRDs, note 11 above, part IX, addressing human rights defenders who are refugees, asylum seekers or migrants.
17. See, for example, Parliamentary Assembly of the Council of Europe (PACE), [Resolution 2525 \(2024\)](#) on the theme of migration and asylum in election campaigns and the consequences on the welcoming and rights of migrants, 23 January 2024; UNSR on migrants, note 11 above, parts D.1 and D.2; FIDH/OMCT, note 11 above, part III, with a detailed overview of hostile rhetoric against HRDs in Europe. Also see Commissioner for Human Rights, [‘The Turkish authorities must protect democratic freedoms’](#), 5 May 2023; [Submission](#) to the Committee of Ministers for the supervision of the execution of judgments in the cases of *Ilias and Ahmed v. Hungary*, grouped with *Shahzad v. Hungary*, CommDH(2022)19, 12 August 2022, paragraph 15; intervention in the case of *R.A. and others v. Poland*, note 10 above, paragraph 14.
18. Already in 2010, one of the Commissioner’s predecessors warned of the nefarious impact of using terms like ‘illegal’ migration on criminalisation, see [Criminalisation of migration in Europe: human rights implications](#), issue paper, CommDH/IssuePaper(2010)1, part III.b.
19. See, for example, Council of Europe Venice Commission and OSCE ODIHR, [Joint opinion on the provisions of the so-called ‘Stop Soros’ draft legislative package which directly affect NGOs](#), CDL-AD(2018)013, 25 June 2018, paragraph 72.
20. Expert Council on NGO Law, note 11 above, paragraph 67.
21. See, for example, Commissioner for Human Rights, report on the United Kingdom, note 7 above, part 1.1. Also see Council of Europe Committee of Ministers [Recommendation No. R\(2000\)21](#) on the freedom of exercise of the profession of lawyer, Principle 1, paragraph 4: “Lawyers should not suffer or be threatened with any sanctions or pressure when acting in accordance with their professional standards.”
22. See, for example, E. Cusumano & M. Villa, [‘Sea rescue NGOs: a pull factor of irregular migration?’](#), policy brief issue 2019/22, European Union Institute/Migration Policy Centre, November 2019; A. Rodríguez Sánchez et al, [‘Search-and-rescue in the Central Mediterranean Route does not induce migration: predictive modeling to answer causal queries in migration research’](#), *Scientific Reports* 13, 11014 (2023).
23. Commissioner for Human Rights, [Pushed beyond the limits](#), note 5 above, foreword.
24. A recent and particularly chilling example is the [bomb attack](#) of 5 January 2024 on the office of KISA, an NGO assisting refugees, asylum seekers and migrants, and more generally working on issues of inclusion and the combating of racism, xenophobia and discrimination in Cyprus. Also see the reactions from the [UN Special Rapporteur on Human Rights Defenders](#), the [UN High Commissioner for Refugees](#), and [Amnesty International](#).
25. See, for example, statement following the emergency visit to Poland, note 7 above, highlighting harassment and intimidation of people providing help to migrants at the border, as well as a specific attack on the car of volunteer medics; [‘Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece’](#), 3 March 2020, raising alarm about the threat of vigilantism for both

refugees and migrants and for NGOs; Report on the United Kingdom, note 7 above, paragraph 9 and footnote 3, addressing a knife attack against a staff member of a law firm supporting clients in migration proceedings.

