



POLICY BRIEFING - Criminalisation of POM

Policy Timeline: International, Transnational, National Levels

YEAR:	UN Legislation:	EU Legislation:	GR legislation:
1990		Schengen Convention Article 7 (1)	
1991			Law: 1975/1991 <i>The first time facilitation is defined as a criminal offence.</i>
1993	Resolution 48/102 on the Prevention of Smuggling Aliens		
1999		Tampere Council Conclusions	
2000	Convention Against Transnational Organised Crime Protocol to Prevent, Suppress and Punish the Smuggling of Persons / Protocol Against the Smuggling of Migrants by Land, Sea and Air		
2001			Law: 2910/2001 <i>Increase in penalties and expansion of aggravating circumstances.</i>
2002		Facilitator's Package (2002/90/EC and 2002/946/JHA9)	
2003			Law: 3153/2003 <i>Two new felonies in the area of facilitation:</i> <ul style="list-style-type: none"> - Endangering human life - Causing the loss

			<i>of human life</i>
2005			Law: 3386/2005 <i>Expanding the definition of a facilitator.</i>
2009			Law: 3772/2009 <i>All forms of facilitation of entry, exit and transportation become a felony crime. This leads to a further increase in penalties.</i>
2014			Law: 4251/2014 <i>Minimum sentence for facilitation set to 10 years per person transported. Financial gain removed as a precondition.</i>
2015		European Agenda on Migration European Agenda on Security Action Plan Against Migrant Smuggling (2015-2020)	
2016		Europol's European Migrant Smuggling Centre established	
2017		Evaluation of the Facilitator's Package	
2019			Law: 4619/2019 - The New Criminal Code <i>Penalty of a minimum of 10 years and a maximum of 15 years per transported person.</i>
2021		Renewed Action Plan Against Migrant Smuggling (2021-2025)	

Policy Brief:

In recent years, securitisation discourses have shifted the framing of migration as a human rights issue bound up with Cold War politics, to an issue of criminality and the fight against transnational organised crime. This has, in turn, led to an increasing overlap between criminal law and migration management at the transnational level in the European Union (EU) which is reflected by the increase in legislation governing the movement of people. Nothing reflects this phenomenon more clearly than the cases of strategic litigation brought against people-on-the-move (POM), and the lengthy prison sentences that accompany them. The criminalisation of movement in general has been in the focus of the Border Violence Monitoring Network's (BVMN) advocacy work since its conception in 2017.

When analysing the relevant policy documents provided in the timeline above, there is a clear distinction between international human rights instruments at the UN level, and the ways in which such rights are provided for in EU legislation. In 2000 when the UN established the Convention Against Transnational Organised Crime, ratified by all EU Member States (MS), there was a clear emphasis on dividing the definitions and charges of 'smuggling' and 'trafficking' through the establishment of two separate protocols. Furthermore, the former protocol clearly outlined the rights of POM being smuggled and prohibited the criminalisation of individuals who were subject to smuggling. At the EU level, the distinctions between smuggling, trafficking, and illegal migration are ill-defined. The creation of an internal free market and free movement as put forth by the Schengen acquis required, *inter alia*, a commitment to strengthening the EU's external borders as a means of protecting the internal body of MS. In fact, the offence of facilitation of illegal entry is first mentioned in [Article 7 \(1\)](#) of the Schengen Convention (1990). In 2002, the Facilitator's Package furthered this agenda by putting forward the goal of the Commission to combat both illegal migration and the *aiding* of illegal migration. The package even stands in direct contradiction to the UN definition of smuggling; it doesn't consider financial gain as intrinsic to this definition, simply an aggravating circumstance. Again, the mechanisms behind this are somewhat blurred with the terms used in the policy document such as 'smuggling', 'financial gain', and 'humanitarian assistance' left open and undefined, with full discretion being left to MS to decide how sanctions are transposed into national legislation ([Article 3](#)).

EU policy on smuggling, trafficking, and facilitating illegal entry/exit is sufficiently broad to have allowed for the Greek state to develop one of the strictest anti-smuggling legislations across EU MS; one that is often misapplied to target asylum seekers and [human rights defenders](#). The geographical strain placed on Greece as a key entry point at the EU's external border, as well as a transit country for secondary migration, has led to disproportionate levels of criminalisation of movement and policies of containment and control on behalf of the Ministry of Migration and Asylum (MMA). Since the crime of facilitation first entered into national legislation in 1991, the scope for charging an individual for taking on a 'facilitation' role has increased, and many have fallen victim to this agenda: civil society organisations (CSOs) and POM alike. Furthermore, sentences applied to those convicted of facilitating illegal entry stand at a maximum of 15 years *per person transported*, leading to individuals being charged with [sentences of hundreds of years](#) imprisonment. The organisation [Christian Peacemaker Teams Lesvos \(CPT - Lesvos\)](#) have been monitoring smuggling trials since 2014 and have identified that those accused of being criminal

smugglers are likely people seeking asylum. This phenomenon is not limited to the Aegean, [Human Rights 360 have reported extensively](#) on the generalised practice of judicial authorities to convict newcomers with the offence of illegal entry in the Evros region. These charges are often met with disproportionately heavy penalties, including up to two years in prison, fines, in some cases without the possibility of suspending the sentence while pending appeal. These legislative realities have left POM in Greece at high risk of being subject to lengthy prison sentences for the simple 'crime' of movement.

Individual Cases:

Moria 6:

- <https://cpt.org/2021/06/13/ams-moria-6-sentenced-10-years-imprisonment-after-fir-e-moria-camp>
- <https://legalcentresvos.org/2021/03/09/justice-for-the-moria-6/>
- Campaign organised to support the defendants:
<https://freethemoria6.noblogs.org/who-are-the-moria6/>

Samos 2:

- <https://freethesamostwo.com/>
- <https://www.statewatch.org/news/2021/november/greece-new-campaign-against-criminalization-of-migration-free-the-samos2/>
- https://www.europarl.europa.eu/doceo/document/E-9-2021-003513_EN.html

Vial 15:

- <https://cpt.org/2021/07/22/ams-report-trial-vial-15>

Paros 3:

- <https://www.nd-aktuell.de/artikel/1161387.justiz-gegen-fluechtlinge-auf-gefaehrliche-routen-gezwungen.html>

Trial of H. Haddi and M. Hadder:

- https://www.borderline-europe.de/sites/default/files/readingtips/Report%20trial%20observation%20Hamza%26Mohamed_EN.pdf (*appealed and suspended*)

Trial of Mohamad Abdi Hanad:

- <https://www.infomigrants.net/en/post/32248/greece-migrant-accused-of-smuggling-sentenced-to-146-years-in-prison>
- <https://www.nytimes.com/2021/06/25/world/europe/greece-migrants.html>