

DAY 2

Legal Restrictions on the
Rights to Defend Rights



Criminalisation of HRDs

In criminology, the term 'criminalisation' refers to:

“the process by which behaviours and individuals are transformed into crime and criminals”

For HRDs - we understand criminalisation to derive from the intent to discredit, sabotage or impede the work of HRDs through the misuse of the legal system.

Lawfare

Can be defined as:

the misuse of legal systems and principles against an enemy, by damaging or delegitimizing them, tying up their time or winning a public relations victory.

Lawfare can take many forms including:

- Litigation
- Regulatory complaints, including attacks on charitable status
- Requests for government investigations or prosecution
- Service restrictions e.g. pressuring banks to cancel the accounts

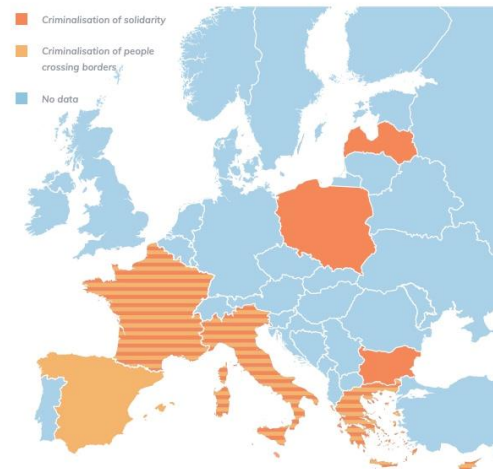
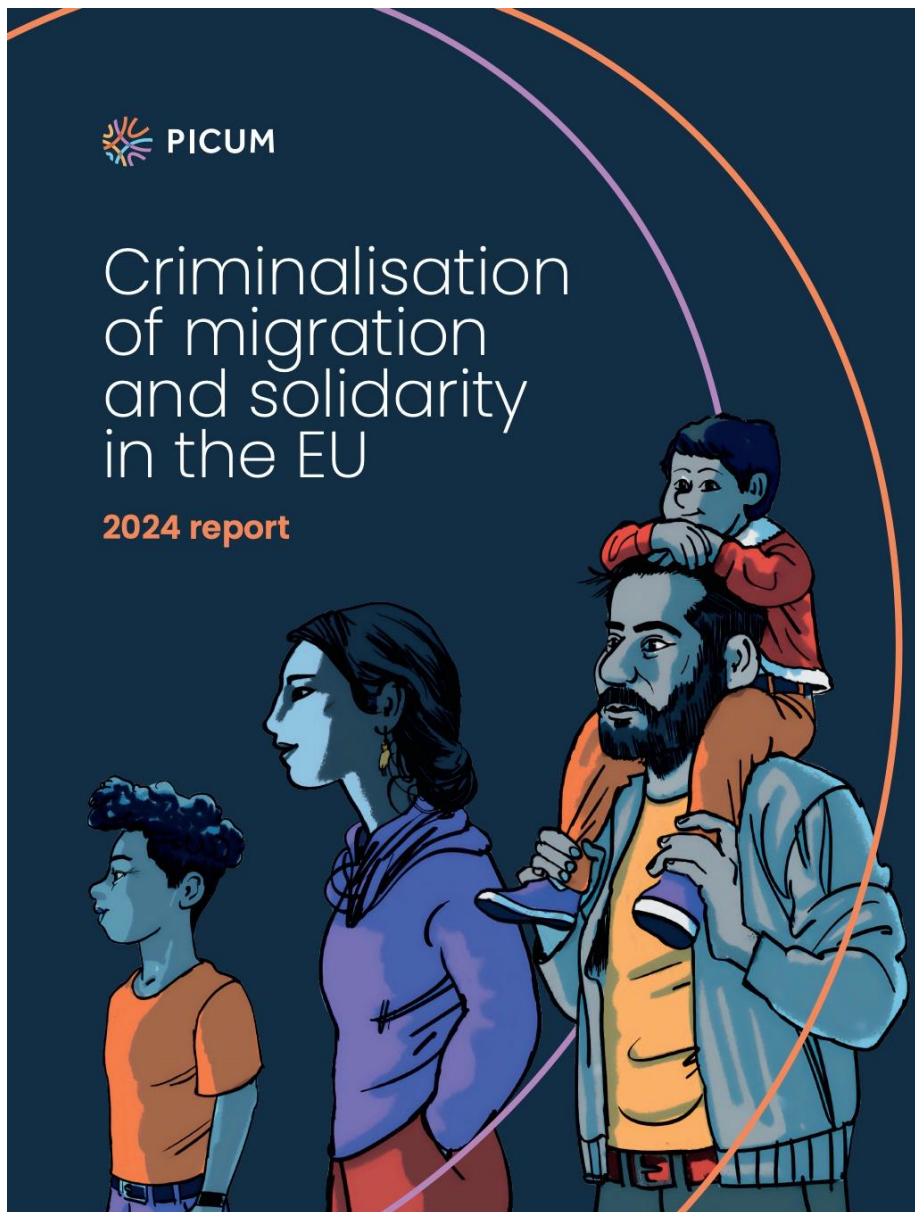
DIFFERENT TYPES OF LEGAL ACTIONS

