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Contesting Migration in Law

Perspectives on Cases involving Pro- and Anti- Migration
Mobilisation in the Mediterranean



Antonina Albanese is a PhD Candidate at the University of Palermo (Department of Political Sciences), examining the micro-politics of resistance in everyday financial infrastructures, with a focus on money transfer practices among migrant and refugee communities in Palermo and informal financial networks in the Mediterranean and SWANA regions, at the intersection of space, structural discrimination, and migratory trajectories. She is also Senior Project Manager at CESIE ETS, and a Board Member and Secretary General of Refugees Welcome Italia, Member of the Refugees Welcome International Scientific Committee, and Responsible for the Refugees Welcome International Network.



Marion Bouchetel is a qualified lawyer from France specialising in migration, asylum and human rights. She has been engaged in legal assistance, advocacy and litigation work in Greece, and in particular in Lesbos, since 2017. Her research and advocacy focus on border regimes, criminalisation, anti-racism and civic space.



Olga Demetriou is Professor in Political Anthropology at the School of Government and International Affairs at Durham University and leads the *Contesting Migration* project. Her work straddles anthropology and politics and has focused on citizenship, minorities, gender, and displacement in border locations in Greece and Cyprus. She has authored two monographs, *Capricious Borders* (Berghahn, 2013) and *Refugeehood and the Postconflict Subject* (SUNY, 2018) and various articles.



Daisy Vaughan Liñero is a migration and asylum policy specialist with over eight years' experience across UK local government, international humanitarian contexts and national policy influencing. She works across independent consultancy and public sector roles to support the design, review and improvement of asylum, migration and integration systems, services and programmes, with a particular focus on embedding the meaningful involvement of people with relevant lived experience. Her international experience includes roles in Mexico, Jordan and Lebanon, working on refugee protection, resettlement and participatory research in close partnership with UNHCR. She holds a Master's in Refugee Protection and Forced Migration, a post-graduate diploma in Spanish Immigration Law, and has published research on externalisation policies, the UK asylum system and SOGI-based protection claims.

Other reports in the series:

Marion Bouchetel, 2026, *Contesting Migration in Law: Perspectives on Cases involving Pro- and Anti-Migration Mobilisation in Greece*, Contesting Migration Legal Report Series 1/2026, Durham, May 2026; Antonina Albanese, 2026, *Contesting Migration in Law: Perspectives on Cases involving Pro- and Anti-Migration Mobilisation in Italy*, Contesting Migration Legal Report Series 2/2026, Durham, May 2026; Daisy Vaughan-Liñero, 2026, *Contesting Migration in Law: Perspectives on Cases involving Pro- and Anti-Migration Mobilisation in Spain*, Contesting Migration Legal Report Series 3/2026, Durham, May 2026.

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Perspectives on Cases involving Pro- and Anti- Migration Mobilisation in the Mediterranean

Contesting Migration in Law
 Perspectives on Cases Involving Pro- and Anti- Migration Mobilisation in the Mediterranean

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Authors: Antonina Albanese, Marion Bouchetel, Olga Demetriou, Daisy Vaughan Liñero
 Editor: Olga Demetriou
 Designer: Natalie Demetriou
 Cover photo: Moria ruins © Olga Demetriou

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About the project:

This report has been produced as part of the ESRC-funded project “Contesting Migration: Pro- and Anti-Migrant Mobilization in Mediterranean Refugee Reception Sites” (ES/W012324/1), led by Olga Demetriou at Durham University in collaboration with Antonis Ellinas at the University of Cyprus.

Contesting Migration brings together anthropologists and political scientists to study one of the main social and humanitarian contemporary challenges, that of forced displacement. The project focuses on the impact of grand policy shifts on migration and refugee protection over the last decade on local activist communities in the Mediterranean. Taking locations in Greece, Italy, and Spain as its main sites of focus, and building on previous research in Greece and Cyprus, the project studies the governance of migration through the lens of refugee reception sites with a focus on political contestation. Mobilising political ethnography in nine sites, the project seeks to understand in a comparative frame, refugee politics and policy from the point of view of activists involved in conventional, contentious, and cultural forms of activism.

The project’s legal reports address the landscape of activism for and against migration in the three countries and provide a frame for understanding the legal context in which this form of conventional activism operates. They seek to provide contextual and judicial background, through studying the provisions of the law and how these are put in practice. Each report uses two legal case studies to compare the approach to pro- and anti-migration activism in each country.



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Contesting Migration in the Sphere of Law

Report on Mediterranean

Report Summary

This report traces the manifestations of dynamics between pro- and anti- migration activism in the sphere of law, in three Mediterranean countries that have assumed the role of “frontline” states in the EU’s migration governance model since the 2010s. It examines six migration-related activism cases in the three countries: the criminalisation of pro migrant activism in Greece in the case of the Emergency Response Centre International (ERCI), in Italy in the case of Linea d’Ombra, and in Spain in the case of Proactiva Open Arms; and to litigation involving anti-migrant actors in the cases of the criminal prosecutions of attackers of migrant protestors in Sappho Square in Lesbos in Greece and of migrant minors in Castelldefels in Spain, as well as the case against the closing of CasaPound Italia’s social media pages for racist and anti migrant content. In each country, the reports also scan recent developments in the domains of legislation on the management of irregular migration, freedom of expression, association and assembly, and hate speech and racist crime and offer insights on how migration has shaped case-law in these domains. Across the reports, a key similarity that emerges is the asymmetric approach of the authorities applying the law, which results in harsher consequences for pro-migrant activism than anti-migration activism.

Introduction

The crossing of international borders by refugees who flee has, in the last decade, become more intense, more difficult, more organised, and more deadly and has spurred wholesale policy changes globally and in Europe in the forms of the Global Compact on Refugees and the European Migration Pact. These grand policy shifts have largely been elicited by emergencies in specific refugee reception sites. In the Mediterranean, such sites have attracted much attention during this time, and have served to magnify the broader socio-political dynamics that refugee flows set in motion, primarily between pro- and anti-refugee actors.

This report traces the manifestations of these dynamics in the sphere of law, in three Mediterranean countries that have assumed the role of “frontline” states in the EU’s migration governance model since the 2010s. In Greece, Italy, and Spain, activism for and against migration has intensified over this period, and so has its legal and judicial regulation. As laws restricting migration have criminalised civil society actors, pro-migrant activists have faced litigation for their humanitarian work as well as assault by anti-migration actors. But they have equally brought cases against such violence and have defended their actions against state prosecutions.



“Frontex, what will you tell your children?” graffiti outside Mytilene in Lesbos © Olga Demetriou October 2022

The report examines six migration-related activism cases in the three countries. Three of them refer to the criminalisation of pro-migrant activism: Emergency Response Centre International (ERCI) in Greece, Linea d’Ombra in Italy, and Proactiva Open Arms in Spain; the other three refer to litigation involving anti-migrant actors: criminal prosecutions of attackers of migrant protestors in Sappho Square in Lesbos in Greece and of migrant minors in Castelldefels in Spain, and litigation against the closing of CasaPound Italia’s social media pages for racist and anti-migrant content. Each country-focused section of the report undertakes an internal comparison of two cases concluded at national level, one relating to pro-migrant activism and one to anti-migration activism. In this sense, this collective report distils comparisons and findings of three longer country-specific reports, which are separately published within the series and focus specifically on Greece, Italy, and Spain, and which further detail the cases, national context, and research methodology. The purpose of this report is to collate the key findings from each country report into an overview of cross-national dynamics. Through the six cases summarised here, this report outlines the legislative and judicial dynamics that EU policy and its national application have spurred in these three frontline states and situates these dynamics within the national socio-political contexts.



Decennial event in Tangiers commemorating border deaths in the sea off Ceuta © Olga Demetriou, February 2024

Collectively, the reports in this series scan recent developments in the domains of legislation on the management of irregular migration, freedom of expression, association and assembly, and hate speech and racist crime and offer insights on how migration has shaped case-law in these domains. Each country case presents distinctive characteristics in the application of such legislation, but they all feature important similarities between them.

Most important of these similarities is the asymmetric approach of the authorities applying the law, with expansive interpretation of parameters applicable to sanctioning pro-migrant actions and restrictive interpretation of parameters applicable to sanctioning anti-migrant crime. Equally important are the differential effects of similar approaches in the prosecution of pro- and anti-migrant actors, e.g. the length of proceedings, which affect activities of actors in the long-term differentially, restricting pro-migrant civic space but emboldening anti-migrant activism. A related finding that cuts across the country studies is the chilling effect of criminalisation on pro-migrant activism, which does not appear to be mirrored in the criminalisation of hate crime. This is also linked to the finding that while criminalisation of pro-migrant activism is often state initiated, the prosecution of hate crime most often results from civil society initiatives.

Such comparative findings point to similarities in the socio-political context in which activism in frontline states has developed over the last decade, and which is further analysed via ethnographic research in selected sites within the “Contesting Migration” project. The current report series serves to complement these findings by providing legal context and background to local manifestations of activism and mobilisation. Publications relating to findings of the ethnographic research are available on the project’s website <https://contestingmigration.webspace.durham.ac.uk>

Greece

Context

Over the last decade Greece underwent a transformation in its political, legal and social approach to migration governance. Initially celebrated for spontaneous acts of solidarity by local communities and civil society actors, it has gradually been tasked with deterring migration at Europe’s external borders. This shift reflects broader European policy toward deterrence, externalisation and securitisation of migration, exemplified in the 2024 EU Pact on Migration and Asylum. In this context, a wide and polarised landscape of activism has emerged ranging from migrant self-organised groups, solidarity networks and humanitarian organisations to nationalist and anti-migrant groups. The interaction of these actors in an increasingly regulated and restrictive legal environment has made Greece a highly contested arena for migration-related mobilisation.

Since 2015, Greece has progressively hardened its migration governance model, shaped largely by the “hotspot approach”, the EU–Turkey Statement of March 2016 and the subsequent EU funding conditionalities. The ‘hotspot approach,’ presented by the European Commission’s [European agenda on migration](#) in 2015, aimed to support migration management in Italy and Greece, creating, in Greece, five ‘hotspot’ Reception and Identification Centres (RICs) for asylum-seekers in Lesbos, Chios, Samos, Kos and Leros. With the [EU-Turkey Statement](#), these islands were transformed, overnight, into places of forced containment for people, channelled through fast-tracked asylum procedures, and into deportation platforms to Turkey and countries of origin for rejected asylum seekers. Implemented most intensively on the Aegean islands’ hotspots, this regime institutionalised this containment/detention in degrading, overcrowded and substandard refugee camps, first in RICs and later in highly securitised Closed Controlled Access Centres (CCACs).



Ruins of abandoned Reception and Identification Centre in Samos © Olga Demetriou, October 2022

Greek public attitudes toward migration have oscillated between solidarity-based initiatives and periods of intense xenophobia, which have also at times co-existed. Early local networks on the Aegean islands, shaped by long histories of migration, initially mobilised humanitarian support and solidarity actions. However, prolonged containment conditions, deteriorating camp infrastructures and heightened border securitisation contributed to increased polarisation of public opinion, including anti-migrant sentiment. Nationalist, right-wing populist and far-right mobilisation against migration intensified especially in the Eastern Aegean “hotspot” islands after 2018. Concurrently, Greece has also developed into a unique hub of transnational solidarity

movements, with thousands of volunteers, activists and aid workers passing by or staying in Greece over the last years.

In Lesbos, the Moria RIC became a global symbol of humanitarian crisis, causing regular injuries and deaths due to endangering conditions in the camp, and leading to migrant-led protests and riots. These mobilisations demanded freedom of movement, relocation, access to asylum, vital medical services and dignified living conditions. From grassroots protests and squats, pro-migration activism developed towards legal and institutional arenas, with human rights defenders escalating legal strategies, by bringing cases to Greek courts, the European Court of Human Rights (ECtHR) and other international fora.



Scattered documents in the ruins of the events hall at Karatepe reception facility in Lesbos after it was abandoned © Olga Demetriou, October 2022

Public discourse has adopted a stance of increased hostility against NGOs and activists working with refugees and journalists, who are publicly portrayed as “traitors, enemies of the state, Turkish agents, criminals, smugglers and traffickers” (UN Special Rapporteur on Human Rights Defenders). Investigations and criminal proceedings against them based on smuggling legislation, have had chilling effects on grassroots engagement, leading to a shrinking of civic space.



The Closed Controlled Access Centre in Samos shortly after it opened in September 2021 © Olga Demetriou, October 2022

The relevant legal frameworks are outlined below.

