

Tilting the playing field: what is left of human rights activism in Europe?

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Demonstration in front of the sea, in Taormina, Italy, 27th May 2017 | Photography: [Alessio Mamo](#)

Human rights activism is at risk in Europe. From the everyday practice of working for a not-for-profit organisation defending people's rights, to engaging and participating in acts of protest or simply acting in solidarity with the most marginalised in our society, over the last decade these actions have become increasingly scrutinised, attacked, and even criminalised by those in power, corporates and the far right.

The absence of a unique, universally accepted term to encompass the diverse spectrum of practices employed in defence of human rights has resulted in the proliferation of various terminologies. These include designations such as professional non-profit organisations (NGOs), civil society organisations, social movements and collectives; as well as individuals commonly referred to as activists, human rights defenders (HRDs), humanitarian workers and volunteers, among others. The choice of terminology depends on the specific context and the prevailing definitions commonly employed within the civil society sector.

This analysis contends that these terms collectively pertain to the overarching category of human rights activism. Nevertheless, the absence of a singular nomenclature that can be

embraced and politically mobilised by individuals and organisations within civil society contributes to the complexity inherent in identifying prevailing trends and formulating strategies for resilience across the entire sector.

Following an attempt to elucidate some of the most salient contemporary trends in European human rights activism and a critical examination of the underlying drivers of these trends, this article will present potential avenues for action.

Criminalisation of activism: the case of solidarity with migrants

The criminalisation of solidarity with migrants includes practices like demonisation, stigmatisation, obstruction, and legal penalties imposed on individuals and organisations providing humanitarian aid to migrants. This practice, referred to as “over-criminalisation” [1] by criminal studies scholar Vegh Weis, underscores a significant paradox: those who rescue distressed individuals at sea, a duty mandated by international law, often face criminal charges, while the authorities who neglect their obligations to rescue those in peril remain under-criminalised.

Carola Rackete serves as a prominent example of this phenomenon. In the summer of 2019, as the Commander of the *Sea-Watch 3*, she was arrested and charged with resisting police when she entered the Italian port of Lampedusa. Her actions were rooted in the welfare of the people she had rescued, and her trial lasted nearly two years before her case was dismissed.

While Rackete’s case garnered substantial attention, numerous others have gone unnoticed. Volunteers have faced charges for aiding pregnant women near the Italy-France border, a region where at least 87 individuals have tragically lost their lives since 2015. On the Polish-Belarus border, human rights activists who provided aid to a family stranded in the forest were arrested and detained by Polish authorities.

Today, activists in the field continue to face persecution, with some instances of everyday acts of kindness – such as providing food, water, transportation or shelter – being transformed into illegal activities. According to the Platform for International Cooperation on Undocumented Migrants (PICUM), over 100 individuals faced criminalisation for their acts of solidarity [2] in 2022 alone, contributing to a total of more than 350 reported cases since 2015. These charges encompass crimes like facilitating irregular entry, transit or stay, smuggling, money laundering, espionage, and forgery. In the European Union (EU), legislation called the Facilitation Directive, which makes no distinction between human smuggling and humanitarian assistance, serves as an example of how the criminal justice system can be misused to penalise humanitarian actors.

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However, there have been instances of successful legal challenges. Cédric Herrou, who assisted around 200 individuals in crossing the border from Italy into southern France, was acquitted when France's Constitutional Council invoked the "principle of fraternity" enshrined in the French national motto (Freedom, Equality, Fraternity). This decision concluded that individuals may not be prosecuted for "crimes of solidarity".

Nonetheless, prosecutions have detrimental consequences and the effect on organisations in this sector is alarming. Even when charges are dropped, NGOs and their volunteers suffer lasting damage to their reputation, along with the social, economic and psychological costs stemming from years of investigations. This discourages activists from engaging in human rights work, with some resorting to self-censorship.

Externalisation of migration as a root cause of criminalisation

Since the "refugee crisis" of 2015, European authorities have significantly curtailed their search and rescue operations at sea. A prevailing strategy of European policies involves the externalisation of border controls to impede the arrival of asylum seekers and migrants within the EU. This is often achieved through agreements with countries such as Turkey or Libya, designed to keep individuals within their borders. In a recent example, the EU struck a deal with Tunisia, offering 785 million euros to support Tunisia's economy in exchange for retaining migrants within the country and repatriating EU nationals from Tunisia. This support from the EU stands in stark contrast to documented human rights violations against migrants in Tunisia, including the persecution and mass deportation of individuals from sub-Saharan Africa.

It is precisely as a result of the externalisation of migration control and the criminalisation of migration within the continent, that the number of criminal charges levied against those engaged in the rescue and assistance of individuals at sea or at European land borders has escalated significantly.