26. See note 11 above.
27. Expert Council on NGO Law, note 11 above, part IV.5. Also see Commissioner for Human Rights, '[Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece](#)', 3 March 2020.
28. Commissioner for Human Rights, intervention in *R.A. and others v. Poland*, note 10 above, paragraphs 12 and 13, presenting the Commissioner's observations on human rights defenders being intimidated by border guards or security services, including being manhandled, held at gunpoint, threatened, verbally abused, and subjected to lengthy and intrusive questioning and personal searches.
29. *Euronews*, '["Far-right extremists" could police Lithuanian border under new law, warn activists](#)', 26 April 2023.
30. See, for example, *InfoMigrants*, '[Libyan coast guard fired shots over rescue ship, migrants, NGOs say](#)', 27 March 2023.
31. See UNSR on HRDs, note 11 above, part VIII, dealing specifically with gender-based attacks on HRDs.
32. Commissioner for Human Rights, *Human rights defenders in the Council of Europe area in times of crisis*, note 4 above, paragraphs 22-24; UNSR on HRDs, note 11 above, paragraphs 42-43; UNSR on migrants, note 11 above, part D.1.
33. Commissioner for Human Rights, report on Italy, note 7 above, part 1.2.1.
34. [Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organised Crime](#) of 2000, Article 3(a).
35. [Directive 2002/90/EC](#) of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, OJ L 328, 5 December 2002, pp. 0017-0018.
36. Expert Council on NGO Law, note 11 above, paragraphs 71-73
37. Article 1(1)(b) of Directive 2002/90/EC only relates to "any person who, *for financial gain*, intentionally assists" residence in breach of a member state's laws (emphasis added).
38. Article 1(1)(a) of the Directive requires the adoption of appropriate sanctions on "any person who *intentionally assists* a person who is not a national of a Member State to enter, or transit across, the territory of a Member State in breach of the laws of the State concerned on the entry or transit of aliens" (emphasis added).
39. In 2020, the European Commission published guidance in 2020 to clarify that humanitarian assistance mandated by law (especially in the framework of search and rescue operations) should not be criminalised, see [2020/C 323/01](#). But see, M. Wu, '[The EC's guidance on the Facilitation Directive – ending the criminalisation of NGO-led SAR operations?](#)', for a critical discussion of the impact that this guidance has had on criminalisation of sea rescue.
40. See, in this respect, Commissioner for Human Rights, report on Italy, note 7 above, part 1.2.2, outlining how the Italian authorities have heavily circumscribed what actions by NGO search and rescue vessels they consider as appropriately mandated by law, including the problem of imposing sanctions in case of failure of a ship to return to a port assigned for disembarkation without delay after every rescue, prohibiting them from carrying out multiple rescues on a single journey.
41. European Commission, [Proposal](#) for a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union,

replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM(2023) 755 final, 28 November 2023.

42. *Ibid.*, Article 3(1)(a).
43. *Ibid.*, recital 7.
44. See, for example, M. Monroy, '[Attack against helpers of refugees: new EU package criminalises aiding and abetting of "smuggling"](#)', 21 December 2023. Monroy highlights, for example, that the new proposal also sets out to criminalise "publicly instigating third-country nationals to enter, or transit across, or stay within the territory of any Member State in breach of relevant Union law or the laws of the Member State concerned" (Article 3(2) of the proposal), which he argues may impact on organisations such as Alarm Phone or sea rescuers when they report on their activities on the internet and in social media.
45. PICUM, note 11 above, providing an overview of publicly reported cases of criminalisation, including in relation to facilitation. See in particular p. 4 discussing the length of proceedings.
46. EU Fundamental Rights Agency, note 11 above, Annex. FRA provides an overview of legal proceedings by EU member states against civil society actors involved in search and rescue operations in the Mediterranean. The overview lists 11 cases in which facilitating irregular migration is the main or part of the charges levelled in the case. Of these, as of 30 June 2023, eight cases had been acquitted, whilst the other three were pending. PICUM, note 3 above, p. 4-5, highlights that for 90% of the 102 human rights defenders faced with criminalisation in the EU in 2022, their case was still ongoing by the start of 2023. Of the remainder, nine had received acquittal decisions, while no one was convicted. Also see, AP, '[Greek court acquits aid workers who helped rescue migrants crossing in small boats](#)', 30 January 2024.
47. For example, in 2018, the [French Constitutional Council](#) found that the 'solidarity offence' of criminalising a person facilitating irregular entry or stay was partially unconstitutional, including on the basis of the principle of fraternity, which implies freedom to help others, for a humanitarian purpose, without considering the legality of their residence on the national territory. In 2022, the [Italian Constitutional Court](#) highlighted the importance of making clear consideration of the distinction between those acting with criminal intent and those acting for humanitarian reasons.
48. Expert Council on NGO Law, note 11 above, part IV.2; UNSR on migrants, note 11 above, part D.3.
49. Commissioner for Human Rights, *Human Rights Defenders in the Council of Europe area in times of crisis*, note 4 above, paragraphs 22-24; PICUM, note 11 above, p. 5-6.
50. Commissioner for Human Rights, submission in the case of *Ilias and Ahmed v. Hungary*, note 17 above, paragraph 16.
51. EU Fundamental Rights Agency, note 11 above, Annex, listing, for example, transporting too many passengers, violations of environmental laws, alleged illegal waste management, spending too many hours at sea, and other undefined "technical deficiencies" or "violations of maritime regulations" as reasons for detained NGO vessels in ports.
52. Court of Justice of the EU, *Sea-Watch eV v. Ministero delle Infrastrutture e dei Trasporti*, C14/21 and C15/21, judgment of 1 August 2022, EU:C:2022:604, paragraphs 107-109.
53. N. Nielsen, '[Meloni decree detained rescue boats a dozen times in 2023](#)', *EU Observer*, 5 January 2024; Also see the overview provided by the EU Fundamental Rights Agency of measures against vessels engaged in search and rescue operations, note 11 above, Annex. Furthermore, see Commissioner for Human Rights, Recommendation *Lives*

saved, note 4 above, and her report on Italy, note 7 above.