Theme	Laws	Stipulations	Comment
Criminalisation of migration “Anti-smuggling legislation”	Law 5038/2023 - Migration Code, (as amended by Law 5275/2026), based on the EU’s Facilitators Package	Article 25: facilitation of unauthorised entry, transit or stay in the country: in practice used to criminalise “boat drivers” and drivers transporting third country nationals irregularly Article 24: main statutory framework used to criminalise migrant rights activists and aid workers	felony offence considered one of the harshest in the EU with high penalties and covering a broad range of situations (no definition of facilitation) Being a member of a registered NGO is an aggravating factor
	“exemption clause”	recognised refugees and asylum seekers not to be penalised for their own irregular entry or facilitating their own journey Article 25, Para. 6: specific humanitarian operations (rescue at sea and transportation of people in need of international protection) if competent authorities have been notified.	national courts routinely disregard this safeguard does not protect all kinds of solidarity work and requires advance notification of authorities, a barrier to spontaneous or independent assistance
Asylum procedures & criminalisation	Asylum Code ratified by Law 4939/2022 (as amended subsequently, since the EU-Turkey statement of 18 March 2016)	speeds up procedures; lowers protection standards; adds procedural and substantive obstacles; increases grounds for rejection	increasingly more restrictive policies
	Law 5226/2025	Article 27: irregular stay a criminal offense; abolishes several possibilities of regularisation for undocumented persons	first time that illegal stay is criminalised in Greece with 2-5 years imprisonment and minimum €5,000 fine)
Civil SAR	Law 4825/2021 Deportation & Return Bill	Article 40: SAR and human rights organisations monitoring at sea required to: operate under the instructions of port authorities and only upon written approval from them; register with Greek Registry of NGOs	effectively prevents any independent and spontaneous operations at sea and shores
NGO registration	Law 4686/2020	Article 58: non-profit organisations not registered may not carry out activities in Greece	NGOs must provide prohibitively detailed documentation

Law 4939/2022 (Asylum Code as amended subsequently)		Article 78: only registered NGOs may participate in activities inside RICs	unregistered NGOs or NGOs barred from accessing state-controlled migrant facilities
Protests	Law 4703/2020	organisers must notify authorities in advance about planned demonstrations	demonstration organisers liable for damage or injury caused during the protest; authorities have broad discretion to ban or restrict protests; refugee-led protests not seen as political and systematically met with force, arbitrary arrests, and criminal charges
Racism and hate	Law 927/79	criminalises hate speech as the intentional public incitement to acts or activities that may lead to discrimination, hatred or violence	no specific provision criminalising racist or hate crime
	Article 82A of the Penal Code	racist motivation as an aggravating circumstance for sentencing purposes	provides for enhanced penalties for any crime committed with racist characteristics
	Article 184 par. 2 of the Penal Code	the act of incitement to commit crimes, violence or discord is punished with imprisonment of up to 3 years or a fine	in such cases, Article 82A of the Penal Code is not applicable
	Code of police ethics (article 1 P.D. 254/2004)	police staff are obliged to respect the value of the person; must also avoid prejudicial behaviour	Hellenic police are also responsible for receiving and handling complaints relating to hate crimes

ERCI and others

The “Emergency Response Centre International (ERCI) and others” case ended with the acquittal of all defendants in January 2026, seven years after it emerged as “the largest case of criminalisation of solidarity in Europe”. The ERCI was a Greek-registered humanitarian organisation active primarily on the island of Lesbos in 2015-2018. ERCI, were operating maritime search and rescue (SAR), first aid and post-rescue/landing assistance on shores, and coast monitoring or boat spotting activities. This happened with regular coordination and at times joint operations with the Greek Coast Guard, in a context of large-scale migrant arrivals, limited state capacity and extensive involvement of international volunteers. In 2018, a police investigation and a prosecutor’s accusation targeted ERCI volunteers and other activists for allegedly going beyond lawful humanitarian assistance and, amongst other activities, coordinating the facilitation of irregular entry of third-country nationals into Greece. Following the arrests and detention of three ERCI volunteers, the organisation suspended and ultimately ceased its operations. The case has since evolved through multiple procedural phases, spanning over 7 years and involving repeated trials, procedural flaws, appeals and adjournments.

Greek prosecutorial authorities framed the case as a matter of enforcing domestic criminal and migration law in the context of border control and the fight against organised migrant smuggling. The investigation produced an extensive criminal file encompassing misdemeanour and felony charges against 24 aid workers beyond ERCI, exposing them to a risk of up to 25 years imprisonment if convicted. Allegations ranged from offenses classified as administrative

and misdemeanour offences, including unauthorised use of radio equipment and forgery, espionage, violation of state secrets, to serious felony accusations, such as facilitation of irregular entry, leadership and membership of a criminal organisation, and money laundering. Prosecutors have relied on patterns of repeated rescue operations, use of encrypted messaging applications and financial flows from fundraising activities to support these. Greek police and prosecutorial statements have consistently rejected the characterisation of the case as one targeting humanitarian action.

The defendants have denied any criminal intent, asserting that their conduct was strictly humanitarian. Defence counsel have stressed that ERCI’s operations were conducted openly and, evidence was presented indicating that volunteers routinely relayed information on boats in distress to Greek authorities. The defence has also argued that the prosecution failed to establish the requisite mens rea for facilitation, organised crime or money-laundering offences, and that humanitarian rescue activities cannot, without clear proof of profit-seeking or collusion with smugglers, satisfy the constitutive elements of those crimes, in particular when international maritime law imposes a duty to render assistance to persons in distress at sea. Defence submissions further challenged the probative value and admissibility of key evidence and highlighted violations of fair-trial guarantees. A wide range of national and international human-rights organisations have publicly criticised the proceedings and characterised the case as a paradigm of the “criminalisation of solidarity”, in which the charges are legally unfounded, rely on misinterpretations of lawful rescue activities, and create a chilling effect on civil-society engagement in humanitarian assistance.

The first trials (2019-2024) only concerned charges classified by the prosecution as misdemeanours, including alleged espionage or infringement of state secrets, unauthorised use of radio frequencies, forgery and related offences. The misdemeanour charges were split by the prosecution from the felony charges so they could be tried within the 5-year statute of limitations provided under Greek law. On 1 February 2024, i.e. 6 years after the initial arrests, and following 4 hearings before the Appeals Court of the Northern Aegean in Lesbos, the trial of the defendants was completed, acquitting them of all the espionage-related and other misdemeanour charges.

Prosecution authorities continued to pursue 3 felony charges (2024-2026) relating to facilitation of irregular entry (smuggling), membership of a criminal organisation and money laundering. After prolonged pre-trial proceedings and repeated adjournments, and without new evidence being brought to the file, a felony trial, which could have resulted in sentences of up to 20 years’ imprisonment against the 24 defendants was finally concluded on 15 January 2026 with the acquittal of all defendants by the Court of Mytilene in Lesbos.

The “ERCI and others” case is one of the most significant instances of criminal proceedings against humanitarian actors in Greece. Domestically, it raises fundamental questions about the interpretation of criminal law in migration contexts, prosecutorial discretion and systemic issues in the respect for procedural safeguards. At the European level, the case has become emblematic of the broader phenomenon of criminalising solidarity. While the case ended in the acquittal of all defendants and the recognition that the prosecution was baseless, the mere subjection to such extended criminal procedures constitutes a clear form of sanction against activists, with damaging consequences including serious financial pressure to cover legal fees, trauma and psychological harm, reputational harm, travel bans, limbo and uncertainty over years. The “ERCI and others” case catalysed a profound reshaping of the pro-migrant mobilisation landscape in the Aegean border area, leading to the withdrawal of all of the few remaining civil search and rescue actors operative after the EU-Turkey statement of 2016. The 2021 legislation (Deportation and Return Bill) which instated a prohibitive restriction on civil search and rescue ensured that civil search and rescue could not practically be re-established and operate again in Greece, creating a significant gap in the monitoring of rights violations at the sea border at a time of growing evidence of pushbacks and shortcomings in saving lives and preventing deaths at sea.

Racist rally and attacks against the Sappho square sit-in protesters

On 17 April 2018, a group of asylum seekers residing in Moria RIC in Lesbos occupied the city’s main square, in protest against their substandard living conditions. The demonstration was sparked by the death of an Afghan refugee in Moria camp attributed to medical neglect. After a

week of peaceful occupation of Sappho square which gathered about 150 migrants, mostly families with children, the protesters were violently attacked by about 200 far right and anti-migrant activists, who had organised to surround and empty the square. During the entire night of 22-23 April 2018, despite the presence of police, the racist rally threw stones, bottles and firecrackers at the asylum seekers and supporters, who gathered to protect women and children. The attackers screamed “burn them alive” and ended up physically attacking, chasing down and injuring dozens of protesters, leaving many severely wounded and unconscious, with at least 10 persons hospitalised. When the far-right attackers dispersed in the early hours of 23 April, Greek police arrested 108 migrants, including 12 minors, and two Greek supporters. Criminal charges were brought against them, including for unauthorised occupation of public space and violent resistance. None of the anti-migrant attackers were arrested during the rally, but in November 2018 Lesbos police identified 26 potential perpetrators who were prosecuted.

In the days preceding the racist rally and attacks, complaints about the protesting migrants were circulated on social media and local press. Nationalist groups, like the “Patriotic Movement for Mytilene” urged locals to attend the weekly military parade on Sunday and be “ready for anything.” A court order had been issued on the day of the far-right mobilisation to evacuate protesters from Sappho square. While riot police were present and deployed during the entire night of 22-23 April, they failed to prevent the racist attacks and remained largely passive during the rally, forming a physical temporary barrier between attackers and protesters. They eventually used tear gas to disperse assailants.

On 9 May 2019, i.e. 1 year after the racist attacks, the 110 charged protesters were acquitted by the Three-Member Misdemeanours Court of Mytilene. Their lawyers denounced the criminalisation of peaceful protest, after their clients had suffered racist violence and disproportionate violence by the police.

The Lesbos Police Department identified 26 individuals suspected of involvement in the racist attacks in November 2018. Following preliminary investigation, the Public Prosecutor decided, almost a year after the attack, to press charges *ex officio* against the 26 suspects, for felonies and misdemeanours that included the aggravating factor of racist characteristics. The case was referred to trial in November 2022, i.e. over 4 years after the attacks. On 9 July 2024, i.e. over 6 years after the attacks and 5 court hearings, the Three-Member Misdemeanour Court of Mytilene finally convicted 21 attackers. Given the unprecedented delays in the pre-trial phase, most prosecution witnesses, who were migrants and activists, had already left Lesbos by trial time, and the ones who were present, including police officers, could not remember all the facts.

Four defendants were acquitted of all charges and one passed away. Four defendants were found guilty of causing dangerous bodily harm with a racist motive to protestors and without racist motive to police officers and bystanders. They were also found guilty of aggravated disturbance of public peace. Two were additionally found guilty of threatening refugees with racist motive. The first two were sentenced to 5 years and 9 months in prison, while the other two were sentenced to 6 years in prison. The sentences were suspended for 3 years and convertible to a fine of €5 per day. Seventeen defendants were found guilty of simple disturbance of public peace and sentenced to 1 year in prison, except for one defendant who was sentenced to 9 months due to his young age. The defendants appealed the verdict. On 5 June 2025, i.e. over 7 years after the attacks, the Three-Member Misdemeanour Court of Appeal of Mytilene issued a final decision on appeal, significantly reducing the sentences of the 15 defendants. The appeal court did not recognise the racist motives behind the attackers’ actions and acquitted the defendants of charges of bodily harm and threats. Ten of the defendants were found guilty of simple disturbance of the public peace, and sentenced to 6-7 months of imprisonment. The youngest was granted mitigating factors and his sentence converted into a fine. Four others, charged with aggravated disturbance, received 9-month prison sentences. All sentences were suspended for 3 years.

Despite having been overturned, the 2024 first instance verdict against the attackers has particular significance as the first time a court in Lesbos formally recognised racist motives as aggravating factor, using Article 82A of the Penal Code. The Sappho square case illustrates the dynamics and gaps of legal accountability for racialised violence and demonstrations in Greece. The case demonstrates stark differences in using force, arresting and prosecuting migrants and pro-migrants activists who exercise their right of peaceful demonstration compared to anti-migrant or racist attackers. The case highlights clear clemency and tolerance towards the racist attackers.

Moreover, the gradual downgrading of the Public prosecutor’s requests against the attackers to the point of requesting full acquittal on appeal, shows leniency towards them. The fact that the final decision erased all racist motives from the sentence is extremely concerning regarding accountability for hate and racist crimes. While the 2018 racist rally and attacks remain one of the most violent episodes against migrants in Lesbos, over time they appear to have been condoned by police, prosecution and judiciary authorities, and handled as simple altercation between opposing groups.

Comparative analysis

The two cases reveal stark asymmetries in state response. In the “ERCI and others” case, law enforcement manifested in proactive surveillance, arrests, and prolonged investigation targeting humanitarian actors, while in the Sappho square case, police presence during the attacks was passive and enforcement measures directed primarily at the victims of racist violence rather than its perpetrators. This differential treatment suggests a hierarchy of enforcement priorities whereby migrant and pro-migrant activists are treated as threats to public order, while racist or anti-migrant mobilisation is tolerated or addressed belatedly. This asymmetry can also be observed in the coercive measures against defendants during the pre-trial phase. While the Sappho square attackers underwent investigation without pre-trial custody, the ERCI volunteers were subjected to pre-trial detention, travel bans to Greece after detention, and prolonged legal uncertainty. Similarly, the severity of penalties faced differ considerably. “ERCI and others” activists faced much more serious criminal charges, while Sappho square perpetrators were charged with misdemeanour offences, and the aggravating factor of racism was finally abandoned.

Both cases were marked by extraordinary procedural delays but with different effects. In the “ERCI and others” case, delays functioned as a form of punishment, extending the period of judicial limbo, as well as the uncertainty, reputational damage, and deterrence experienced by the former defendants. In the Sappho square case, the 4 years that passed before the defendants were sent to trial worked to their advantage: prosecution witnesses left the island, memories faded and prosecutorial demands were progressively weakened. The eventual downgrading of charges and the erasure of all racist motives in the final sentence underscores how temporal distance can operate as a mechanism of *de facto* impunity for hate-motivated violence, particularly when victims belong to racialised groups.

A significant parallel lies in how the police, the prosecution, and the judiciary redefined the nature of the conduct criminalised in each case. In the “ERCI and others” case, rescue operations were reframed as organised crime and espionage. In the Sappho square case, racist mob violence was reframed as a disturbance of public peace. In both instances, the legal categorisation stripped the events of their substantive political dimensions. The Appeal court’s refusal to recognise racist motives in the Sappho square case is particularly troubling, given the scale and the explicit nature of the violence. This judicial erasure undermines the purpose of hate-crime legislation and signals a reluctance to confront racism as a structural phenomenon within criminal adjudication.

The asymmetric judicial treatment of the two cases is unsurprising within the socio-political context. It also generates sharply differentiated deterrence effects for the future. While the criminal prosecution of aid actors in the “ERCI and others” case produced a powerful chilling effect on pro-migrant activism, the lack of accountability for racist violence in the Sappho square case failed to deter similar xenophobic attacks from repetition. For instance in 2020, migrants’ protests against conditions in Lesbos during COVID-19 were violently repressed by Greek police, while local far-right and vigilante groups operated roadblocks on several roads and violently attacked migrants and non-governmental organisations, with full impunity. The Racist Violence Recording Network (RVRN) documented 158 incidents of hate speech and racist attacks in 2023, while self-organised mobilisation of migrant groups has become more rare over time and is increasingly taking other forms that do not include street demonstrations.

The shifting of laws and interpretations of legality surrounding pro-migrant activism in Greece has significantly and permanently reconfigured the landscape of civil society engagement at the border, propelling other actors into a “frontline” position. The recent acquittal of all defendants in the “ERCI and others” case is unlikely to enable the resumption of civil SAR operations in Greece. Moreover restrictive legislative reforms targeting NGO and activist work in recent years, and increasingly violent state practices at the borders, suggest that a point of no return has been

reached. The “ERCI and others” has contributed to a climate of public distrust and suspicion toward humanitarian aid and NGOs, which is likely to last, given the recent continued accusations against and criminalisation of migrant rights defenders

Conclusion and key recommendations

The “ERCI and others” and “Sappho Square” cases reveal a clear trend in the governance of migration through criminal law in Greece, and its uneven effects on migration-related activism. The two cases show higher severity and punitive intent in the Greek authorities’ approach to pro-migrant assistance, and greater leniency towards racist and hate crimes. These asymmetries produce a durable and harmful contraction of civic space and highlight a hierarchy of protected state interests in which border enforcement apparently prevails over anti-racism enforcement. The result is a system in which those who assist or defend migrants’ rights are punished, while those who attack them enjoy impunity.