- NGO laws targeting the operation of organisations
- Laws such as tax laws, AML laws and other that impact on NGOs
- Inspections, audits, additional reporting etc.
- Spurious cases based on alleged tax fraud, corruption etc.
- SLAPPS
- Criminalisation – either linked to support to migrants or counter-terrorism



Criminalisation of migration and solidarity in the EU

2024 report



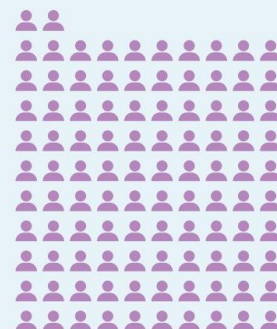
Criminalisation of solidarity*

Greece	62
Italy	29
Poland	17
France	17
Bulgaria	11
Malta	3
Latvia	2
Cyprus	1

Criminalisation of people crossing borders*

Greece	45
Italy	40
Cyprus	3
Spain	2
France	1

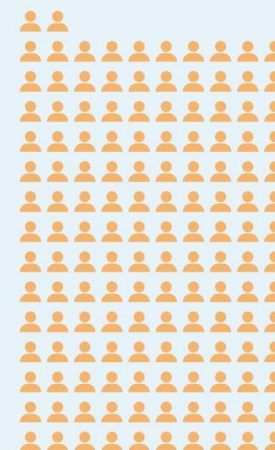
Number of people criminalised for acting in solidarity with migrants



At least 102 in 2022



At least 117 in 2023



At least 142 in 2024

GENEVA (9 February 2023) – A UN expert* today condemned the criminalisation and repression of human rights defenders involved in sea-rescue charities in Italy, ahead of the trial of NGO crew members in Sicily.

“The ongoing proceedings against human rights defenders from search and rescue NGOs are a darkening stain on Italy and the EU's commitment to human rights,” said Mary Lawlor, UN Special Rapporteur on the situation of human rights defenders.

In May 2022, preliminary criminal proceedings were opened against 21 people at the Court of Trapani – including four members of the *Iuventa* search and rescue crew, and human rights defenders from other civilian vessels – for alleged collaboration with people smugglers. They are being charged with aiding and abetting unauthorised immigration in connection with several rescue missions conducted in 2016 and 2017.

Status: **Acquitted**

About the situation

On 19 April 2024, an Italian court in Trapani dismissed the charges of "aiding and abetting illegal immigration to Italy" in the Iuventa case and acquitted twenty-one refugee and human rights defenders, along with three organisations, including Jugend Rettet, Save the Children, and Médecins Sans Frontières (MSF). The decision came after seven years of legal harassment following the seizure of the Iuventa search and rescue ship.

On 2 March 2021, the Trapani Prosecutor Office brought charges of "aiding and abetting illegal immigration to Italy" against 21 individuals, including four migrant rights defenders of the "Iuventa" search and rescue ship, and three organisations, including Save the Children and Médecins sans Frontières (MSF). If convicted, the charges carry a possible sentence of 5-20 years imprisonment and a fine of 15,000 euros per person that was rescued during the search and rescue operations.

About Iuventa 10



The Iuventa10 is a collective of crew members of the Iuventa ship, operating search and rescue missions in the Mediterranean sea, and the volunteers assisting them. Over the course of 16 missions, the Iuventa's crew have assisted 175 boats and rescued 23,810 people, taking more than 14,000 people on board. The ship's crew and volunteers have treated 4,800 people for dehydration, circulatory failure, hypothermia, chemical burns and pregnancy complications, among many other issues. Since August 2017 the ship has been impounded in the port of Trapani, Sicily while its crew are facing criminal investigation. Iuventa10 was the recipient of the 2020 Amnesty International Germany Human Rights Award.

