
THE CRIMINALISATION OF PRO-MIGRANT CIVIL SOCIETY IN EUROPE



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Thesis submitted for the degree of Doctor of Philosophy, Royal Holloway, University of
London, April 2022

Declaration of Authorship

I, Laura Schack, hereby declare that this thesis and the work presented in it is entirely my own. Where I have consulted the work of others, this is always clearly stated.

A handwritten signature in blue ink, appearing to read 'L. Schack', written in a cursive style.

7th March 2022

Acknowledgements

Thank you to all my interviewees, who took time out of their busy schedules to participate in this research. A special thanks also goes to the organisations at the former Help Refugees warehouse in Calais and to One Happy Family on Lesvos who welcomed and hosted me during the participant observation phases of my field research.

I would like to especially thank my supervisors Dr Will Jones and Professor Lizzie Coles-Kemp, who have supported and encouraged me at every step of my PhD and whose ideas and feedback have shaped this thesis. I would also like to thank my advisors Professor Ben O’Loughlin and Dr Tom Dyson for their advice and support throughout the course of my PhD.

Thank you to Alice, who I met at Royal Holloway’s Little Echoes nursery almost 30 years ago, and who handed in her PhD thesis two weeks before me – thank you for the runs, the lake swims, the late-night working sessions, and for helping me with final proofreading. I would like to dedicate this thesis in memory of Alice’s father, Justin Champion, who was an inspiration and who first encouraged me to apply for a PhD.

I would also like to thank all of my family and friends who have supported me in the last four years. Thanks to April, for her friendship and invaluable support in Calais, Lesvos and beyond. To Hannah for proofreading and for always being there for me. To my mum, for her enthusiasm and faith in me. To my dad, for all his support and for hosting and putting up with me in the first months of lockdown and in the last months before submission – it can’t have been easy! To Fridge and Kathi for being awesome siblings, and to my grandmother, Helga, for her solidarity. To Jami, Lyd and Tom who were the most amazing virtual PhD support group throughout the pandemic and who don’t hold up too bad in person either. To Amber, Marie, Wolf and Rebecca, who kept me going and who were the bright spots of my time in Berlin. And to Ian, Jen, Masha, Rosie and Rowan for your support, friendship, long phone calls, and good times in London.

Finally, I would like to acknowledge and sincerely thank my funders: Royal Holloway’s Leverhulme Magna Carta Doctoral Training Centre which granted me a studentship; The Friendly Hand charity which generously funded my field research trip to France, Greece and Italy in 2019; and the German Academic Exchange Service (DAAD) which granted me a one-year doctoral research grant in order to finish my thesis and conduct further research in Berlin.

Abstract

This thesis examines the criminalisation of pro-migrant civil society in Europe within the context of the 2015 'refugee crisis'. While individuals and civil society groups helping migrants and refugees were initially widely praised, state attitudes towards pro-migrant civil society actors (CSAs) soon shifted, resulting in the phenomenon referred to as the 'criminalisation' of pro-migrant civil society, in which CSAs are prosecuted and targeted in different ways for their work with migrants. This thesis answers three broad research questions: how does criminalisation operate? Why does criminalisation occur? And what are the consequences of criminalisation? Between 2018 and 2019, I conducted 90 semi-structured research interviews, primarily in France, Greece and Italy, and conducted six weeks of participant observation research as a volunteer in Calais and on Lesbos. Based on this research and responding to gaps in the literature regarding the conceptualisation of criminalisation, I first create a new typological framework structured around six methods of criminalisation and repression: legislative change, judicial harassment, police harassment, administrative sanctions and techniques of bureaucracy, labels and stigmas, and co-optation. Second, I argue that criminalisation can be explained by the politicisation of migration, in which CSAs are criminalised for political and electoral gain, and by their positions as witnesses to state and EU security practices which systematically violate human rights and international law. Third, I argue that more repressive tactics utilised in Greece result in a more subdued and silenced civil society whereas more direct forms of criminalisation, as experienced by CSAs in Calais and SAR NGOs in the Central Mediterranean, create a more resistant civil society space. Finally, throughout this thesis I problematise the use of the word 'criminalisation' and associated emphases on notions and frameworks of legality, which risk obscuring the increasingly authoritarian nature of state actions around migration in Europe.