These cases are interconnected manifestations of a broader legal and political logic. Their legacy is shaping not only the future of humanitarian action and pro-migrant protest in Greece, but also the credibility of criminal law and procedures as tools for protecting fundamental rights in contexts of racialised violence and border control.

Measures that can address these imbalances include:

Strengthening the investigation and prosecution of hate and racist crimes in line with Greece’s positive human rights obligations by:

- i. ensuring that any hate speech and racist crime –regardless of the type of offense– is subject to mandatory investigation and ex officio prosecution.
- ii. providing judicial training on national and European anti-racism legislation.

Proposing a bill to reform the anti-smuggling legislation in force (Migration Code, Law 5038/2023, as amended by Law 5275/2026) so it cannot be instrumentalised towards deterring migration or pro-migrant work. Anti-smuggling laws and regulations should, at the very least, be brought in line with the UN Smuggling Protocol, to prevent prosecution of migrants forced to enter the country irregularly given the absence of legal pathways, and of legitimate humanitarian, activist and civil society monitoring activities.

- i. there is no financial or other material benefit,
- ii. in cases where migrants are subjected to smuggling networks, and
- iii. in cases of humanitarian and civil society monitoring activities.

Greece and the EU should focus on creating and multiplying safe and legal pathways, beyond the sole asylum system, for people to reach Europe regularly and without putting their lives at risk or at the hands of smugglers.

Repealing Law 4825/2021 so as to allow for the operations of legitimate and necessary civil society search and rescue and other activities at sea borders and shores.

Repealing or revising Joint Ministerial Decision 10616/2020 and the related legislative provisions in Law 4686/2020 in line with the ECHR standards and respect for freedom of association and the protection of civil society space.

Italy

Context

Over the past decade, migration has become one of the most divisive issues in public and institutional life in Italy. As one of the European Union’s primary entry points for persons crossing the Mediterranean and the Western Balkans, Italy has confronted acute administrative pressures in the management of reception infrastructure and sustained political controversy surrounding the regulation of arrivals, the processing of asylum claims, and the governance of borders.



Monument commemorating the 3rd October shipwreck in Lampedusa © Olga Demetriou, May 2022



“Together” monument in a neighbourhood square in Lampedusa © Olga Demetriou, May 2022

As a frontline state, Italy’s migration governance has been shaped by successive layers of EU legal architecture. From first-entry responsibility frameworks, to the Dublin Regulation which formally assigned asylum processing to states of arrival, to the Hotspot Approach which designated Italian reception sites as primary identification and screening hubs, each iteration compounded administrative pressure on a strained national system. Far-right political actors have in turn exploited this tension, weaponizing migration in anti-EU sovereigntist discourse in which European frameworks are cast as external impositions undermining national sovereignty.

Between 2014 and 2017, 624,000 people reached Italy by sea, with over 4,500 deaths recorded in the central Mediterranean in 2016 alone. The State progressively withdrew from direct involvement in the management of migrant and refugee populations, externalising responsibility for humanitarian assistance, social support, and legal advocacy to civil society organisations (CSOs). Public debate has been shaped by successive governments of divergent political orientations and by shifting patterns of public sentiment, reflecting persistent legal ambiguities in the treatment of newly-arrived migrants and refugees and in the regularisation of 'economic' migrants.

Search and rescue (SAR) is criminalised under Article 12 of the Italian Consolidated Immigration Act (Legislative Decree n. 286/1998), which has been expanded under two Security Decrees enacted in 2018 under then-Interior Minister Matteo Salvini. Although subsequent governments partially amended these measures, their legacy continues to influence law enforcement practices, prosecutorial culture, and public discourse. A particularly illustrative case is that of *Mediterranea Saving Humans*, whose vessels have been repeatedly detained by Italian authorities since 2019. Competent courts have largely declined to proceed or have dismissed these investigations, underscoring the fundamental tension between the domestic criminalisation framework and the international law imperative of humanitarian compliance. A less visible dimension of this criminalisation dynamic concerns migrant people themselves, specifically those designated as boat drivers or captains. Since 2013, more than 2,700 individuals have been arrested and prosecuted under Article 12 based on few testimonies often extracted under pressure, resulting in sentences of up to life imprisonment.



Porta d'Europa monument, Lampedusa © Olga Demetriou, May 2022

The prominence of migration in Italian public discourse has also fuelled organised anti-migration activism, racial hostility, and far-right mobilisation. Polling data place immigration among Italians' top concerns, with three quarters of Italian respondents affirming a linkage between migration and criminality. This attitudinal environment provided fertile ground for neo-fascist actors to expand their organisational presence, most notably CasaPound Italia and Forza Nuova. Over a twenty-year period, the two movements ran sustained campaigns targeting migrant populations. In February 2026, CasaPound activists were convicted under the Scelba Law prohibiting the reconstitution of fascist organisations, in a trial that lasted 8 years, beginning in September 2018, when they attacked demonstrators protesting Salvini's anti-immigration policies in Bari.

The table summarises Italy's relevant legal history:

Theme	Laws	Stipulations	Comment
Migration regulation	Law 943/1986	regulates employment of non-EU immigrant workers and combats irregular migration	dual-track approach towards labour protections to documented workers and penalties on undocumented
	Martelli Law, 39/1990	annual foreign worker quotas, regularisation	family reunification became a migration driver
	Turco-Napolitano Law, 40/1998	unified residence and work permit, introduced Temporary Detention Centres for expulsion	the institutional foundation for criminalising undocumented migration, basis of Repatriation Centres in agreement with Albania 2024-2025
	Bossi-Fini Law, n. 189/2002	conditions entry on work contracts, strengthened border control, reinforced expulsion	generated significant demand for fraudulent documentation
	2008 Security Package	systematic biometric data collection, linking of asylum seekers' data to intelligence databases	concerns of discriminatory profiling and criminalisation of refugee status
	2017 Memorandum between Italy and Libya	Italy funded the Libyan government to stop departures	self-renewing every three years
	Salvini Security Decrees, No.113/2018, No.132/2018	abolished humanitarian protection replacing it with limited special permits; detentions and deportation	punitive frame was structurally facilitated by the hotspot approach in place at Italy's external borders
	Lamorgese Decree (Law Decree n.34/2020, Art. 103)	regularisation during COVID-19, followed by reforms expanding access to reception; limited authority to block rescue vessels, reduced penalties for assistance operations at sea	related to the judicial and political fallout of the Open Arms case
Racism and hate	XII Transitory & Final Provisions of Constitution	prohibits reorganisation of the dissolved Fascist National Party in any form	
	Law Scelba, Law 20 June 1952, n. 645	promotion or direction antidemocratic ends for >5 people punished up to 12 years imprisonment; criminalises fascism apology and demonstration	recent jurisprudence, as in the <i>Acca Larentia</i> case, has exhibited a narrowing down of the application
	Law Reale, Law 654/1975	introduces provisions of CERD	extended to cases of homophobia and transphobia

	Law Mancino (Law n.205, June 25th, 1993)	sanctions on hate speech and hate crime, incitement, dissemination and public expression of racist symbols, racial violence, threats, and harm; racism an aggravating factor in Penal Code penalties	prohibits groups promoting discrimination or incitement to violence; adherence to ECHR; was not activated for neo-Nazi gatherings in recent years
	Penal Code, Articles 604-bis and 604-ter	punishes hate crimes and incitement to discrimination; criminalises propaganda and instigation to racial crimes	prosecutors used them against negationist propaganda and racist motivation, but courts require high evidential bar
	Penal Code, Articles 241-258	proscribe treason, espionage, crimes against constitutional order & unlawful use of state secrets	complemented by special laws on terrorism (Article 270-bis)

Linea D’Ombra

Linea d’Ombra was founded in 2019 by Gian Andrea Franchi and Lorena Fornasir, activists supporting migrants arriving in Trieste, often after facing police brutality in Balkan crosspoints. Once into the Italian side of the border, the organisation provides basic necessities, legal support, and medical and psychological care. Both founders have been accused of facilitation of illegal migration, under Legislative Decree No. 286 of 1998, better known as the Consolidated Immigration Act. Article 12 and Article 12-bis regulate this offense, the associated penalties having been increased with Law Decree 20/2023. Under these, the promotion, organisation and funding of non-Italian people entering into Italian territory carries a penalty up to five years’ imprisonment, rising to fifteen if aggravating circumstances pertain, e.g. transporting over five people, using false documents or subjecting people to inhumane or degrading treatment. The investigation falls within anti-smuggling operations and Linea d’Ombra thus faced accusations as a criminal trafficking network.

The case opened in January 2021. Authorities seized phones, accounting books, financial records and other documents during a raid in the founders’ private home in February 2021. The prosecution argued that their humanitarian activities may have been undertaken for financial gain, a framing that sought to reclassify the organisation’s financial operations as commercial transactions. The investigative and prosecutorial actions took place during a period of intensified state control over NGO space, shaped by the emergency governance frameworks of the pandemic. Restrictions on movement, assembly, and associational life overlapped with and amplified pre-existing security logics targeting humanitarian actors operating along migration routes. The same period saw NGO rescue vessels subjected to prolonged port detention under health and safety regulations, and civil society across the Balkan route facing increased surveillance and legal pressure from national authorities.

The Association for the Study of Migration Law (ASGI) played an important role in Linea d’Ombra’s defence by stating that the two founders’ behaviours were visible acts of solidarity and that there was no specific functional link between them and a larger network of trafficking. Consequently, the Preliminary Investigation Judge of the Bologna Court ordered the dismissal of this part of the proceedings on 23 November, 2021.

The case against Linea d’Ombra raises questions about freedom of expression and civic space at the national level. Such prosecutorial attitudes can generate a powerful deterrent effect, discouraging individuals from supporting migrants. They also contribute to wider negative societal dynamics, potentially exacerbating social instability and polarisation. That the case was opened against the founders of Linea d’Ombra as individuals rather than the organisation as a whole, suggests a wider trend in how this type of criminalisation happens across Italy and also

in other European contexts whereby one or more selected individuals who are the most visible figures in a movement are targeted specifically.

In this light, the restrictive interpretation of immigration-related criminal law adopted in the case – notwithstanding the dismissal of all charges – reveals the progressive shrinking of the public space for solidarity in the Italian context. This pattern is not isolated. In the same period, and subsequently, similar approaches have been pursued by the Italian judiciary in other high-profile cases. In May 2025, the Court of Ragusa ordered six activists, including the co-founder of *Mediterranea Saving Humans*, Luca Casarini, the captain and the crew of *Mare Jonio* to stand trial on charges of facilitating illegal immigration from the rescue of 2020 on the *Maersk Etienne*. Unlike the *Linea d’Ombra* case – which was closed at the preliminary investigation stage – the *Maersk Etienne* proceedings advanced to full trial and are ongoing as of March 2026. The concurrent *Paragon* surveillance operation – authorised against Casarini in 2024 and confirmed by COPASIR in June 2025, illustrates that the criminalisation of humanitarian actors has extended beyond the courtroom to encompass executive-level intelligence surveillance, raising distinct and serious concerns under Articles 8 and 10 of the ECHR.

A further illustration of institutional asymmetry is provided by the civil ruling of 18 February 2026 by the Tribunal of Palermo in the *Sea Watch 3* case. The Court ordered the Italian State to pay over €76,000 in compensation to the German NGO *Sea Watch* for the administrative detention of its vessel following the rescue operation commanded by Captain Carola Rackete. The administrative detention of the vessel was deemed unlawful, and the State’s failure to respond within the statutory period had produced a tacit administrative acceptance that generated documented patrimonial damage to the vessel. The Court excluded, at the same time, compensation for the vessel’s inability to conduct rescue operations. This civil ruling can be read alongside the criminal proceedings against Captain Rackete herself, cleared of all charges in June 2019, with the Court of Agrigento formally dismissing all charges in December 2021. The 2026 civil ruling thereby constitutes the final chapter in a seven-year procedure that ended with the State ordered to bear the financial consequences of its own unlawful enforcement action.

CasaPound Italia

CasaPound Italia has been the subject of a number of legal cases. It is a far-right, openly neo-fascist political movement, originated from the occupation of a state-owned building in Rome’s Esquilino neighbourhood on 26 December, 2003, which became its namesake “CasaPound” after the American poet Ezra Pound. It was formally established as a national social promotion association in 2008, evolving from earlier far-right squats and cultural initiatives in the late 1990s. CasaPound Italia contested elections since 2013, often under coalitions like “Sovranità” (Sovereignty) in 2014, achieving limited local success such as electing a councillor in Bolzano in 2015, and three in 2016. Nationally, it runs independently or allies with other far-right groups, focusing on anti-immigration, anti-EU, and housing policies, though it garners under 1-2% in parliamentary races and it reverted to a social movement focus in 2019 after modest results.

Sentenza 17909/2022 concerns a legal dispute between CasaPound Italia and Meta Platforms Ireland Ltd. The litigation arose following Meta’s decision to remove CasaPound Italia’s official Facebook and Instagram pages, along with associated profiles, in September 2019, citing violations of Community Standards through hate speech, incitement to violence, and extremist ideology, including posts portraying migrants as invaders, criminals, and threats to Italian welfare. The specific evidence submitted to support this has not been made public. CasaPound Italia challenged this decision before the Italian civil courts, arguing that the removal constituted an unlawful restriction of its freedom of expression and political participation. This case highlights how anti-migrant mobilisation often reframes racism and hate as protected political speech, displacing scrutiny from constitutional anti-fascism to private platform governance.

In December 2019, the Tribunal of Rome issued a precautionary order (17 December 2019) compelling Meta Platforms Ltd. to reinstate CasaPound Italia’s accounts, holding that exclusion from dominant social media platforms could seriously compromise the organisation’s ability to participate in public and political debate. Meta appealed this order, but in April 2022 the Tribunal confirmed its earlier precautionary position, dismissing Meta’s challenge and maintaining the reinstatement obligation. The Court’s reasoning at both interim stages was framed almost

exclusively through the lens of pluralism and political participation, without substantive engagement with CasaPound Italia's ethnonationalist ideology or documented record of discriminatory conduct. However, in the full-merits proceedings (sentence deposited 2 January 2025), the same court reversed its earlier position and rejected CasaPound Italia's claims, recognising Meta Platforms Ltd.'s contractual autonomy and its right to enforce rules aimed at preventing hate speech and violent extremism.