Taking a bird's-eye view: criminalisation as a continuum in our societies

To gain a comprehensive understanding of the phenomenon of the criminalisation of providing assistance to migrants, Jalusic [3] suggests conceptualising it as a continuum. This continuum encompasses several stages, beginning with discursive criminalisation, which involves the public labelling and scapegoating of activists and volunteers in political

and media discourse as smugglers, pull factors, or traitors. Subsequently, there are regulatory and administrative barriers which require NGOs to be registered, cooperate with authorities and submit reports of their activities. These hurdles also encompass restrictions on accessing and monitoring border areas. Finally, the continuum may culminate in direct criminal charges being brought against individuals.

The case of Hungary aligns with this continuum. Since 2015, the Hungarian Government has capitalised on anti-migrant sentiments through media campaigns and official speeches, accusing humanitarian NGOs of colluding with smugglers and acting as active pull factors for illegal migration, thereby posing a threat to national security. Hungarian authorities have sought to impede NGO activities by introducing new laws and policies targeting those who aid or advocate for the rights of migrants. This culminated in the enactment of the “Stop Soros package” legislation in 2018, which criminalises various legitimate migration-related activities, including the monitoring of human rights violations at border zones, the dissemination of information to asylum seekers or undocumented migrants, and assistance with asylum applications. Additionally, individual donations to such organisations are classified as financing migrant smuggling activities [4]. In late 2021, the Court of Justice of the European Union ruled that this legislation violated EU law.

The genesis of “othering” and its implications in European activism

In the realm of post-colonial studies, the landscape of challenges faced by activists can be examined through the notion of othering. This conceptual framework revolves around the deliberate classification and treatment of individuals as “others”, often designated “non-democratic” or “state enemies”. Othering serves to demarcate activists from the broader citizenry and effectively excludes them from the construct of the *demos*. In many instances, activists find themselves discursively branded as internal adversaries, extremists, or potential sources of violence, despite such categorisations lacking substantive grounds. [5] In post-colonial contexts, the process of othering predominantly materialises through racialisation and ethnicisation, frequently intersecting with other social categories, including gender, class and disability. [6]

Consider the case of Muslim individuals and those who advocate for their rights in the French context. As a result of the European war on terror in the aftermath of 9/11, the notion took root that Muslims, as a collective, constituted the new “enemy within”. This perspective, which held that the beliefs and practices of Muslims were incongruent with European values and norms, received validation across the political spectrum (Open Society Justice Initiative). A prevailing narrative surrounding the religious attire of Muslim women, allegedly imposed by Muslim men, served as a primary symbol in this discourse. Over time, this narrative provided authorities with a pretext to justify the restriction of the visible presence of Muslim women and Islam in various domains, ranging from educational institutions to public employment.

Concurrently, the French public authorities have targeted organisations dedicated to the

defence of Muslim rights, or groups comprising individuals who are either Muslim or perceived as such. A study [7] conducted in 2022 by the French Observatoire des libertés associatives examined the attacks and sanctions imposed by public authorities on organisations accused of promoting “separatism”, “communitarianism”, “religious radicalism”, or “proselytising”, characterising these actions as a “witch hunt”.

Under the guise of safeguarding the nation from Islamic terrorism, the French authorities perceive civil society organisations that cater to Muslims or defend their rights as pivotal components of an “Islamist ecosystem”. This ecosystem allegedly aims to “separate” Muslims from the broader *demos* through the establishment of specific sports clubs, charitable organisations, humanitarian non-governmental organisations and schools, among other entities. The constraints on Muslim freedom of association have particularly intensified following the tragic murder of schoolteacher Samuel Paty in 2020, when a political discourse on “accomplices of terrorism” rapidly escalated into accusations of fostering a separatist narrative against organisations that denounced Islamophobia in France. This escalation led to the targeting of non-governmental organisations that advocated for Muslim rights in France, exemplified by the dissolution of the Collectif contre l’islamophobie en France (CCIF) and the suspension by the Ministry of the Interior of EU funding to the organisation Alliance Citoyenne.

The next year saw the enactment of the so-called “separatism” law, which mandated the signing of a “Republican Engagement Contract” by all organisations receiving public funding. Upon signing the contract, organisations commit to the principles of freedom, equality and fraternity, refrain from questioning the secular nature of the Republic and abstain from any actions deemed to undermine “public order”. Critics within the sector have expressed concerns over the broad interpretive and punitive powers vested in the administration by this contract.

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Since its implementation, the “separatism” law has been invoked to justify restrictions on freedom of association by public authorities in France, encompassing a wide array of non-governmental organisations, including those that focus on gender-based violence and climate justice. For instance, the Femmes sans Frontières (Women without Borders) organisation, which provides assistance to victims of domestic violence, faced allegations of “disregarding Republican values” because its director chose to wear a headscarf. Subsequently, public authorities withdrew their funding from the organisation. Similarly, Alternatiba, a grassroots climate justice movement in the French city of Poitiers, faced allegations of breaching the Republican contract for organising civil disobedience workshops.