MEET IUVENTA 10 

“

It is no coincidence that the proliferation of security measures to counter terrorism and to prevent and counter violent extremism, on the one hand, and the adoption of measures that restrict civic space, on the other, are happening simultaneously... For civil society, the international primacy of security over human rights was translated into polarising political rhetoric: “with us or with the terrorists”. This has led to the targeting of civil society members who question the legitimacy of the counter-terrorism measures.”

– Professor Fionnuala Ní Aoláin, UN Special Rapporteur on Human Rights and Counter-Terrorism



Environmental HRDs

- Labelled as 'eco-terrorists'
- New laws restricting rights
- Further restrictions on the rights to protest
- Disproportionate sentences



📷 A protestor holds a picture of Marcus Decker during a demonstration in July. Photograph: Vuk Valcic/Sopa Images/Shutterstock

“Since my appointment I have been travelling to many countries in Europe and there is a clear trend,” Forst told the Guardian. “We can see an increasing number of cases by which these climate activists are brought to court more and more often and more and more severe laws being passed to facilitate

- UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters – Aarhus Convention
- UN Special Rapporteur on Environmental Defenders under the Aarhus Convention
- <https://unece.org/environment-policy/public-participation/short-videos-environmental-defenders-and-work-special-rapporteur>
- <https://unece.org/env/pp/aarhus-convention/special-rapporteur>

SECURITY PLAYBOOK

- **FRAMEWORKS** Abuse of security frameworks to silence dissent
- **TECH** Use of technology to surveil and censor
- **NARRATIVES** Promotion of the security narrative to justify restrictions

See Civic Futures resources, reports, information <https://civic-futures.org/trends-and-analysis/>

Financial Action Task Force

Recommendation 8: 'Countries should identify the organisations which fall within the FATF definition of non-profit organisations (NPOs) and assess their terrorist financing risks. Countries should have in place focused, proportionate and risk-based measures, without unduly disrupting or discouraging legitimate NPO activities, in line with the risk-based approach. The purpose of these measures is to protect such NPOs from terrorist financing abuse, including: (a) by terrorist organisations posing as legitimate entities; (b) by exploiting legitimate entities as conduits for terrorist financing, including for the purpose of escaping asset-freezing measures; and (c) by concealing or obscuring the clandestine diversion of funds intended for legitimate purposes to terrorist organisations' (FATF 2023).

- In 2001 NPOs were labelled as being 'particularly vulnerable' to terrorist financing
- Provided internationally sanctioned cover for governments seeking to legitimize a crackdown on critical civil society

Key indicators for identifying SLAPP cases

1. Is the legal action brought by a private party (i.e. not by the state)?

The key quality that distinguishes SLAPPs (sometimes referred to as “privatised censorship”) from traditional forms of censorship is that they are pursued by private parties rather than state actors. Note, however, that government figures may act in a private capacity when filing lawsuits. Furthermore, in many European jurisdictions it is possible for private parties to trigger or pursue criminal charges against their critics: in the case of criminal defamation laws, in particular, this has proven to be a powerful weapon against public watchdogs.

2. Does the legal action target acts of public participation?

“Public participation” is a broad term that can encompass any effort to engage in an issue of societal or political significance: journalism, advocacy, whistleblowing, peaceful protest or boycotts, activism, or simply speaking out against the abuse of power.

IF YES TO BOTH



DAPHNE
CARUANA
GALIZIA
FOUNDATION

Key indicators for identifying SLAPP cases

3. Has the lawsuit been brought with the purpose of silencing, shutting down, or discouraging the acts of public participation?

Many of these are tactics designed to maximise the ability of the lawsuit to intimidate and harass the target. By suing the individual journalist or activist, for example, the SLAPP filer leaves the defendant isolated and exposed – raising the possibility they will be intimidated into silence. For the same reason, SLAPPs often come with demands for excessively high damages, calculated as much to intimidate the defendant as to accurately represent any alleged harm caused.

A number of qualities can provide clues as to the true purpose of the lawsuit. These include the following:

- 1. Remedies are unusually aggressive or disproportionate**
- 2. Plaintiff engages in procedural manoeuvres designed to drive up costs.**
- 3. Plaintiff exploits economic advantage to put pressure on the defendant(s).**
- 4. The lawsuit targets individuals rather than just the organisation they work for.**
- 5. The arguments relied upon are legally or factually baseless.**
- 6. The plaintiff uses the litigation process to intimidate and harass third-party critics.**
- 7. The lawsuit appears to be part of a wider campaign to bully, harass, or intimidate the defendant.**
- 8. The plaintiff has a history of SLAPPs and/or legal intimidation.**

How expansively should 'public interest' be understood?