CasaPound Italia, far from marginal, is a structured movement with national branches, electoral runs, and ethnonationalist ideology opposing immigration. It has operated for years in a legal grey zone, benefitting from the narrow judicial interpretation of anti-fascist laws that require proof of a concrete threat to democratic order. Social media platforms played a crucial role in CasaPound Italia's strategy. Facebook and Instagram allowed the movement to bypass traditional media, mobilise supporters, disseminate propaganda, and normalise far-rights discourse through memes, videos, and local mobilisation campaigns. For CasaPound Italia, digital platforms were not merely communication tools but core infrastructure that facilitated its political existence.

In this case, Meta Platforms Ltd. justified the removal of CasaPound Italia's pages by reference to its Community Standards, which prohibit content that praises, supports, or represents extremist ideologies and organisations, as well as material that incited hatred or violence against groups at risk of vulnerability. Meta Platforms Ltd. classified CasaPound Italia as an extremist organisation and concluded that its online activity systemically violated these rules.

This decision did not stem from a criminal conviction or a formal ban by Italian authorities, but rather from a private regulatory assessment based on transnational private standards developed in response to global pressure on platforms to combat online radicalisation processes. In this sense, Meta Platforms Ltd. exercised a form of private governance that overlaps with, but is not dependent on, state action.

In the interim proceedings of December 2019, the Tribunal of Rome ordered Meta Platforms Ltd. to reinstate CasaPound Italia's pages holding that Facebook acquired the character of an essential platform for the exercise of freedom of expression. The Court reasoned that exclusion from such a dominant communication space could substantially impair CasaPound Italia's ability to participate in political debate and therefore amounted to an unjustified restriction of constitutional rights. This reasoning was striking, as it effectively treated CasaPound Italia as a legitimate political actor entitled to equal access to digital public space, without engaging with its ethnonationalist ideology and structural racism or its history of chauvinist rhetoric. At this stage, the Court framed the dispute almost exclusively through the lens of pluralism and political participation.

In the 2022 ruling, the Tribunal of Rome overturned the precautionary ruling. The Court recognised that while social media platforms play a central role in contemporary public discourse, they remain private entities governed by contractual relationships with users that accept rules upon registration, and Meta Platforms Ltd. was therefore entitled to enforce its Community Standards. The Court also acknowledged that CasaPound Italia content fell within categories legitimately restricted by Meta Platforms Ltd., including the dissemination of discriminatory, racist, and violent narratives. In doing so, the Tribunal explicitly cited Meta's Community Standards prohibiting direct attack on protected characteristics including race, ethnicity, national origin, accepting that CasaPound Italia's content – including xenophobic posts, fascist symbolisms and calls to violence against migrant reception centres – systemically violated these rules, demonstrating a higher level of regulatory vigilance by private platforms than that exercised by Italian Criminal or Administrative Authorities.

One of the most significant aspects of the case is the limited role played by the Italian State. CasaPound Italia was not removed from Facebook because it was outlawed, prosecuted, or declared unconstitutional by public authorities. Instead, its digital presence was curtailed by a private corporation applying its own standards. This reveals a form of regulatory outsourcing: while Italian institutions have been reluctant or unable to fully enforce anti-fascist and anti-racist laws, digital platforms have stepped in to fill the gap. Yet this shift raises serious democratic concerns. Private companies are not bound by constitutional principles of due process, proportionality, or democratic accountability, and their decisions are driven partly by reputational and economic consideration.

The CasaPound Italia v. Meta Platforms Ltd. case highlights how far-right, anti-migration movements can operate within legal and political systems that hesitate to confront them directly. The litigation illustrates a structural contradiction: the Constitution enshrines militant democracy and rejection of fascism, yet in practice these principles are weakly enforced. Anti-migration and neo-fascist actors thus enjoy a wide margin of operation, while civil society actors supporting migrants face criminalisation and administrative repression. From the perspective of Global Administrative Law, the case exemplifies how regulatory power is increasingly fragmented between public and private actors creating a multi-layered governance system in which fundamental rights are negotiated rather than guaranteed.

Comparative analysis

A central theme emerging from the comparison is the asymmetrical treatment of activism depending on its political orientation. In the Linea d'Ombra case, pro-migrant solidarity is subjected to criminal suspicion, investigative intrusion, and the deployment of anti-smuggling norms originally designed to counter organised crime. By contrast, CasaPound Italia, an openly neo-fascist and anti-migration movement, is not criminally prosecuted for its ideology or activities but recognised as a legitimate litigant asserting its right to participate in public debate. The judicial system engages with CasaPound Italia primarily through freedom of expression and access rules to digital public spaces, rather than through constitutional safeguards against reconstructed fascist groups.

The elasticity of legal interpretation expands or contracts depending on the subject being regulated. In the pro-migration case, criminal law provisions are interpreted expansively. The absence of profit motive, coercion, or organisational linkage to trafficking networks does not prevent the opening of investigations. Conversely, in the CasaPound case, legal interpretation tends to be restrained and cautious, laws designed to prevent fascist resurgence, combat hate speech, or sanction racist propaganda being overlooked.

A striking asymmetry in the role of litigants underscores the selective enforcement patterns between the two cases. In the Linea d'Ombra proceedings, the Italian State proactively initiates criminal investigations while, in the CasaPound litigation, the State refrains from launching proceedings under anti-fascist or anti-racist statutes. Instead, in the 2019 preliminary injunction against Meta, Italian courts effectively defended the far-right group by ordering platform reinstatement on freedom of expression grounds, only later upholding Meta's removal in 2022 without State-initiated hate crime charges. This inversion highlights how migration enforcement is prioritised as public imperative, while anti-racism remains privatised or dormant, amplifying the chilling effects on civic space while legitimising far-right mobilisation.

In CasaPound Italia v. Meta Platforms Ltd., freedom of expression is central to the judicial reasoning. Even in the final ruling favouring Meta, CasaPound Italia is recognised as a political actor whose expressive interest merit judicial consideration. By contrast, the activities of Linea d'Ombra are not judicially framed as an exercise of the rights to freedom of association or assembly despite the evident civic and political character of the organisation's work. Acts of solidarity are instead depoliticised and recast as technical violations of migration law. This discrepancy suggests that freedom of expression and association functions as a shield for exclusionary politics, while offering markedly limited protection to those who challenge state migration policies through organised civic practice rather than through discourse alone.

The two cases also differ in their interaction with non-state actors. In the pro-migration case, civil society organisations act as defensive actors against state overreach. In the CasaPound case, a private corporation plays a quasi-regulatory role, enforcing community standards that reflect international human rights norms more robustly than domestic authorities. The Italian Court, in upholding Meta's autonomy to exclude content that incites hatred, implicitly recognises the inadequacy of public enforcement mechanisms.

Italy's constitutional identity as a militant democracy offers another comparative lens. The Linea d'Ombra case shows a state acting militantly against perceived threats to border control, while the CasaPound litigation illustrates hesitation to apply the same militancy to anti-democratic ideologies. This signals a transformation: migrant control has replaced anti-fascism as the primary object of state defence.

The ultimate deterrent effects also differ profoundly. For Linea d'Ombra, the mere initiation and drawn-out nature of these initial proceedings acted as de facto punishment, shrinking volunteer pools and donations in Friuli-Venezia Giulia's solidarity scene, as evidenced by reports of eroded public trust and access barriers for civil society organisations. Conversely, CasaPound Italia leveraged the long courtroom drama as a publicity coup, portraying itself as a defiant political force challenging platform monopoly.

Several lessons emerge:

- Legal neutrality is illusory because law has been applied within political hierarchies that privilege border control over human rights.
- Criminal law is an instrument of governance and not merely of sanction in migration contexts.
- Freedom of expression is often unevenly distributed, befitting those aligned with dominant narratives.
- Private actors are increasingly filling regulatory voids, raising questions about accountability in terms of democratic principles and participation mechanisms.
- Militant democracy is weakening not through formal repeal but through selective non-application.

Conclusion and recommendations

While Italy's constitutional architecture is formally grounded in anti-fascism, equality, and international human rights obligations, contemporary governance practices demonstrate a growing imbalance in how these principles are operationalised. The criminalisation of humanitarian assistance, juxtaposed with the cautious or inconsistent regulation of extremist and racist movements, signals not merely a legal discrepancy but a deeper normative shift within the Italian democratic order.

Criminal law, administrative discretion, and procedural burdens are mobilised against individuals and organisations providing assistance to migrants, even in the absence of profit motives or demonstrable harm. Conversely, movements promoting exclusionary or openly neo-fascist narratives are often channelled into civil or regulatory disputes framed around freedom of expression, thereby preserving their visibility and political agency.

From a systemic perspective, the delegation of hate-speech governance to private digital platforms further complicates accountability. While companies such as Meta may enforce anti-discrimination standards more effectively than public authorities, reliance on private regulation cannot be a substitute for coherent and principled state action. The absence of consistent enforcement against extremist movements weakens public trust in democratic institutions and reinforces perceptions of selective justice.

In light of these findings, several recommendations emerge:

- First, Italian migration law – in particular Articles 12 and 12-bis of the Consolidated Immigration Act (Legislative Decree n. 286/1998) – should be comprehensively reformed to introduce an explicit and unconditional humanitarian exemption, modelled on the standards recognised by the Court of Justice of the European Union in Joined Cases C-924/19 PPU and C-925/19 PPU. Legal certainty is essential to protect civic actors from deterrent prosecutions that erode social cohesion and democratic participation.
- Second, the application of existing anti-fascist and anti-hate legislation must be strengthened through clearer prosecutorial guidelines and judicial training, ensuring that constitutional principles are not subordinated to political expediency. The consistent under-enforcement of the Scelba Law (Law n. 645/1952), the Mancino Law (Law n. 205/1993), and Articles 604-bis and 604-ter of the Penal Code represents a structural failure of Italy's militant democracy commitments. The conviction of February 2026 may represent a step in the right direction,

but ongoing judicial reforms at the centre of a referendum still underway at the time of writing equally provide cause for caution.

- Third, the state should reclaim its regulatory responsibility over hate speech and extremist mobilisation, reducing over-reliance on private platforms and reaffirming democratic accountability.

Ultimately, safeguarding democracy requires more than controlling borders. It demands a consistent commitment to protecting those who act in defence of human dignity while firmly opposing movements that seek to undermine equality and constitutional values. Rebalancing these priorities is essential to preserving Italy's democratic integrity in an increasingly polarised political environment.

Spain

Context

As both a member of the Common European Asylum System and a Mediterranean member state at the EU's external border, Spain's domestic legislation, policy and practice reflects the broader trajectory toward securitised migration governance, and the externalisation of responsibility, solidarity and specific functions of asylum and immigration systems.

Spain's socio-political environment is shaped by the tension between comparatively inclusive regularisation and integration policies, and highly securitised border controls, creating a structural internal-external mismatch. While Spain's interior policy discourse emphasises the positive contribution of migration and the need for regular pathways, its external border enforcement remains restrictive and operationally intensive. Spain's recent regularisation law, passed in January 2026 by royal decree, expected to regularise 0.5m people who can prove they have lived in Spain for the 5 months prior to 31st December 2025, illustrates this. The success of this grassroots campaign is being celebrated against a backdrop of continued "third country cooperation" by the Spanish government, which prioritises externalisation measures with countries like Mauritania, where human rights abuse concerns for migrants persist.

Spain's border regions account for most criminal proceedings linked to 'facilitating irregular migration,' with conviction rates above 90%. Many pertain to "boat-driving" cases against migrants themselves, reflecting systemic patterns of criminalising those forced into navigational tasks on precarious journeys. Although Spain has relatively few convictions for acts of solidarity, the broader regulatory environment frames humanitarian practices as potential criminal conduct. Charges of facilitation and smuggling can be used to criminalise migrants and those acting in solidarity with them, and actions with a clear humanitarian purpose, like providing food, shelter, water, accompaniment, or rescue assistance. This criminalisation raises questions about how the law is used as a tool to regularise humanitarian activity. Spain has also witnessed public mobilisation in defence of this solidarity. In 2024, as part of the J'accuse campaign, more than 3,000 people declared themselves 'guilty of solidarity', illustrating the rising contestation around the legitimacy of prosecuting humanitarian assistance.

On the other side of the political spectrum, anti-migrant activism and mobilisation have also shaped Spain's socio-political landscape. Despite inclusive regularisation and integration policies, far-right narratives expounded by political leaders and amplified by the media —particularly surrounding unaccompanied migrant children— have fuelled protests, xenophobic hate campaigns targeting migrants, and, at times, violence. The March 2019 racist assault on a facility for unaccompanied minors in Castelldefels analysed below, is one example; others include institutional racist incidents against child migrants in Melilla, and a December 2019 grenade attack on the Hortaleza centre in Madrid. Political rhetoric has exacerbated these tensions: the centre-right opposition party Partido Popular reintroduced proposals for the expulsion of unaccompanied children as 'economic migrants,' while the Spanish Ombudsman investigated whether officials of the far-right Vox party had committed hate-crime offences through incitement against minors.

Under Article 318 bis of the Penal Code, targeting smuggling networks, Spanish courts consistently criminalise a wide range of actions under 'facilitation,' particularly of boat crossings, which can include making an emergency call, fixing the engine, or operating the GPS. When the facilitation offence is committed with the 'aggravating factors' of financial benefit or creating conditions that endanger the life or dignity of migrants, a higher sentence is imposed. Spanish jurisprudence has interpreted these 'aggravations' expansively, e.g. including the lack of adequate safety equipment like life jackets on boats. Thus, migrants themselves are often the ones prosecuted, facing lengthy prison sentences based on evidence that is fragile or derived from coercive investigative practices. The humanitarian exemption in Article 318 bis (1) that prevents punishment when the sole purpose is to provide humanitarian assistance, is also interpreted narrowly, e.g. only when humanitarian assistance is institutionalised or formally organised. Thus, judicial proceedings are frequently opened against civil society actors, with the burden of proof placed on the accused, who remain fully exposed to full criminal investigation, often for prolonged periods, before they can actually demonstrate the lawfulness of their conduct. Even when proceedings ultimately result in an archive order, the opening of the investigation produces clear regulatory effects,

discouraging humanitarian and journalistic engagement and embedding legal uncertainty around activities that aim to protect the life and dignity of people on the move.