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Abbreviations

ANSA	<i>Agenzia Nazionale Stampa Associata</i> [Italian National Associated Press Agency]
AYS	Are You Syrious?
CFR	EU Charter of Fundamental Rights
CJEU	Court of Justice of the European Union
CRS	<i>Compagnie Républicaines de Sécurité</i> [the French riot-control force]
CSA	Civil Society Actor
DRC	Danish Refugee Council
ECHR	European Court of Human Rights
ECNL	European Center for Not-for-Profit Law
ECRE	European Council on Refugees and Exiles
ERCI	Emergency Response Centre International
ESTIA	European Emergency Support to Integration and Accommodation
EU	European Union
EUNAVFOR Med	European Union Naval Force Mediterranean (Operation Sophia)
ECI	European Citizen's Initiative
FA	Forensic Architecture
FO	Forensic Oceanography
FRA	Fundamental Rights Agency of the European Union
Frontex	European Border and Coast Guard Agency
GMA	Gibraltar Maritime Association
HCC	Hungarian Constitutional Court
HRAS	Human Rights at Sea
HRO	Human Rights Observers
IGPN	<i>Inspection générale de la Police nationale</i> [French General Inspectorate of the Police Nationale]
IOM	International Organization for Migration
IRR	Institute of Race Relations
MPG	Migration Policy Group
MRCC	Maritime Rescue Co-ordination Centre
MSF	<i>Médicins Sans Frontières</i> (Doctors Without Borders)
NGO	Non-Governmental Organisation
OHCHR	International Covenant on Civil and Political Rights

OHF	One Happy Family
OLAF	European Anti-Fraud Office
PMA	Panama Maritime Authority
PSC	Port State Controls
ReSOMA	The Research Social Platform on Migration and Asylum
RIO	<i>Referentiel des Identites et de l'Organisation</i> [French Police identification number]
RSA	Refugee Support Aegean
SAR	Search and Rescue
SMS	Site Management Support
UN	United Nations
UNHCR	The UN Refugee Agency

Interview Key

The interview codes I use to reference my interviews throughout this thesis (particularly in chapters two, six, seven, and eight) are comprised of three parts. For example, a reference might look like this: (Interview, C1V). The first part, 'C', refers to the location (Calais); the second part, '1', refers to the order in which it appears in the list of interviews in the appendix; and the third part, 'V', relates to the interviewees role or position (Volunteer).

Principal research phase interview key:

Key: Location

A = Athens

C = Calais

G = Greece

L = Lesbos

P = Paris

R = Rome

S = Sicily

SAR = Search and Rescue (no location specified)

Key: Role

A = Activist

L = Lawyer

R = Representative of a CSA

Re = Researcher

S = State or Supra-state actor

V = Volunteer

For interviews from my pilot research phase (featuring particularly in chapter 2), the key is slightly different. It is comprised of four parts and might look like this: (Interview, G1R18). The first part 'G' refers to location (Greece); the second part '1' refers to the order in which it appears in the list of interviews in the appendix; the third part 'R' refers to the role of the interviewee (Representative); and the fourth part '18' refers to the year of the interview and distinguishes it from interviews from my principal field research phase.

Pilot research interview key:

Key: Location

B = Berlin

D = Denmark

G = Greece

Key: Role

R = Representative of a CSA

Chapter 1: Introduction

‘When we were assisting Chechen refugees in Russia, we were considered as enemies of Russia. We were considered as terrorists. When we were assisting refugees in Syria, we were accused as terrorists, or of collaborating with ISIS. But we never thought that we were going to face the same here in Europe’ (Interview, G1R18).

The director for Greece of an international Non-Governmental Organisation (NGO) involved in helping migrants and refugees in Europe told me this during an interview in Athens for my pilot research in June 2018. This presents a stark contrast to the initial positive portrayal of the large numbers of NGOs, grassroots movements, and individuals who acted as ‘first responders to Europe’s ‘refugee crisis’’ through their provision of help and aid in 2015 when over one million migrants and refugees ‘irregularly’ entered the EU (Allsopp, Vosyliūtė and Smialowski, 2021: 68). The spontaneous ‘Refugees Welcome’ movement was widely praised in the media as images proliferated of citizens greeting refugee arrivals at train stations; search and rescue (SAR) NGOs rescuing migrants on the Central Mediterranean route between Libya and Italy were initially praised by politicians and the media as ‘angels’ (Cusumano and Villa, 2021: 24); and in 2016, several NGOs from Hungary, Germany, Greece and Spain were awarded the European Economic and Social Committee’s Civil Society Prize as those ‘who have demonstrated outstanding examples of solidarity towards refugees and migrants’ (Allsopp, Vosyliūtė and Smialowski, 2021: 68).