Shrinking civic space: save climate justice activism, stop the lawfare

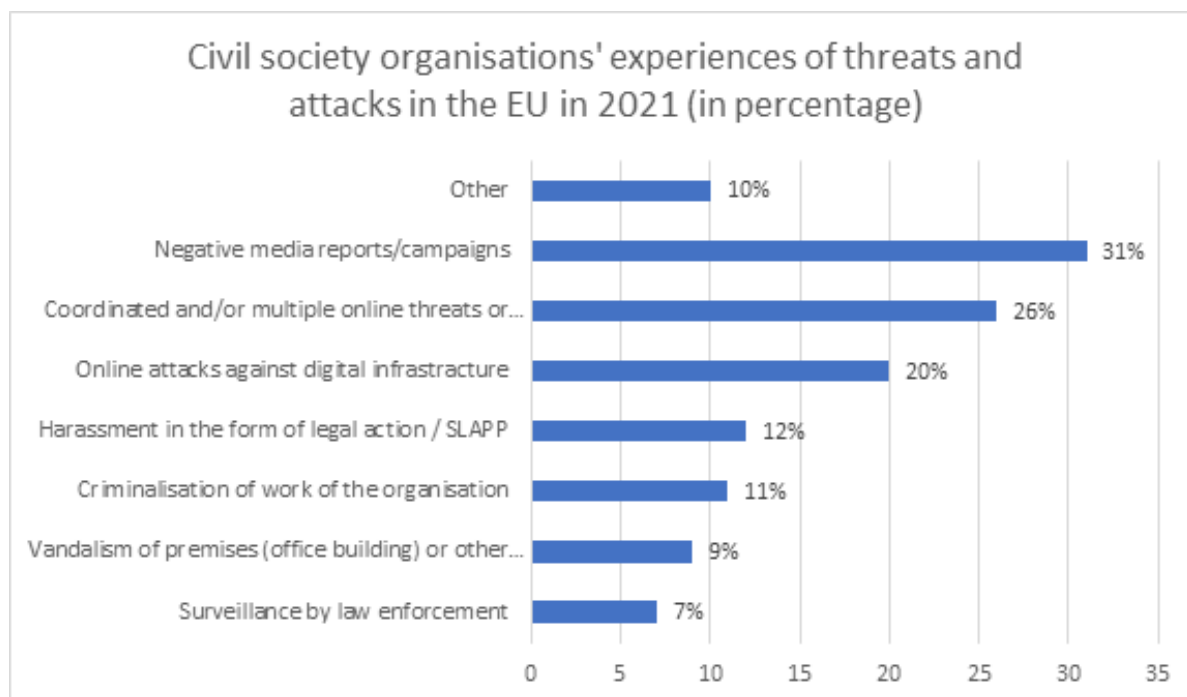
This examination delves into the criminalisation of environmental defenders and climate justice activists, a topic that has garnered significant media attention and political scrutiny across contemporary Europe. The effective enforcement of environmental regulations and human rights legislation – specifically those pertaining to a clean and healthy environment, such as the right to water and the right to adequate food – is often challenged by competing interests between corporate entities and other influential actors. Frustrations stemming from the ineffectiveness of existing policies or the lack of institutional mechanisms for addressing environmental harms and crimes have prompted the emergence of informal forms of resistance and social movements. Civil disobedience, a non-violent method of breaking the law to protest injustices, is one of the most prominent tactics deployed by activists. In response, authorities have adopted increasingly stringent measures, including defamation campaigns that label communities, activists and the resistance itself as “extremist” or “eco-terrorist”. [8]

This trend is exemplified by recent instances in Germany, where police conducted raids on Last Generation members under suspicion of forming a criminal organisation, utilising legislation originally designed to combat organised crime and terrorist groups. Similarly, in France, authorities forcibly disbanded Les Soulèvements de la Terre, with Minister of the Interior Gérald Darmanin repeatedly characterising the group’s actions as “eco-terrorism”. Italy has proposed the introduction of legislation against non-violent direct action, designating the targeting of landmarks and monuments as specific offences. Additionally, existing laws in Italy have been reinterpreted to suppress protestors, with the government employing anti-mafia laws to charge climate activists.