This legal landscape is further shaped by the otherwise administrative 'gag law' which grants authorities broad discretionary powers in border zones and ports. This provides additional avenues for surveillance, fines and disruption of humanitarian or journalistic activity and has been used explicitly to prohibit the documentation of the treatment of migrants by security forces at Spain's Southern border, particularly in Ceuta and Melilla, where those documenting 'push-backs' can face criminal proceedings under Art 318 bis and fines of up to €600,000. Furthermore, a specific legal framework exists in Ceuta and Melilla, formalised in 2015 through the 'gag law,' which allows the immediate, summary return of third-country nationals detected while attempting to cross the Ceuta or Melilla border irregularly.

The central statutory provision relating to anti-migrant activism is Article 510 of the Spanish Penal Code, which criminalises public acts that incite hatred, hostility, discrimination or violence against groups defined by race, ethnicity, nationality, or similar protected characteristics. Jurisprudence emphasises that application of Article 510 requires proof of a discriminatory purpose or effect, and a public, expressive dimension intended to reach an audience beyond the immediate victims. This doctrinal requirement has resulted in a restrictive interpretation of Article 510, particularly in cases involving localised acts of violence or aggression against migrants. Thus, many instances of anti-migrant activism are prosecuted under ordinary criminal provisions such as assault, damage to property, and public disorder (Articles 557 et seq). When xenophobic or racist motivation is present, courts typically apply Article 22.4 of the Penal Code, which treats discriminatory motive as an aggravating factor. Therefore, racist or anti-migrant intent affects sentencing, but is not the core element of the criminal charge. Cases involving far-right mobilisation —such as the conviction of the anti-migrant activist Isabel Medina Peralta for xenophobic incitement outside the Moroccan Embassy— suggests that the judicial application of Article 510 is generally narrow, and predominantly reserved for instances of overt, public, and ideologically framed mobilisation, while the bulk of anti-migrant violence is handled through general criminal law mechanisms.

This results in a regulatory landscape where xenophobic and racially-motivated anti-migrant mobilisation is addressed under criminal proceedings, but not systematically treated as a coherent form of political activism. This stands in marked contrast to the application of Article 318 bis in cases involving humanitarian or pro-migration activity, where specialised migration-control offences play a central and often expansive role.

Open Arms

The Proactiva Open Arms proceedings from 2019 constitute one of the most legally developed examples of how Spain investigates solidarity and pro-migration activism under Article 318 bis. The case involves allegations that crew members of the NGO facilitated irregular entry to Spain during rescue operations in the central Mediterranean. The investigation was extensive, spanned over a year, and involved consideration of whether compliance with international maritime rescue obligations could fall under Article 318 bis, whether the NGO's activities could be construed as encouraging and facilitating irregular migration, and whether humanitarian intent was compatible with activism or political critique. The judge ultimately issued an archive order, finding no financial motive, recognising the binding nature of maritime rescue obligations, and affirming that the conduct was indeed legitimately humanitarian. Unlike many shorter investigative actions, the Open Arms file created a substantial judicial record in which the boundaries of Article 318 bis were tested, interpreted, and clarified.

On 1 August 2019 the Proactiva Open Arms vessel rescued 55 migrants in the Mediterranean, including two babies and a pregnant woman; on 2 August it rescued a further 69 people, including two young girls and two pregnant women; and in the early hours of the 10 August a further 39 stranded people were taken aboard. The ship attempted to reach Lampedusa, and on 20 August the Spanish Government ultimately arranged for a naval vessel to transfer the rescued people to Spain. The prosecution file was later archived, but not before these high-vulnerability rescues had been framed as possible facilitation under Article 318 bis and as potential unlawful detention under Article 163 of the Spanish Penal Code.

The criminal proceedings were opened on 20 August 2019 following a formal criminal accusation by the Spanish state against the NGO Proactiva Open Arms, its founder, the vessel's captain and crew, and associated migrants' rights groups for crimes against foreign nationals including smuggling under Article 318 bis and illegal detention or kidnapping under Article 163. The earlier administrative measures taken between January and April 2019—during which Spanish maritime authorities repeatedly refused or revoked the ship's authorisation to depart and effectively immobilised the Open Arms search and rescue vessel, prompting administrative litigation before the High Court of Justice of Madrid—created a climate of sustained institutional suspicion that not only disrupted the NGO's humanitarian operations but also set the conditions for framing the subsequent criminal proceedings of August 2019, reinforcing the perception that the organisation's rescue activities were subject to regulatory and judicial scrutiny.

At the judicial level, the decisive dimension of the investigating judge's reasoning was the application of the statutory humanitarian exception in Article 318 bis(1). The judge ultimately accepted that there was no profit motive and subsequently treated the organisation's conduct, including life-saving assistance to children and pregnant women, as consistent with mandatory maritime SAR obligations. This factual and legal alignment thereby activated the statutory exemption and supported the subsequent archive order of the case.

A critical analysis of the Open Arms shows the role of Spanish criminal law as a strategic instrument that allows the opening of formal criminal proceedings used to regularise suspicion, impose investigatory obstacles and deter civil-society rescue actors. The NGO was subjected to the kind of criminal charges typically reserved for transnational smuggling networks, producing reputational harm, resource diversion and the debilitating effects that accompany these protracted investigations of serious criminal charges. This represents a significant form of operational deterrence independent of eventual acquittal or archiving.

The administrative dimension of the case further illustrates the State's capacity to restrict humanitarian operations through non-criminal mechanisms. The organisation faced repeated refusals, delays and conditional grants of departure authorisations, producing extended port retention and significant operational costs. The NGO launched a judicial appeal against the State, arguing that these imposed restrictions amounted to an indirect suspension of its humanitarian activities. The High Court of Justice of Madrid dismissed Proactiva Open Arms' administrative appeal, and concluded that there was no violation of fundamental rights because the delay and conditions imposed reflected routine administrative control rather than punitive or discriminatory measures. Although the High Court of Justice of Madrid dismissed the claim on procedural grounds, the administrative record reveals a pattern of restrictive practice that achieved the temporary immobilisation of the organisation's rescue capacity, demonstrable of how administrative law can complement or substitute for criminal law as a tool of migration and migration-activism governance. In April 2019 Spanish authorities allowed the Open Arms vessel to deliver humanitarian aid to refugee camps on Lesbos and Samos but denied them capacity to conduct search and rescue (SAR), exposing a critical tension in the application of Spain's humanitarian exception under Article 318 bis. This suggests that the humanitarian clause may be applied selectively: states may tolerate passive aid but criminalise or restrict active rescue, thereby using administrative powers to limit the full exercise of the humanitarian exception, despite Spain's statutory protection for "solely humanitarian" acts.

In conjunction, the Proactiva Open Arms proceedings show that, while the humanitarian exception in Article 318 bis(1) can protect rescue actors on the merits, the broader legal environment imposes significant institutionalised barriers through criminal accusation, lengthy judicial proceedings, and administrative leverage. The case illustrates both the doctrinal limits of criminalisation—where courts recognise the binding force of maritime rescue obligations and the exclusivity of humanitarian purpose—juxtaposed with the practical reality that investigation and administrative control can themselves operate as deterrent mechanisms for pro-migration activism with a clear humanitarian intent.

Castelldefels

On the other side of the spectrum, the Castelldefels litigation shows how the Spanish criminal courts conceptualise and classify acts of anti-migrant mobilisation, and what the doctrinal limits

of the current legal framework are in theory and practice. The case involved four adult defendants who, forming part of a larger group of around twenty individuals carrying sticks and stones, went to an emergency protection centre operated under the authority of the Catalan child-protection services with the intention of carrying out a targeted attack on a group of child migrants. They apparently sought out two unaccompanied minors with whom members of the group had had an unspecified conflict. After shouting and throwing stones at the outside of the premises, the group forced their way into the building. Once inside, and upon identifying one of the minors they were looking for, they launched a violent attack against him and the other child migrants resident in the centre. Highlighted explicitly within the judge's reasoning is that the aggression was carried out 'with a derogatory and aggressive approach with contempt for their national and ethnic origin.' The violence escalated further, with objects and furniture thrown, and numerous people—social workers, security staff and children themselves—suffered injuries.

The appeal was brought by a civil-society, pro-migrant organisation attempting to raise the legal classification of a racist attack on unaccompanied migrant children to a hate crime under Article 510. The lower court had convicted the defendants of 'violent affray' under Article 154 of the Penal Code, 'criminal damage' under Article 263(1), and, for one defendant, a 'minor offence of bodily injury' under Article 147(2). The court did recognise the racist nature of the attack and therefore applied the aggravating circumstance of discriminatory motive. On appeal, the Spanish Immigration and Refugee Aid Network argued that the trial court's own factual findings already met the requirements and legal thresholds contained within Article 510(2)(a): the appellate court explicitly found that the defendants had acted with racist motivation, that the insults shouted at the migrant children were degrading in nature, and that the minors were selected and attacked specifically on account of their ethnicity and national origin. This corresponds directly to the protected grounds listed in Article 510, which names race, ethnicity, and nationality as central protected characteristics.

Despite this factual basis, the court roundly rejected the application of Article 510. The judicial reasoning centred around a particular and restrictive interpretation of the hate-crime provision in Article 510, culminating in the decisive statement that 'there is no evidence of an intention to injure dignity.' This sentence is doctrinally pivotal because it marks the court's view that, although the defendants used racist insults and chose their victims specifically because they were migrants, their criminal conduct lacked the specific, expressive intention required to reach the legal threshold of a hate-crime offence. The judge's decision to classify the incident as interpersonal violence had an important impact on the sentencing outcome, with defendants receiving entirely non-custodial penalties of five to six months of fines at €3 per day for violent affray and for the criminal damage, and a further one-month fine added for the minor injuries caused, together with modest compensation to injured social workers and one injured minor. Had the conduct been classified as a hate-crime offence, each defendant would have faced custodial sentences of six months to two years' imprisonment as the starting point, with potential elevation under Article 510(4) if the acts were considered capable of generating fear or insecurity in the protected group. By absorbing explicitly racist, targeted violence against migrant children into the framework of ordinary violence and damage, the judgment ensured that the defendants avoided the significantly heavier custodial consequences that the hate-crime regime is designed to impose.

This judicial reasoning appears therefore to superimpose onto Article 510 a requirement that is not contained explicitly within its text. Article 510(2)(a), the provision at issue in Castelldefels, criminalises actions that injure dignity by means of humiliation, contempt, or disparagement of a protected group or of persons because they belong to that group. The text does not require publicity, dissemination, or an outward-facing communicative act. It focuses on the harm to dignity and the discriminatory reason for the conduct. Arguably then, it is designed to capture precisely the kind of racist, degrading attacks on vulnerable persons that the defendants carried out.

Finally, the procedural context of this case reinforces this substantive narrowing of the judicial interpretation. The appellate court emphasised that the civil-society organisation had not modified its factual narrative at trial and had not used the procedural mechanism to request clarification or supplementary reasoning. This strict formalism effectively prevented any re-characterisation of the facts as hate crime. Even when an organisation engages in a 'popular prosecution' to strengthen the legal response to racist violence, procedural doctrine makes it difficult to shift a case into the hate-crime framework unless the trial court already accepts that classification.

The Castelldefels appeal illustrates the high doctrinal thresholds of hate-crimes applied to anti-migrant activism. The statutory language seems broad enough to encompass racist violence against groups with protected characteristics relevant to migrants, but the judiciary interprets it as applying only to public, expressive, outward-facing acts. The defendants thus benefited from a legal categorisation that treated their conduct as ordinary violence aggravated by a discriminatory motive rather than as a direct attack on the dignity of a protected group. The outcome points to a justice system in which racially motivated violence resulting from anti-migrant mobilisation is absorbed into general criminal law while the specialised hate-crime regime remains largely confined to expressive, public forms of hostility rather than to concrete, collective acts of racist anti-migrant violence.

Comparative analysis

The legal frameworks governing pro and anti-migrant activism in Spain reveal a legal asymmetry in how domestic criminal law is applied. Pro-migration actors, including NGOs, volunteers, and journalists, are scrutinised under legal provisions intended specifically to govern and control migration (Article 318 bis), conceptually tied to border security, people smuggling and irregular entry rather than to public order. This means that expressly humanitarian conduct can trigger investigatory measures, placing the burden on the accused to demonstrate that their actions do in fact fall within the narrow humanitarian exemption. By contrast, anti-migrant mobilisation is generally prosecuted under ordinary criminal offences including assault, public disorder or damage to property, where the explicitly anti-migrant element is downgraded to an aggravating factor under Article 22.4 of the Spanish Penal Code rather than constituting the core legal basis of the offence, and thus a hate-crime. Although Article 510 does, in theory, provide a mechanism for addressing racist or xenophobic incitement, courts tend to apply it restrictively, requiring a public dissemination angle, including explicit calls to hatred, and a collective dignity-based harm that is not extended to the majority of anti-migrant violence. The result is a pattern in criminal prosecution that treats pro-migrant activism or acts of solidarity with migrants as potential border-security threats, while anti-migrant hostility and activism is interpreted through a legal lens as interpersonal criminal behaviour with a discriminatory motive.

This contrast has clear doctrinal implications for how pro- and anti-migration mobilisation and activism is treated in law and practice. For example, Article 318 bis provides for penalties of four to eight years' imprisonment, with the upper half of the range imposed where aggravating elements are detected. On the other hand, Article 510, intended to govern hate crimes and public incitement to violence or discrimination, offers a considerably lower punitive scale of one to four years' imprisonment and fines of six to twelve months, unless the conduct falls within the most serious forms of organised incitement in which case sentencing of four to eight years' imprisonment could, in theory, be applied. In practice however, as Castelldefels shows, courts are reluctant to apply any custodial sentence.