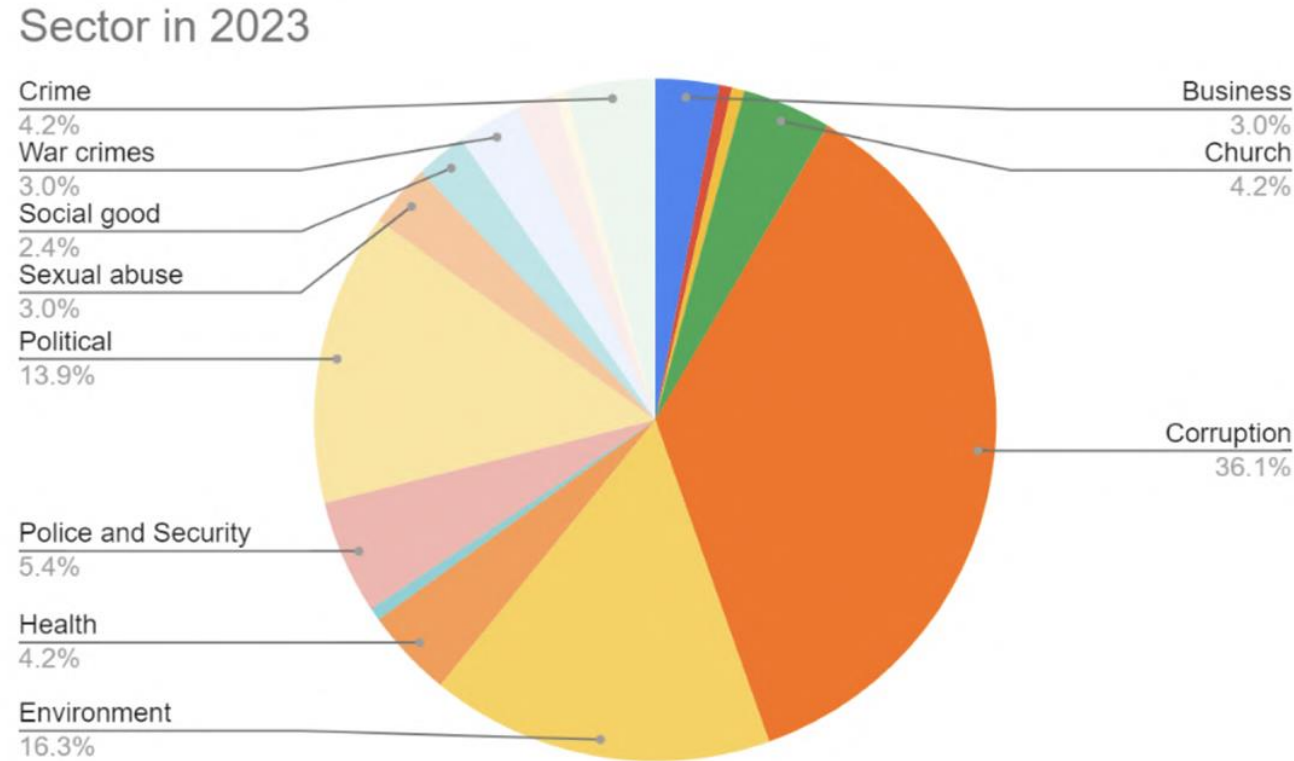


Figure 10: CASE-recorded SLAPP legal cases in 2023 – sectors/issues

KEY INDICATORS

Is there legal action or a threat of such?

Does it target an act of public participation?

Is the act of public participation in the public interest?

Is the Claimant a public figure or official / politician / businessperson or a state linked entity or person?

Is the Defendant an individual rather than the organisation responsible for the challenged action?

Is there any inequality of arms?

Is the lawsuit being pursued - including remedies sought - in an aggressive/abusive manner?

What are the merits of the complaint?

Are there any cross-border elements?

Have non-judicial attempts been made to settle the dispute?

Is this part of a wider campaign to bully, harass, or intimidate?