54. Commissioner for Human Rights, letter to Cyprus, note 8 above.
55. According to the Recommendation CM/Rec(2007)14 of the Committee of Ministers of the Council of Europe, the dissolution of an NGO should only be used as a measure of last resort for serious misconduct.
56. OSCE/ODIHR and Venice Commission *Guidelines on Freedom of Association*.
57. Commissioner for Human Rights, letter to Greece, note 8 above; Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, *Opinion on the compatibility with European standards of recent and planned amendments to Greek legislation on NGO registration*, CONF/EXP(2020)4, 2 July 2020; UN Special Rapporteurs on the rights to freedom of peaceful assembly and of association, on the situation of human rights defenders, and on the human rights of migrants, [communication](#) to the Greek government, OL GRC 1/2021, 31 March 2021.
58. Expert Council on NGO Law; Amnesty International, PICUM (all note 11 above).
59. Commissioner for Human Rights, '[Commissioner calls on member states to cooperate with NGOs assisting migrants](#)'; 19 June 2018; Recommendation *Lives saved*, follow-up report *A distress call for human rights*, and Recommendation *Pushed beyond the limits* (all note 5 above); also see Expert Council on NGO Law, note 11 above, paragraph 20: "Originally seen as allies providing vital support to states overwhelmed by the high volume of arrivals and often underprepared by the scale, complexity and immediacy of the tasks, this constructive relationship between states and NGOs has shifted in many states as a consequence of hardening anti-migrant policies."
60. Commissioner for Human Rights, Recommendation *Lives saved*, follow-up report *A distress call for human rights*, and country reports on Italy and Malta (all note 5 above).
61. See, for example, Commissioner for Human Rights, '[Time to immediately act and to address humanitarian and protection needs of people trapped between Turkey and Greece](#)'; 3 March 2020; statement following the emergency mission to Poland, note 7 above; [Letter](#) to Latvia (2022), note 8 above; Recommendation *Pushed beyond the limits*, note 5 above, chapter 3.
62. Commissioner for Human Rights, letter to Cyprus, note 8 above; [Report](#) following visit to Austria from 13 to 17 December 2021, CommDH(2022)10, 12 May 2022, paragraph 20.
63. Commissioner for Human Rights, report on Malta, note 7 above, paragraphs 55 and 65.
64. Commissioner for Human Rights, intervention in the cases of *S.B. v. Croatia*, *A.A. v. Croatia*, and *A.B. v. Croatia*, note 10 above, paragraph 25.
65. See, for example, European Court of Human Rights, *Muhammad and Muhammad v. Romania* [GC], no. 80982/12, [judgment](#) of 15 October 2020; *Ljatifi v. the former Yugoslav Republic of Macedonia*, no. 19017/16, [judgment](#) of 17 May 2018; *S.B. v. North Macedonia*, no. 64163/19, [judgment](#) of 30 November 2023.
66. See, for example, the surveillance measures taken against a Greek journalist regularly reporting on migration-related issues: G. Papoulias, '[Solomon's reporter Malichudis under surveillance for "national security reasons"](#)', *Solomon*, 3 August 2022; U. Realfonzo, '[Extent of Greek government spying scandal revealed at European Parliament inquiry](#)', *The Brussels Times*, 11 September 2022.
67. UNSR on migrants, note 11 above, part D.4.
68. See, for example, Commissioner for Human Rights, [letter](#) to the Chairman of the Parliament of Georgia, 22 February 2023 (published 28 February 2023); European Court of Human Rights, *Ecodefence and others v. Russia* (Nos. 9988/13 and 60 others),

[judgment](#) of 14 June 2022.

69. Commissioner for Human Rights, [Presentation](#) of the 2023 Annual Activity Report to the Council of Europe Parliamentary Assembly, speech, 22 January 2024.
70. Commissioner for Human Rights, '[Commissioner urges more coordinated efforts by all member states to meet the humanitarian needs and protect the human rights of people fleeing the war in Ukraine](#)', 24 March 2022.
71. Commissioner for Human Rights, Recommendation *Lives saved*, note 5 above; statement on the emergency visit to Poland, note 7 above.
72. Including [Resolution 2362 \(2021\)](#) on restrictions on NGO activities in Council of Europe member States, and [Resolution 2225 \(2018\)](#) on protecting human rights defenders in Council of Europe member States.

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member states.

The activities of this institution focus on three major, closely related areas :

- country visits and dialogue with national authorities and civil society,
- thematic studies and advice on systematic human rights work, and
- awareness-raising activities.

The current Commissioner, Dunja Mijatović, took up her functions in April 2018. She succeeded Nils Muižnieks (2012-2018), Thomas Hammarberg (2006-2012) and Álvaro Gil-Robles (1999-2006).



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