Similarly, Article 557 on public disorder, carries sentences between six months and three years, which may be substantially increased when the aggravating factor of hate-based motivation in Article 22.4 is applied. The practical application of these provisions shows a pronounced disjunction between the formal severity of the legal framework and the relatively moderate sentences imposed in concrete anti-migration activism cases. Both the Valencia case (racially motivated assault) and the high-profile Isabel Peralta case (public incitement to hatred against migrants) resulted in one-year prison sentences and fines of approximately €1000, despite judicial findings confirming explicit xenophobic motivation and, in the case of Peralta, direct calls to violent public action. These outcomes sit in stark contrast with the sentences routinely imposed under Article 318 bis, where even low-level involvement in 'facilitation' can expose individuals—primarily migrants themselves—to multi-year custodial sentences or coercive plea deals. The disparity underscores how Spain's criminal framework, though formally symmetrical in its condemnation of both the facilitation of irregular migration and hate-based anti-migrant mobilisation, operates asymmetrically in practice.

Equally important is the fact that although the Spanish state reserves the exclusive authority to prosecute criminal offences, cases involving anti-migrant activism or hate speech often only reach criminal proceedings – or are challenged at appeal stage – when prompted by complaints from

civil society actors and pro-migrant activists. This is not the case for prosecutions of pro-migrant activism, which almost exclusively tend to be initiated directly and proactively by state authorities.

Conclusion and Recommendations

The foregoing legal analysis highlights the need for clearer legal safeguards to ensure Spain's criminal framework is not applied in ways that disproportionately restrict or deter humanitarian action or distort the scope of criminal liability at the migration–solidarity nexus. Three key recommendations arise:

- Firstly, Spanish judicial and prosecutorial authorities should adopt and uphold a more robust and consistent application of the humanitarian clause in Article 318 bis of the Spanish Penal Code, recognising that where prima facie humanitarian purpose is evident—such as in maritime search and rescue efforts, the provision of food, shelter, water, or emotional support to migrants by civil society actors—criminal proceedings should not be initiated at all. Humanitarian actors should not be required to undergo prolonged investigations only to then prove the exonerating circumstances of their humanitarian intent in court. Clear prosecutorial guidelines on the threshold for opening Article 318 bis investigations would significantly reduce the regulatory, deterrent effect currently generated by investigative pressure, and therefore in turn, could ensure more migrant lives are safeguarded.
- Secondly, journalists reporting on migration policy and practice, border enforcement, and rescue operations would benefit from explicit statutory and procedural protection, including guarantees against the misuse of facilitation or public security provisions to inhibit their documentation of state conduct against migrants. This includes adopting clear limits on the treatment of journalistic activity within Article 318 bis investigations and establishing operational protocols for safeguarding press freedom in border zones, ports, and maritime operations, particularly in the Ceuta and Melilla border areas.
- Finally, in relation to anti-migrant activism and racially motivated violence, Article 510 of the Spanish Penal Code should be applied more robustly and consistently as the principal legal basis for prosecuting hate speech and incitement against migrants, rather than relying on less serious public-order offences that dilute the racialised or xenophobic nature of the conduct. The aggravating factor contained within Article 22.4 of the Penal Code should continue to be applied wherever discriminatory motive is present, ensuring that judicial reasoning accurately reflects the social harm targeted at migrants and racialised communities, but only in cases where it is more appropriate to do so than maintaining Article 510 as the central legal argument, given that these two Articles are mutually exclusive in their judicial reasoning and subsequent application. A more coherent, proportional application of Article 510 is needed to strengthen deterrence and ensure that violent rhetoric and mobilisation against migrants is addressed with the legal weight they warrant.

These measures and legal recommendations would contribute to a more coherent, rights-respecting legal environment in which pro-migrant activism and humanitarian action in Spain is protected rather than penalised, journalists can operate without fear of criminalisation, and anti-migrant mobilisation involving violence and incitement is prosecuted within the full scope of Spanish anti-discrimination law.

References

Publications, reports, media

Greece

ACAPS, Country Analysis, (no date).

Al Jazeera, Far-right attacks increase tension in Greece's Lesbos, (23 April 2018).

Al Jazeera, Thousands protest after Greece's Moria refugee camp burns down, (11 September 2020).

Amnesty International, Greece: Regulation Of Ngos Working On Migration And Asylum Threatens Civic Space, (31 July 2020).

Amnesty International, Greece: Freedom of assembly at risk and unlawful use of force in the era of COVID-19, (14 July 2021).

Amnesty International, Greek authorities must drop baseless charges against ERCI volunteers (12 November 2025).

AP, Greece says it's investigating claim migrants were illegally deported back to Turkey, (25 May 2023).

AP, Greek parliament passes suspension of asylum claims despite international criticism, (11 July 2025).

Athens Voice, The chronicle of the violent confrontations in Lesvos and Chios, (27 February 2020) (in Greek).

Arab News, Greece seeks to toughen punishment for migrant smuggling, (24 January 2026).

Bailey-Morley, A. and Lowe, C., Public narratives and attitudes towards refugees and other migrants: Greece country profile. London: ODI, (2023).

borderline-europe, Criminalization of Flight and Escape Aid, (2017).

borderline-europe, A legal vacuum, the systematic criminalisation of migrants for driving a boat or a car in Greece, (July 2023).

borderline-europe, Aegean Migrant Solidarity and Can't Evict Solidarity, Crete: 16-year-old faces 4670 years in prison for smuggling, (26 February 2024);

Cabot, H., The Business of Anthropology and the European Refugee Regime, (2019).

CNN, Live interview of Prime Minister Mitsotakis by Christiane Amanpour, (19 August 2020).

Council of Europe Committee for the Prevention of Torture (CPT), Report to the Greek Government on the Visit to Greece Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 17 March 2020, CPT/Inf (2020) 35, (19 November 2020).

Council of Europe Commissioner for Human Rights, Letter to Greek Minister of Citizens' Protection, Minister of Migration & Asylum and Minister of Shipping and Island Policy, (3 May 2021).

Council of Europe Commissioner for Human Rights, Greek authorities should investigate allegations of pushbacks and ill-treatment of migrants, ensure an enabling environment for NGOs and improve reception conditions (12 May 2021).

Council of Europe Commissioner for Human Rights, Greece's Parliament should align the deportations and return bill with human rights standards, (3 September 2021).

Council of Europe Commissioner for Human Rights, Recommendation, Pushed beyond the limits Four areas for urgent action to end human rights violations, (7 April 2022).

Council of Europe Commissioner for Human Rights, Greek authorities should reverse the trend undermining the work of human rights defenders and journalists, (12 January 2023).

Council of Europe Commissioner for Human Rights, Greece: the Commissioner calls for accountability for human rights violations committed at the borders and intensified efforts to honour the human rights of Roma, (11 February 2025).

Council of Europe Commissioner for Human Rights, Memorandum on migration and border control, following the Commissioner's visit to Greece from 3 to 7 February 2025, (17 April 2025);

Council of Europe Commissioner for Human Rights, Greece should prevent pushbacks and ensure accountability for human rights violations at the borders, (6 May 2025)

Council of Europe, Expert Council on NGO Law of the Conference of INGOs, Using Criminal Law to Restrict the Work of NGOs Supporting Refugees and Other Migrants in Council of Europe Member States, (December 2019).

Council of Europe, Expert Council on NGO Law of the Conference of INGOs, Guidelines on Protecting NGO Work in Support of Refugees and Other Migrants, (May 2020).

Council of Europe, Expert Council on NGO Law of the Conference of INGOs, Opinion On The Compatibility With European Standards Of Recent And Planned Amendments To The Greek Legislation On NGO Registration, (2 July 2020).

Council of Europe Commissioner for Human Rights, Greek authorities should reverse the trend undermining the work of human rights defenders and journalists, (12 January 2023).

Council of Europe Conference of INGOs, CINGO President and Expert Council react to recent statements by Greece's Minister of Migration and Asylum, (5 September 2025);

CPT, Aegean Migrant Solidarity, CPTer documents minute-by-minute account of fascist attack on Afghan refugees in Sappho Square, Mytilene, (25 April 2018).

CPT, Aegean Migrant Solidarity, bordermentoring.eu, borderline-europe, Incarcerating the marginalized, The fight against alleged smugglers on the Aegean islands, (November 2020).

CPT, Aegean Migrant Solidarity, Reporting a trial that never started: 'ERCI and others', (26 January 2023).

CPT Aegean Migrant Solidarity, Deadly End, (2023).

CPT, Aegean Migrant Solidarity, Humanitarians acquitted on search and rescue in the Aegean, (23 February 2024).

CPT, Aegean Migrant Solidarity, The Sappho Square case heard six years later, (30 July 2024).

CPT, Aegean Migrant Solidarity, Appeal trial for the "Pogrom of Sappho Square" concluded, (6 June 2025).

CPT Aegean Migrant Solidarity, How to build a detention centre, The case of Vastria in Lesvos, (16 July 2025).

Deportation Monitoring Aegean, Three Arrested After Protest Against Deadly Violence, (23 January 2020).

ECRE, Expert Opinion upon request from the ELENA Coordinator in Greece concerning the lawfulness of Greek legislation regulating the registration of non-governmental organisations (NGOs) on the Registry of NGOs working with refugees and migrants in Greece, (December 2021).

ECRE, Greece: Minister Accuses MEPs of Being Manipulated by Propaganda and NGOs of Coordinating with Human Smugglers, (24 June 2022).

ECRE, Greece, Country Report: Short overview of the asylum procedure, (18 December 2025).

Efsyn, Mitarakis: Closed detention centres will open in the summer, (10 February 2020) (in Greek).

Efsyn, New Democracy official finds the burning of a refugee structure more idyllic than a sunset, 8 March 2020 (in Greek).

Ekathimerini, Islanders protest against overcrowding in migrant camps, slow processing, (22 January 2020).

Ekathimerini, Norwegian photographer held on spy charge released, (21 March 2022).

Ekathimerini, Court convicts 21 people for 2018 attack against migrants on Lesbos, (9 July 2024).

ELIAMEP, Hellenic Foundation for European and Foreign Policy, Migration Trends in Greece: Key Developments and Challenges in 2023 – 2024, (2024).

Ellinas, A.A. Societal mobilization and the fall of the Neo-Nazi Golden Dawn in Greece. Georgetown Journal of International Affairs, 22(1), pp.61-67 (2021).

El Pais, Greek court acquits Spanish firemen accused of people smuggling, (8 May 2018).

Ethnos, New commando attack in Mytilene - Craneporters against NGO volunteers, (27 February 2020) (in Greek).

Eurojust, European Union Agency for Criminal Justice Cooperation, Legal definition of migrant smuggling and/or facilitation of irregular migration, An overview of EU legislation, (January 2024).

Euronews, Europe's human rights watchdog urges Greece to end 'pushbacks' of migrants, (6 May 2025).

European Civic Forum, Civic Space Watch, Civic Space Report 2024, Greece, (2024).

European Commission, Financial Support from the EU, and Managing migration, EU financial support to Greece, (September 2021).

European Commission, EU Pact on Migration and Asylum, (21 May 2024).

European Council, Press release, 18 March 2016,, EU-Turkey statement, (18 March 2016).

European Court of Human Rights, Analysis of Statistics, Trends for Greece (no date).

European Legal Network on Asylum (ELENA), Greece: Athens Bar Association's interpretation of the Greek Bar Code on guaranteeing the lawyer-asylum applicant relationship without criminalisation,(12 September 2013).

European Parliament, STUDY Requested by the LIBE committee, The EU Approach on Migration in the Mediterranean, Policy Department for Citizens' Rights and Constitutional Affairs, Directorate-General for Internal Policies PE 694.413, p.111, (June 2021).

European Parliament, Press release, Frontex: MEPs want an effective border agency compliant with fundamental rights (14 December 2023).

Fasia, E., In Court for Saving Lives, The Binder and Mardini case, Verfassungsblog, (24 November 2021).

Forensic Architecture, Lighthouse Reports and Bellingcat, The killing of Muhammad Gulzar, (8 May 2020).

Forensic Architecture, Drift-Backs in The Aegean Sea, (15 July 2022).

Forensic Architecture, The Pylos shipwreck, (7 July 2023).

Forensic Architecture, The Evros/Meriç river: a century of border design, (15 January 2025).

Front Line Defenders, Seán Binder, Sara Mardini and Nassos Karakitsos receive trial date (2022).

Greek City Times, Migrant search and rescue ship denied entry into Lesvos, (6 March 2020).

Greek City Times, Lesbos Trial Begins: 24 Aid Workers Face Felony Smuggling Charges, Greek Authorities Defend Border Security, (4 December 2025).

Greek National Commission for Human Rights (GNCHR), Statement on the reported practices of push backs, (9 July 2020).

Greek National Commission for Human Rights (GNCHR), Interim Report, Recording mechanism of incidents of informal forced returns interim report, (January 2023).

Greek National Commission for Human Rights (GNCHR), Annual Report 2023, Recording mechanism of incidents of informal forced returns interim report, (June 2024).

Greek National Commission for Human Rights (GNCHR), Annual Report 2024, Recording mechanism of incidents of informal forced returns interim report, (July 2025).

Heinrich Böll, Sotiropoulos, V., LGBTQI Rights in Greece, (25 May 2022).

Hellenic Republic, Ministry of Justice, National Action Plan Against Racism And Intolerance, 2020-2023.

HIAS, 108 Refugees Acquitted of Criminal Charges in 2018 Sappho Square Protest, HIAS Greece secures legal victory, continues to advocate against criminalization of protests, (29 May 2019).

HIAS, Legal Analysis, Some thoughts on the new Joint Ministerial Decision, regulating the registration of migration-related NGOs in Greece, (8 May 2020).

HIAS, Strict New Regulations Limit NGOs Helping Refugees in Greece, 17 August 2020.

Human Rights Legal Project Samos and Legal Centre Lesvos, The exemption from criminalisation, A real safeguard or an illusion?, (November 2025).

Human Rights Watch, Greece: Rescuers at Sea Face Baseless Accusations (5 November 2018).

Human Rights Watch, Greek Authorities Target NGOs Reporting Abuses against Migrants, (22 July 2021).

Human Rights Watch, Greece Latest Assault on Civil Society, EU Action Needed to Protect Civic Space, (16 September 2025).

Human Rights Watch, Solidarity on Trial in Greece (3 December 2025).

Human Rights Watch, Humanitarians Cleared of Bogus Charges in Greece, After 7 Years, Abusive Prosecution Ends in Acquittal, (15 January 2026).

Human Rights Watch, Greek Immigration Bill Demonizes Civil Society, (29 January 2026).

Human Rights Watch, Greek Coast Guard Under Scrutiny for Migrant Death, (6 February 2026).

Human Rights Watch, Greece Continues Its Relentless Assault on Civil Society, (16 February 2026).