Hypothetical 1

A small campaigning organisation gets in touch. Its Chairman, Jeff, has been sued personally for statements made about a local chicken farm on the group's Facebook page. The campaigning organisation is the only group working to expose environmentally destructive and cruel farming practices. Unfortunately, Jeff himself can get carried away and has used his platform to describe the farm's owners as "fascists" and suggest they're part of a secret "global cabal" of evil chicken farmers. The chicken farm is demanding 200,000 Euros in damages.

Hypothetical 2

A well-known but divisive journalist - famous for her impassioned diatribes against the political elite - gets in touch about proceedings she is involved in. The plaintiff is the highly litigious Minister of Interior, Sue Emmanuel. The case is ongoing and the national context is hostile. Populism has swept the country, trust in journalism is at an all-time low, and the case has becoming a flashpoint in the country's culture wars. The defendant has got in touch late in proceedings, and hearings until this point have all gone badly for the journalist. The defendant needs legal support, but pro bono lawyers are reluctant to get involved.

Hypothetical 3

A well-known environmental movement, established in Vancouver in 1971, has been found liable for a total of \$660m following an aggressive case by an oil and gas pipeline company. The international coordinating body, based in the Netherlands, is a member of CASE. It has been found directly liable for more than \$150m. In a few months time, it will be challenging the lawsuit in

Dutch court - seeking to block its potential enforcement and obtain compensation for the harm caused under Chapter V of the new EU Anti-SLAPP Directive. It would be a test of the Directive's protective capacity.

Greenpeace must pay at least \$660m over Dakota pipeline protests, says jury

Non-profit, which will appeal decision, says lawsuits like this are aimed at 'destroying the right to peaceful protest'



North Dakota jury says Greenpeace must pay at least \$660m over Dakota pipeline protests - video

HRVATSKE ŠUME D.O.O. V VESNA GRGIĆ

- Hrvatske - Croatian Forests Ltd (CFL) a state-owned co managing forests and forest land owned by the Republic of Croatia
- Vesna Grgic - President of the Croatian Veterans and Social Action Association, and NGO fighting against deforestation.
- Over the past years, Vesna has spoken openly about the massive devastation of forests in Croatia – based on detailed documentation. She has accused Croatia Forests Limited of ‘criminal activities’
 - 1 April 2021 – interview with Vesna published on Telegram. She accuses Croatian Forests Limited of being “corrupt organised criminal enterprise”
 - 2 April 2021 – Croatian Forests Limited published a rebuttal: "All of Vesna Grgić's claims are lies”
 - 26 April 2021 - Vesna files a criminal complaint for insult against the signatories of statement
 - 26 June 2021 – Vesna speak at an international online forum
- Croatian Forests Limited files three private prosecutions for criminal defamation against Vesna over above statements. Seeks fines against Vesna of € 500 x the average daily income. Therefore €19,215. For 3 lawsuits a total of €57,645 + court costs etc

VESNA GRGIĆ: A SLAPP

- Is there legal action or a threat of such? **Yes proceedings issued**
- It target an act of public participation? **YES, speech about deforestation and environmental impacts: but some comments re a well organised criminal group go quite far**
- In the public interest? **Yes**
- Is Claimant a public figure or official/ politician / businessperson or a state linked entity or person? **State owned company**
- Is the Defendant an individual rather than the organisation responsible for the challenged action? **Yes (but CFL have reportedly also filed lawsuits against RTL Television, magazine and others)**
- Is there any inequality of arms? **Yes, financial, political and societal position vastly different**
- Is the lawsuit being pursued - including remedies sought - in an aggressive/abusive manner? **Yes, the remedies sought are unusually aggressive:**
- Merits of the complaint **Hard to say – some comments subjective**
- Cross border elements? **N/A**
- Non-judicial attempts to settle dispute **N/A**
- Part of a wider campaign to bully, harass, or intimidate? **Ongoing criticism/counter criticism both sides**
- Conclusion: **motive ? disproportionate to bring 3 x private prosecutions against Vesna in person for criminal defamation.**



CASE

COALITION AGAINST SLAPPS IN EUROPE

**verified
SLAPP**

EU Anti-SLAPP Directive

- Entered into force 6 May 2024 – 2-year transposition period
 - Applies to civil cases with cross-border implications
 - Key elements
 - **Early dismissal of manifestly unfounded claims**
 - **Crucial safeguards** including: accelerated treatment of applications for safeguards; access to remedies for victims of SLAPPs; the use of dissuasive penalties; and access to support for the defendant such as third-party interventions;
 - **Third country manifestly unfounded judgments not recognised**
- Important to ensure effective transposition and to include national cases.**