These *modi operandi* span a continuum, ranging from discursive targeting and administrative obstacles to criminal charges and legislative measures. A notable trend that has significantly impacted the lives of activists is the utilisation of strategic lawsuits against public participation (SLAPPs). These abusive lawsuits are filed to suppress acts of public engagement and encompass public interest journalism, peaceful protests, advocacy, whistleblowing, academic discourse, and speaking out against abuses of power. SLAPPs are increasingly wielded by individuals, politicians and organisations seeking to evade public scrutiny and deter those engaged in public participation. The CASE coalition [9] reported over 150 lawsuits filed in 2022 alone, predominantly founded upon provisions relating to insult or defamation. A poignant case is that of investigative journalist Daphne Caruana Galizia, who, prior to her tragic demise by a bomb in Malta in 2017, faced 43 civil and 5 criminal lawsuits. The EU is currently in the process of legislating on this matter, developing an anti-SLAPP Directive aimed at safeguarding civil society organisations and human rights defenders against legal and judicial harassment.

The broader phenomenon of assaults on civil society organisations falls under the rubric of “shrinking civic space” in Europe. The term denotes the diminishing space wherein people and groups can meaningfully participate in civil society, and the resultant violations of

rights of freedom of expression and opinion, as well as freedom of assembly and association. Reports from the European Fundamental Rights Agency (FRA) corroborate this discernible trend of shrinking civic space. [10] Over the past year, attacks have persisted and include negative media campaigns, coordinated online threats and harassment, online assaults targeting digital infrastructure, legal actions in the form of SLAPPs, criminalisation of organisational activities, vandalism of premises and property, and surveillance by law enforcement. The pressures exerted by both state authorities and non-state actors are on the rise, particularly against those involved in social movements and addressing sensitive issues such as migration, environmental protection, women’s rights, LGBTQI+ rights, and anti-racism.



The graphic shows responses to the question: “In the last 12 months, has your organisation experienced any of the following?”. Source: FRA’s civic space consultation for 2021.

The Old Continent as a force for good? Resilience and resistance strategies

Considering the frequent involvement of certain national authorities in orchestrating attacks against human rights activists, both directly and indirectly, it is pertinent to examine the prospective influence of supranational legislative and enforcement bodies, such as the EU, in addressing the challenges to civic space. The EU, in its pursuit of foreign policy objectives, has been characterised as an entity striving to establish itself as a normative power within the realm of international relations. This notion of EU normative power encompasses the deliberate dissemination of its core norms, including human rights, democracy, the rule of law, and environmental protection on a global scale – an endeavour driven by ideological considerations. [11] In the process of exporting these norms and

values, the EU inevitably delineates certain international actors as “undemocratic others”. Consequently, the act of othering not only shapes the EU’s identity, but also translates into tangible ramifications for its foreign policy. There is therefore an argument to be made around the legitimacy and credibility of the EU in spreading these norms outside the continent.

In particular, the EU’s efforts to uphold and advocate for human rights and environmental standards in the world encompass diplomatic initiatives, civil missions, and financial backing for civil society organisations. The EU has outlined strategies for safeguarding and supporting human rights defenders in its “Guidelines on Human Rights Defenders”. These guidelines recommend measures such as periodic embassy personnel meetings with human rights defenders (HRDs), public recognition of their efforts, monitoring of trials against defenders, prison visits, and the issuance of emergency visas. While these strategies require substantial improvement if they are to effectively protect HRDs around the world, as indicated by Amnesty International reports, similar policies could also be created within the EU, mirroring those contained in its foreign policy. This would be a first step in acknowledging the scale of attacks against human rights activism within the continent.

The protection of civil society in Europe calls for measures beyond the mere establishment of guidelines. For instance, EU Member States have collaboratively instituted a platform called “ProtectDefenders”. Operated by human rights non-governmental organisations, the platform serves as a permanent, expedited response mechanism, offering urgent aid, practical support, temporary relocation and assistance to the families of endangered HRDs outside the EU. To fortify civil society still further, substantial EU and private funding should be channelled towards legal aid for organisations, support for watchdog activities, and the development of an official public index and monitoring system to track attacks on the civic space within Europe, along with the formulation of EU enforceable recommendations for national authorities.

The sustainability of activism and the civil society sector is intrinsically tied to investment in its infrastructural development and the crafting of a compelling narrative that resonates with European societies. For instance, the Civil Liberties Union for Europe has devised a messaging guide tailored to progressive civil society entities facing smear campaigns. [12] This guide serves as a resource for activists aiming to counteract smear campaigns and negative narratives

Contemporary human rights activism is challenging the status quo. Yet, if such activism is to reclaim its power, it must permeate the everyday lives of individuals with its discourse and ideas

Following Gramsci’s cultural hegemony theory, when contemplating the nature of civil society in Europe and its potential to foster meaningful social change - as opposed to reinforcing existing power structures - it becomes evident that contemporary human rights

activism is challenging the status quo. Yet, if such activism is to reclaim its power, it must permeate the everyday lives of individuals with its discourse and ideas.

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