International Network Against Cyber Hate (INACH) and partners, Monitoring hate speech: Trends and Patterns, see from p. 5 on Greece, by the Greek Helsinki Monitor Greece, Panayote Dimitras, (February 2026).

InfoMigrants, Greece: Court convicts 21 people for attack on migrants in 2018, (10 July 2018).

InfoMigrants, Greece: Far-right activists in violent clashes to 'defend Europe' against migrants, (9 March 2020).

International Commission of Jurists, Greece: Criminalization of humanitarian support to migrants and refugees must end, (10 January 2023).

International Federation for Human Rights, Greece: Judicial harassment of migrants' rights defenders Panayote Dimitras and Tommy Olsen, (23 December 2022).

Jansen, B. J., The humanitarian border as a violence-producing environment: revisiting aid and anti-migration protests on Lesvos, Greece, (27 February 2025).

Keep Talking Greece, Lesvos: Locals mob against migrants boat, attack reporters (videos), (1 March 2020).

Keep Talking Greece, Greece files against 33 NGO members for assisting human traffickers, (28 September 2020).

Kollias, A.; Kountouri, F.; Kalamanti, S. Framing Migration Through the Crisis Era 2015–2022: A Content and Semantic Network Analysis of the Greek Press. *Journal. Media*, 6, 4, (2025).

Kouros, T. Contextualizing Anti-Migrant Sentiment: A Comparative Ethnography of Lesvos and Samos, Greece, *Journal of Borderlands Studies*, 1–19, (2025).

Kuno, Trial in Greece shows growing criminalization of aid, (no date).

Legal Centre Lesvos, Op-Ed: Moria 35 – Trial at the Gates of Fortress Europe (20 April 2018).

Legal Centre Lesvos and Feminist Autonomous Centre for research, A Pandemic of Abuses, (August 2023).

Legal Centre Lesvos, JUSTICE FOR PYLOS: Prosecution Of The Pylos 9 And Fight For Justice Following The Deadly 2023 Pylos Shipwreck.

Le Monde, Registration sites shift from a jungle model to a prison model, (9 July 2025).

LIFO, Greece/Moria: They were knocking on doors "looking" for refugees, migrants and NGO members, (5 February 2020) (in Greek).

Middle East Monitor, Greece sentences Egypt fisherman to 280 years imprisonment for steering migrant boat, (9 March 2023).

Ministry of Migration and Asylum, Speech by the Minister of Immigration and Asylum, Notis Mitarakis at the meeting of the Board of Directors of KEDE, (26 February 2020);

New Internationalist, Humanitarian workers acquitted of 'crime' of helping refugees, (10 May 2018).

New York Times, Video shows Greece abandoning migrants at sea, (19 May 2023).

No Border Kitchen Lesvos, Pogrom night in Mytilini, (28 April 2018).

OLAF, European Anti-fraud office, Investigation of Frontex, Case No OC/2021/0451/A1, (2021).

Organised Crime and Corruption Reporting Project (OCCRP), Greek Court to Hear Case Against Aid Workers, (December 2025).

Papataxiarchis, E., Being 'There: At the Front Line of the 'European Refugee Crisis, *Anthropology Today*, (2016).

PICUM, Criminalisation of migration and solidarity in the EU, (2024).

PICUM, How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders, (2024).

Politico, Violence at Greek border as migrants head for Europe, (29 February 2020).

ProtoThema, Kikilias: The justice system is investigating NGO files for possible links to smugglers, (28 April 2025).

ProtoThema, Georgiadis: Doctors Without Borders interpreters told migrants in Chios to say "the port authority hit us", hatred of the state has exceeded all limits of absurdity (9 February 2026) (in Greek).

Racist Violence Recording network, Annual report, (2023).

Racist Violence Monitoring Network, Concern Over the Worsening Climate Against Refugees and Migrants in Political and Public Discourse, (14 July 2025).

Refugee Observatory (Aegean), Criminalising Assistance and Solidarity (14 September 2018).

Refugee Observatory (Aegean), Observatory News Bulletin: On the events of the 22nd of April at Sappho sq. in Mytilene (updated 7 November 2018).

Refugee Support Aegean, Xenophobia and racism in the island communities: yet another loss caused by the EU - Turkey "Deal", (9 March 2018).

Refugee Support Aegean, RSA Comments on the Reform of the International Protection Act, (23 April 2020).

Refugee Support Aegean, Rights denied during Greek asylum procedure suspension, (April 2020).

Refugee Support Aegean, Repression Continued, Greece Further Restricts Civil Society Supporting Refugees and Migrants, (September 2020).

Refugee Support Aegean, Registry of NGOs working with refugees and migrants in Greece under scrutiny, (16 May 2021).

Refugee Support Aegean, 19 refugees dead in the devastating fires and escalation of racist violence in Evros, Greece, (23 August 2023).

Refugee Support Aegean, Refugee facilities on the Aegean islands, (10 December 2024).

Refugee Support Aegean, Pylos shipwreck: Criminal prosecution on felony charges against the current head of the Coast Guard and senior members of its leadership, (7 November 2025).

Reuters, Migrants stranded by Lesbos fire resist new temporary camp, (15 September 2020).

Reuters, Greek police probe aid workers on Lesbos island, (28 September 2020).

Reuters, EU border agency reviewing 12 cases of potential rights violations by Greece, (8 April 2025).

Reuters, Greece bans protests near memorial outside parliament, (22 October 2025).

Reuters, Aid workers stand trial in Greece on migrant smuggling charges (4 December 2025).

Special Rapporteur on the human rights of migrants, Report on means to address the human rights impact of pushbacks of migrants on land and at sea, , para. 55 (12 May 2021).

StoNisi, Crimes with racist characteristics, (8 April 2019).

Stonisi, Battles in Karava, (25 February 2020) (in Greek).

Stonisi, Manhunt in Moria, (4 February 2020) (in Greek).

Stonisi, Before the prosecutor on charges of setting up a criminal group, (7 February 2020) (in Greek).

Sto Nisi, The Golden Dawn members of the Sapphos Square pogrom are "put in the drawer", 11 October 2020 (in Greek).

The Civil Fleet, Solidarity is not a crime, Episode 85, Greece's criminalisation of Sudanese refugees, (17 December 2025).

The Guardian, Refugees in Lesbos: are there too many NGOs on the island?, (5 January 2016).

The Guardian, Greek islanders to be nominated for Nobel peace prize, (24 January 2016).

The Guardian, Riots at Greek refugee camp on Lesbos after fatal fire, (30 September 2019).

The Guardian, Greece sends more riot police to Lesbos after migrant clashes, (4 February 2020).

The Guardian, Erdoğan says border will stay open as Greece tries to repel influx, (29 February 2020).

The Guardian, Migration: EU praises Greece as 'shield' after Turkey opens border, (3 March 2020).

The Guardian, Neo-Nazi leaders of Greece's Golden Dawn sentenced to 13 years, (14 October 2020).

The Guardian, Greece accused of 'shocking' illegal pushback against refugees at sea, (26 April 2021).

The Guardian, Greek police arrest Dutch journalist for helping Afghan asylum seeker, (24 June 2021).

The Guardian, Greek government under fire after video shows 'pushback' of asylum seekers, (19 May 2023).

The Guardian, EU calls for independent inquiry into Greece 'pushback' of asylum seekers', (22 May 2023).

The Guardian, Greek court drops espionage charges against aid workers, (1 May 2024).

The Guardian, 'The real smugglers are rarely on the boat': activists in Greece question jailing asylum seekers, (17 May 2024).

The Guardian, Greece guilty of systematic pushback of asylum seekers, (7 January 2025).

The Guardian, 'It was steer or they would kill me': why Sudanese war refugees are filling prisons in Greece, (28 April 2025).

The Guardian, Greece passes draconian legislation with prison terms for rejected asylum seekers, (3 September 2025).

The Guardian, More than 600 people have died trying to cross the Mediterranean in 2026, UN says, (23 February 2026).

The Pressroom, Lesbos: Young men armed with clubs attack NGO members, (5 February 2020) (in Greek).

The Press Project, Identification and criminal case against 26 people for the fascist attack against refugees in Lesbos, (6 November 2018). (in Greek).

The Press Project, The prosecution of the 26 for the pogrom in Mytilene is racially motivated, (8 April 2019) (in Greek).

The Press Project, Evros: Fascists call for pogroms against refugees and migrants via Viber, (23 August 2023) (in Greek).

The Press Project, Plevris targets lawyer of Moroccan survivor of Chios shipwreck, (10 February 2026) (in Greek).

To Vima, Save democracy in Greece, (14 April 2013).

To Vima, High Court Prosecutor Orders Review of Convictions for Evros Vigilantes, (17 July 2024).

UN High Commissioner for Human Rights, Trial of human rights defenders in Greece for helping migrants, (13 January 2023).

UNHCR, Operational Data Portal-Eastern Mediterranean Arrivals, (2025).

UNHCR, News Comment: UNHCR warns of increasing violence and human rights violations at European borders, (21 February 2022).

UNHCR and Greek National Commission for Human Rights, UNHCR and GNCHR express concern over rhetoric undermining civil society, (28 August 2025).

UNHCR, Press release, UNHCR Comments on the Draft Law of the Ministry of Migration and Asylum, 29 August 2025.

UN Committee Against Torture, Concluding observations to the seventh period report of Greece, , (CAT/C/GRC/CO/7), para. 16, (3 September 2019).

UN Committee on Enforced Disappearances, Concluding observations on the report submitted by Greece under article 29 (1) of the Convention, CED/C/GRC/CO/1, (12 May 2022).

UN General Assembly, Human Rights Council, Report of the Special Rapporteur on the situation of human rights defenders on her visit to Greece, 2 March 2023.

UN Special Rapporteur on Human Rights Defenders, Statement on preliminary observations and recommendations following official visit to Greece, (22 June 2022).

UN Special Rapporteur on the situation of human rights defenders, A/HRC/52/29/Add.1: Visit to Greece - Report of Mary Lawlor, (3 March 2023).

UN Special Rapporteur for Human Rights Defenders, Mary Lawlor, Facebook post, (4 February 2026).

UN Special Rapporteur on the Rights of Freedom of Peaceful Assembly and of Association, Special Rapporteur on Human Rights Defenders, Special Rapporteur on the Human Rights of Migrants, Joint Letter to Greek Prime Minister about Law 4686/2020 and Joint Ministerial Decision 10606/2020 (31 March 2021).

Vouliwatch et al., Rule of Law Backsliding Continues in Greece, Joint Civil Society Submission to the European Commission, on the 2023 Rule of Law Report, (January 2023).

Vouliwatch et al., Greece in Institutional Decline, Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report, (January 2024).

Vouliwatch et al., Struggle for accountability, The state of the rule of law in Greece, (January 2025).

Italy

ASGI (Associazione per gli Studi Giuridici sull'Immigrazione). Country Report: Italy. Asylum Information Database (AIDA), (2021).

Bartlett, J. Birdwell, J., and Littler, M. The new face of digital populism. London: Demos, (2011).

Capoccia, G. Militant Democracy: The Institutional Bases of Democratic Self-Defence. *Annual Review of Law and Social Science* 9: 207-32, (2013).

Cassese, S. *Oltre lo Stato*. Laterza, (2006).

Cassese, S. Administrative Law Without the State? The Challenge of Global Regulation, 45 *NYU J. INT'L L. & POL.* 663, (2012).

Corsi, C., Evaluating the "Salvini Decree": doubts of constitutional legitimacy. In *Policy Briefs*, Migration Policy Centre (pp. 1-5). European University Institute, 2019.

Ferstman, C. on behalf of 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. *Conf/Exp* (2019) 1, (2019).

Froio, C., Castelli Gattinara, P., Bulli, G. and Albanese, M. *CasaPound Italia: contemporary extreme-right politics*. London: Routledge, (2020).

Martini, A. Fighting against "Apology of Fascism": Origins and Contradictions of the Italian Approach to Militant Democracy. *European View* 23, no. 1: 55-73, (2024).

Marone, F., Right-wing extremism and lone-actor violence in Italy: the case of the 2018 Macerata shooting. *Modern Italy*, 28(1): 18-34, (2023).

Padovani, C. Social Media, the Ultra-Right, and Freedom of Speech: A Case Study of CasaPound Italia and Facebook. *International Journal of Communication* 18, (2024).

Thiel, M. *The Militant Democracy Principle in Modern Democracies*. Farnham, UK: Ashgate, (2009).

Spain

Accem, AIDA Spain Country Report 2019, https://asylumineurope.org/wp-content/uploads/2020/07/report-download_aida_es_2019update.pdf

Accem, AIDA Country Report: Access to the Territory and Push Backs (2025) https://asylumineurope.org/reports/country/spain/asylum-procedure/access-procedure-and-registration/access-territory-and-push-backs/#_ftn52

Bondía, David (ed), with Daza, Felip and Sánchez, Ana (coords), *Defender a quien defiende: El derecho a defender los derechos* (2019) https://defenderaquiendefiende.org/wp-content/uploads/2019/08/defender-a-quien-defiende_Libro.pdf

Caritas Europa, La "criminalización" de la solidaridad hacia los migrantes. (2019) Available at: https://www.nadiesinfuturo.org/IMG/pdf/NdeP_Caritas_Europa_criminalizacion_solidaridad.pdf

Castellano, N., Spain's High Court drops criminal charges against Helena Maleno [La Fiscalía de la Audiencia Nacional descartó investigar a Helena Maleno al no apreciar delito] (Cadena SER, 6 December 2017) https://cadenaser.com/ser/2017/12/06/sociedad/1512597770_618744.html, [Date accessed: 15 December 2025]

CIDOB, Challenges and Limitations of the Spanish Asylum System (2019). <https://www.cidob.org/en/news/challenges-and-limitations-spanish-asylum-system#:~:text=Is%20Spain%20on%20the%20frontline,one%20of%20Europe's%20most%20favourable>.

Didoune Andrieu, Un Análisis Jurisprudencial Sobre La Aplicación Del Artículo 318 Bis Del Código Penal ¿Un Mecanismo Creado Para Criminalizar La Solidaridad En El Mar Mediterráneo?, 2024 - <https://repositori-api.upf.edu/api/core/bitstreams/2a058e04-1bd0-4b9a-8897-4cb54e7bf6a8/content>

El diario, Canariasahora, The Government delegate will consult with the State Attorney's Office on the fine to CEAR for registering migrants available at: https://www.eldiario.es/canariasahora/migraciones/delegado-gobierno-consultara-abogacia-multa-cear-empadronar-migrantes_1_10734273.html (1 December 2023).

