

Aspects of criminalization of Migration/Refugee phenomenon

1. Hostile environment/Refugee law is part of administrative law. Asylum procedure is traditionally an administrative procedure. Since the refugee crisis began, instead of RECEPTION AND IDENTIFICATION, ASYLUM PROCEDURES, DUBLIN, legal instruments of criminal law are being applied more and more often to refugees and asylum seekers in the borders, which contents, among others:

2. the substantive criminalization of immigration

- the utilization of criminal law-like enforcement measures

- disproportionate prosecutions for less severe crimes (Misdemeanor prosecuted as felonies – Moria 35 case/Prokeka 15)

- disobedience (instead of Rebellion of detainees), Resistance (instead of arson)

- temporary detention on criminal grounds is then applicable

- use of pre trial detention as deterrent measure

- revival of forgotten crimes (illegal occupation of public property/right to protest), theft of an animal)

3. the deployment of prevention and pre-emptive measures to control and manage migration flows in the European context.

- Penalization of irregular entry

- EU law doesn't prohibit the turn to criminal law for immigration enforcement. Even if the Court of Justice of the European Union (CJEU) declared the use of criminal penalties against immigration lawbreakers incompatible with EU law, the rulings in El Dridi, Achughbalian, and Sagor were primarily justified by guaranteeing the effectiveness of EU law, particularly the 'Return Directive' which establishes minimum standards for returning non-Europeans illegally staying in member states.

- After the EU-Turkey Statement entered into force in March 2016, the Greek authorities progressively adopted a series of measures in order to ensure its smooth implementation and allow for fast returns to Turkey from the Greek Eastern Aegean islands under the readmission procedure. One of these measures, is the 'low-profile' project which is being implemented on the Greek island of Lesbos since September 2016. According to this project, single male asylum-seekers, nationals of countries with a recognition of international protection rate below 25% according to Eurostat, are being detained upon arrival in the Pre-Removal Detention Centre of Moria hotspot. HIAS Greece has previously successfully challenged this problematic policy for three Syrians, however the policy is still in place.
- Eligibility or admissibility screening interviews at ports of entry are becoming longer and more detailed and a lot of emphasis is put on what migrants know about their smuggler. Smuggled migrants are thus increasingly used as information sources for purposes of intelligence gathering data

4. Criminalization of the solidarity movement(ERCI, Proactiva).

5.HATE CRIME INCIDENTS –XENOPHOBIC RACIST ATTACKS-non speedy prosecution/ investigations-non arrest of perpetrators (Sappfo square attack)

- The opposite side of the coin: the easy prosecution of refugees and asylum seekers as “perpetrators” of crimes is not accompanied by their protection as “victims” of crime against them (SAPFFO SQUARE ATTACK)
- Rape and SGBV cases are not being investigated properly and proprio motu as the police asks for an official complaint

EXAMPLES

1. Sappfous Case:

In April 2018, after an Afghan refugee from Moria refugee camp died due to insufficient provision of health services, a group of approximately 200 refugees from Moria gathered in Sappho Square, to protest the insufficient medical services and poor living conditions in the camp, the largest in Greece. On April 22, during an attack by a far-right group against the protesting refugees, police tried to disband the refugees and eventually detained 120 refugees and two Greek citizens. There were 12 children among the detained refugees. On April 23, criminal charges were pressed against the detainees including illegal occupation of public property, revolt with the use of physical force and resistance.

-Non applicability of victims protection directive, no victims protection

-Several attacks of racist violence took place after this incident since, till now, no arrest warrants have been issued

“The mere fact that 110 participants of a peaceful protest were tried in a court of justice, after suffering a racist attack and disproportionate use of violence by the police, is deeply concerning.” From the use of violence for disbandment of a peaceful protest to the criminal prosecution of the participants, all the decisions of the authorities pertaining to the case point towards criminalization of protest – a phenomenon wider than this particular case and therefore all the more worrisome. The Greek Constitution guarantees the right to protest to everyone present inside the jurisdiction of the Greek state and the competent authorities have the obligation to defend it for everyone, regardless of their citizenship or migration status.