Criminalising Solidarity

State of play

Despite the fact that the Facilitation Directive does not encourage criminalisation of those who offer humanitarian assistance to undocumented migrants, statistics compiled by the EU Fundamental Rights Agency has found that:

- 27 member states punish facilitation of stay (Ireland is the exception as it is not bound by the Facilitation Directive)
- 13 member states punish facilitation of stay, even if there is no financial motive
- 8 member states punish both facilitation of stay that is not for profit, and for humanitarian reasons
- Only 8 member states exempt at least some forms of humanitarian assistance to irregularly staying migrants

Case studies

In some EU countries, regional authorities are challenging national legislation through their activities. For example, Ultrecht, the Netherlands, contested national policy by providing accommodation and medical attention to rejected asylum seekers, as well as informing them about their rights. Similarly, in Tuscany, Italy, far-reaching policies granting access to healthcare for all migrants – both documented and undocumented – were introduced that go above and beyond national legislation.

At national level, favour is still set against service providers who assist undocumented migrants. In Cyprus, an NGO was prosecuted for providing financial support to an undocumented migrant so that they could receive urgent medical attention, resulting in the chair of the NGO receiving a fine. The United Kingdom is currently testing a new system in Birmingham and the Black Country whereby landlords are obliged to confirm the immigration status of tenants or risk fines of up to 4,000 EUR. If deemed successful by the government, the system would be rolled-out nationwide.

However, there are some positive examples of people coming together to defend the human rights of undocumented migrants and the rights of service providers to offer humanitarian assistance.



Spain

The 'Let's Save Hospitality' ('Salvemos la Hospitalidad') campaign in Spain successfully lobbied the Spanish government to change its Criminal Code. In 2012, the government proposed a reform that effectively criminalised solidarity with undocumented migrants. The 'Let's Save Hospitality' campaign argues that the state should not interfere with services provided for humanitarian or altruistic motives. Following widespread support on social media and opposition in city halls across Spain, the government amended the law in 2013 to exempt criminal punishment in cases where actions have been carried out with a humanitarian purpose.

cec
conference of european churches

The Netherlands

The Conference of European Churches successfully challenged the Netherlands's social welfare system in the Council of Europe, which found that it violated the rights of undocumented migrants. Specifically, the Council concluded that shelter is a matter of 'human dignity', and the Netherlands's policy contravened undocumented migrants' right to social and medical assistance and their right to housing.