EL PAÍS, 'One Year in Prison for Isabel Peralta, Leader of Bastión Central, a Neo-Nazi Group, for Hate Crimes Against Immigrants' (EL PAÍS, 11 April 2025) <https://elpais.com/espana/madrid/2025-04-11/un-ano-de-carcel-para-isabel-peralta-lider-de-bastion-central-un-grupo-neonazi-por-delito-de-odio-a-inmigrantes.html>

European Parliament, Parliamentary Question E-004083/2025, Criminalisation of solidarity in the 'l'accuse' case in the Basque country. (2025). https://www.europarl.europa.eu/doceo/document/E-10-2025-004083_EN.html

European Union Agency for Fundamental Rights, Criminalisation of NGOs involved in SAR as of 2022, Table 2: https://fra.europa.eu/sites/default/files/fra_uploads/table-2-legal-proceedings-ngos-sar-operations-june-2022.pdf

Human Rights Watch, Mauritania: Years of Migration Control Abuses (HRW News Release, 27 August 2025) <https://www.hrw.org/news/2025/08/27/mauritania-years-of-migration-control-abuses>

Jones, S., Morocco drops case against Spanish activist who helped save lives at sea (The Guardian, 11 March 2019) <https://www.theguardian.com/world/2019/mar/11/morocco-drops-case-spanish-activist-helena-maleno>

La Moncloa, 'Report on the Reality of Migration in Spain: Priorities for Public Policy' (Madrid, 2025) <https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2025/20251112-ces-report.aspx>

López-Sala, A., & Barbero, I. (2019). Solidarity under siege: The crimmigration of activism(s) and protest against border control in Spain. *European Journal of Criminology*, 18(5), 678-694. <https://doi.org/10.1177/1477370819882908> (Original work published 2021)

Novact e Iridia (2024): "Vulneración de derechos humanos de las personas migrantes en canarias 2024: criminalización, detención e infancia." (Human rights violations of migrants in the Canary Islands 2024: criminalisation, detention and children). (English available soon) - <https://novact.org/wp-content/uploads/2025/02/Infancia-migrante-y-criminalizacion.pdf>

Office of the United Nations High Commissioner for Human Rights, European Union: UN experts alarmed by risk of humanitarian assistance criminalisation (Press Release, OHCHR, 1 December 2025) <https://www.ohchr.org/en/press-releases/2025/12/european-union-un-experts-alarmed-risk-humanitarian-assistance>

PICUM, Cases of Criminalisation of Migration and Solidarity in the EU in 2023, 2023 - <https://picum.org/wp-content/uploads/2024/04/Cases-of-criminalisation-of-migration-and-solidarity-in-the-EU-in-2023.pdf>

PICUM, Criminalisation of Migration and Solidarity in the EU in 2024, (2024) <https://picum.org/wp-content/uploads/2025/04/Criminalisation-of-migration-and-solidarity-in-the-EU-2024-report.pdf>

PICUM, How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders, 2024 - https://picum.org/wp-content/uploads/2024/06/How-the-New-EU-Facilitation-Directive-Furthers-the-Criminalisation-of-Migrants-and-Human-Rights-Defenders_EN.pdf

Red Cross EU Office, Protecting people, not punishing them: the case for a humanitarian exemption in the EU Facilitation Directive, 2025 - https://redcross.eu/latest-news/protecting-people-not-punishing-them-the-case-for-a-humanitarian-exemption-in-the-eu-facilitation-directive#:~:text=The%20EU%20Facilitation%20Directive%20was%20adopted%20over%22facilitation%22%20*%20Lacking%20a%20mandatory%20humanitarian%20exemption

van der Woude, M., Barker, V., & van der Leun, J. (2017). Crimmigration in Europe. *European Journal of Criminology*, 14(1), 3-6. <https://doi.org/10.1177/1477370816639814>

Decisions and legal provisions

Greece

Law 927/1979, "On the punishment of acts or actions aimed at racial / ethnic discrimination", Government Gazette A' 139/28.6.1979

Law 4356/2015, "Cohabitation agreement, exercise of rights, criminal and other provisions", Government Gazette A' 181/ 24.12.2015.

Law 4443/2016, "Equal treatment - Combating discrimination, etc.", Government Gazette A' 232, 09.12. 2016.

Law 4375/2016 was adopted in April 2016 and amended in June 2016, March 2017, August 2017 and May 2018 for the implementation of the EU-Turkey statement.

Law 4636/2019 (International Protection Act or IPA) entered into force on 1 January 2020.

Law 4619/2019, National Gazette A' 95/ 11.6.2019, as amended in 2024 (set in force in 1/5/2024) by Articles 14 and 138 par. 1 N. 5090/2024 (National Gazette A' 30/2024).

Law 4686/2020, Gov. Gazette A' 96 /12 May 2020 was adopted on 9 May 2020.

Law 4703/2020, "Public, outdoor gatherings and other provisions", Government Gazette A' 131 / on 10.07.2020.

Law 4686/2020, "Modernization of immigration legislation, amendment of provisions of Law 4636/2019, and other provisions", Government Gazette 96 / A' 12.05.2020 – as amended by Law 5038/2023,

Law 4825/2021, "Reform of procedures for the expulsion and return of third-country nationals ... and other provisions", Government Gazette 157 A', 04.09.2021.

Law 4939/2022 "Ratification of the Code on reception, international protection of third-country nationals and stateless persons, and temporary protection in cases of mass influx of displaced persons", Government Gazette: A' 111 / 10.06.2022, as amended by Law 4960/2022, Government Gazette A', 145, 22-7-2022;

Law 5038/2023, Migration Code, Government Gazette A' 81 / 01.04.2023.

Law 5226/2025, "Reform of the Framework and Procedures for the Return of Third-Country Nationals and Other Provisions of the Ministry of Migration and Asylum", Government Gazette: A' 154 / 08.09.2025.

Presidential Decree 252/2004, establishing the Code of Police Ethics.

Government Decree on the "Suspension of the submission of asylum applications", (2 March 2020), Government Gazette A' 45/2.3.2020.

Joint Ministerial Decision 10616/2020, Government Gazette B 3820/09-09-2020.

Italy

Government of Italy. Memorandum d'Intesa sulla cooperazione nel campo dello sviluppo, del contrasto all'immigrazione illegale, al traffico di esseri umani, al contrabbando e sul rafforzamento della sicurezza delle frontiere tra lo Stato della Libia e la Repubblica Italiana. 2017.

<https://www.governo.it/sites/governo.it/files/Libia.pdf>

Italian Republic. Legge 20 giugno 1952, n. 645 (Scelba Law). Gazzetta Ufficiale della Repubblica Italiana. (1952).<https://www.gazzettaufficiale.it/eli/id/1952/06/23/052U0645/sg>

Italian Republic. Legge 13 ottobre 1975, n. 654 (Ratification of ICERD and anti-racism provisions). Gazzetta Ufficiale della Repubblica Italiana. (1975).

<https://www.gazzettaufficiale.it/eli/id/1975/12/23/075U0654/sg>

Italian Republic. Legge 30 dicembre 1986, n. 943 (Immigration and migrant workers). Gazzetta Ufficiale della Repubblica Italiana. (1986).

<https://www.gazzettaufficiale.it/eli/id/1987/01/12/086U0943/sg>

Italian Republic. Legge 28 febbraio 1990, n. 39 (Martelli Law). Gazzetta Ufficiale della Repubblica Italiana. (1990).<https://www.gazzettaufficiale.it/eli/id/1990/02/28/090G0075/sg>

Italian Republic. Legge 25 giugno 1993, n. 205 (Mancino Law). Gazzetta Ufficiale della Repubblica Italiana. (1993).<https://www.gazzettaufficiale.it/eli/id/1993/06/26/093G0275/sg>

Italian Republic. Legge 6 marzo 1998, n. 40 (Turco-Napolitano Law). Gazzetta Ufficiale della Repubblica Italiana. (1998a).<https://www.gazzettaufficiale.it/eli/id/1998/03/12/098G0066/sg>

Italian Republic. Decreto Legislativo 25 luglio 1998, n. 286 (Testo Unico sull'Immigrazione). Gazzetta Ufficiale della Repubblica Italiana. (1998b).

<https://www.gazzettaufficiale.it/eli/id/1998/08/18/098G0348/sg>

Italian Republic. Legge 30 luglio 2002, n. 189 (Bossi-Fini Law). Gazzetta Ufficiale della Repubblica Italiana. (2002).<https://www.gazzettaufficiale.it/eli/id/2002/08/26/002G0219/sg>

Italian Republic. Decreto-legge 4 ottobre 2018, n. 113, converted into Law n. 132/2018 (Decreti Sicurezza). Gazzetta Ufficiale della Repubblica Italiana. (2018).

<https://www.gazzettaufficiale.it/eli/id/2018/12/03/18G00161/SG>

Italian Republic. Decreto-legge 19 maggio 2020, n. 34 (Relaunch Decree). Gazzetta Ufficiale della Repubblica Italiana. (2020).<https://www.gazzettaufficiale.it/eli/id/2020/05/19/20G00052/sg>

Italian Republic. Decreto-legge 10 marzo 2023, n. 20 (Migration and security measures). Gazzetta Ufficiale della Repubblica Italiana. (2023).

<https://www.gazzettaufficiale.it/eli/id/2023/05/05/23A02665/sg>

Italian Republic. Codice Penale, Articles 241–258 (Crimes against the State) and Articles 270-bis, 604-bis, 604-ter. Gazzetta Ufficiale della Repubblica Italiana. (1930/2023).

<https://www.gazzettaufficiale.it>

Spain

High Court of Justice of Catalonia (Civil and Criminal Chamber, Appeals Section), Judgment 5354/2023, 6 June 2023, ECLI:ES:TSJCAT:2023:5354. [Castelldefels case]

Juzgado de Instrucción Nº 10 de Valencia v Audiencia Provincial de Valencia (Sección 4, SAP V 1484/2020, ECLI:ES:APV:2020:1484, 23 June 2020). [Valencia racial attack case]

Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal, art 318 bis (BOE núm 281, 24 November 1995) Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal (BOE no 281, 24 November 1995) pp. 33987–34058. Available at: <https://boe.es/buscar/doc.php?id=BOE-A-1995-25444> (Cited provisions: arts 22(4), 147(2), 154, 163, 263(1), 318 bis, 318 bis(1), 510)

Ley Orgánica 4/2000 (LOEX), as amended to introduce the Special Regime of Ceuta and Melilla (via LO 4/2015). Overview at BOE: <https://www.boe.es/buscar/act.php?id=BOE-A-2000-544> and LO 4/2015. [Special Regime of Ceuta and Melilla].

Ley Orgánica 4/2015, de 30 de marzo, de Protección de la Seguridad Ciudadana (BOE no 77, 31 March 2015). Available at: <https://boe.es/buscar/pdf/2015/BOE-A-2015-3442-consolidado.pdf>.

Public Prosecutor's Office (Fiscalía General del Estado), Annual Report 2021, ch II §4.7, referring to Preliminary Proceedings 67/2019, Central Investigating Court No 4. https://www.fiscal.es/memorias/memoria2021/FISCALIA_SITE/recursos/pdf/capitulo_II/cap_II_4_7.pdf [Proactiva Open Arms Case]

Tribunal Superior de Justicia de Madrid, Administrative Law Chamber (Sala de lo Contencioso-Administrativo), STS Madrid 12983/2020, ECLI:ES:TSJM:2020:12983 (23 November 2020). [Proactiva Open Arms case]

Red Española de Inmigración y Ayuda al Refugiado v Tribunal Superior de Justicia de Cataluña, STS CAT 5354/2023, ECLI:ES:TSJCAT:2023:5354, CENDOJ 08019312012023100109, Sección de Apelación Penal, TSJ Sala de lo Civil y Penal, Barcelona, 6 June 2023. [Castelldefels case]

International

Council of Europe. (1950). European Convention on Human Rights. https://www.echr.coe.int/documents/d/echr/convention_ENG.

Court of Justice of the European Union, Judgement in case C-821/19 (16 November 2021).

European Court of Human Rights, A.R.E. v. Greece, no. 15783/21, § 229, (7 January 2025).

European Court of Human Rights, G.R.J. v. Greece (dec.), no. 15067/21, § 190 (3 December 2024).

European Court of Human Rights, Nachova and Others v. Bulgaria, (GC) nos. 43577/98 and 43579/98, (6 July 2025).

European Court of Human Rights, Šečić v. Croatia, no. 40116/02, (31 August 2007).

European Court of Human Rights, Bekos and Koutropoulos v. Greece, no. 15250/02, (13 March 2006).

European Court of Human Rights, Sakir v. Greece, no. 48475/09, (24 June 2016).

European Court of Human Rights, Ezelin v. France, no. 11800/85, (26 April 1991).

European Court of Human Rights, Navalnyy v. Russia, nos. 29580/12 and 4 others, (15 November 2018).

European Court of Human Rights, Alkhatib and Others v. Greece, no 3566/16 (16 April 2024).

European Court of Human Rights, Safi and Others v. Greece, no. 5418/15, (7 October 2022).

European Union. 2002/946/JHA: Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence.

European Union. Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence. [2002] OJ L328/17.

European Union. European Commission, Proposal for a Directive Of The European Parliament And Of The Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA, COM/2023/755 final.

European Union. European Commission: Directorate-General for Communication, Pact on migration and asylum – A common EU system to manage migration, Publications Office of the European Union, 2024, <https://data.europa.eu/doi/10.2775/268094>

European Union. European Parliament. (2016). EU-Turkey statement and action plan. <https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan>

United Nations, Basic Principles on the Role of the Lawyer.

United Nations. (1951). Convention relating to the Status of Refugees. <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees>

United Nations. (1965). International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-2&chapter=4&clang=en

United Nations. (1982). United Nations Convention on the Law of the Sea. https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf

United Nations, International Convention on Maritime Search and Rescue (SAR Convention). (1979).

United Nations, International Convention for the Safety of Life at Sea (SOLAS) 1974.

United Nations, Protocol Against The Smuggling Of Migrants By Land, Sea And Air, Supplementing The United Nations Convention Against Transnational Organized Crime, (2000).

United Nations. (1967). Protocol relating to the Status of Refugees. <https://www.unhcr.org/media/1951-refugee-convention-and-1967-protocol-relating-status-refugees>