Since then, however, public and state attitudes towards civil society actors (CSAs) helping migrants and refugees have shifted significantly. SAR NGOs in the Mediterranean are vilified as people smugglers and face criminal prosecutions, volunteers providing food and clothing to migrants living precariously in Calais face constant harassment by the police, in Greece NGOs are scapegoated for creating devastating conditions in refugee camps and are denigrated as money-grabbing ‘bloodsuckers’, and in the UK, activists engaged in non-violent direct action to stop a deportation flight at Stansted Airport were charged, convicted, and later acquitted of committing the terrorism-related crime of endangering an airport. These examples demonstrate a trend which has emerged throughout Europe in which those helping migrants and refugees are being increasingly stigmatised, targeted, blocked and prosecuted by various state actors. Throughout this thesis, I refer to this trend as the ‘criminalisation’ of pro-migrant civil society. The freedom and independence of civil society constitutes a cornerstone of liberal democracy, one which, as my research shows, is increasingly under attack in Europe. This thesis was developed from a normative standpoint which understands the rights and freedom of civil

society as important values which should be protected, while the criminalisation and repression of civil society should be challenged.

This change in attitude also coincided with two other key Europe-wide shifts, which I later argue are also two principal explanations for the criminalisation and repression of pro-migrant civil society. The first is the increased politicisation of migration, in which migration and asylum issues became highly politically and electorally salient as anti-migrant rhetoric proliferated and far-right and populist parties made electoral gains (Gianfreda, 2018; Krzyżanowski, Triandafyllidou and Wodak, 2018). The second is the security response of individual states and the EU, which saw the introduction and expansion of security infrastructures, policies, and practices aimed at keeping migrants out of Europe. These include externalisation policies resulting in, for example, the funding and training of the so-called Libyan Coast Guard, and the introduction of the EU hotspot system aimed at deterrence through the establishment of camps like the notorious Moria camp on Lesbos (Cuttitta, 2018; Davitti, 2018; Christides *et al.*, 2022b; Sinha, 2022). These new and expanded security policies and practices were introduced in the name of ameliorating the apparent humanitarian emergency, yet have consistently resulted in increased deaths and systematic human rights violations at European borders (Colombo, 2018; Davitti, 2018; Tazzioli, 2018).

These interrelated phenomena are, clearly, highly contemporary and continue to evolve. This was particularly the case when I began my research in 2018 when, naturally, much less research had been published about the criminalisation of pro-migrant civil society in Europe. The nature of my research was therefore highly exploratory and guided by three broad research questions. First, I ask ‘how does criminalisation operate?’ From the beginning I was interested in the mechanisms of the different ways in which CSAs appeared to be targeted throughout Europe and across research locations. Which actors are involved and what tools are they using with which to target CSAs? Which CSAs in particular are being targeted? Does this vary between locations? Second, I ask ‘why does criminalisation occur?’ How is criminalisation connected to the politicisation of migration and to state security responses to the ‘refugee crisis’? What are the relationships between these different processes? And third, I ask ‘what are the consequences of criminalisation?’ How does it impact the work of CSAs, and how do CSAs respond to it?

To answer these questions, I conducted two phases of field research. In the summer of 2018, I conducted a pilot research study in which I conducted 13 research interviews with pro-migrant CSAs in Greece, Germany, Denmark and over Skype to Malta. The purpose of this study was to

understand the scope of criminalisation and to evaluate the potential for further research on the topic. Finding ample research potential, I embarked on my principal field research trip to France, Greece and Italy between May and September 2019, focussing particularly on three case studies: CSAs providing humanitarian aid to migrants living in informal settlements in Calais; SAR NGOs in the Mediterranean; and the wide range of different CSAs working on Lesvos. I conducted six weeks of participant observation research in total as a volunteer in Calais and on Lesvos, as well as 77 semi-structured research interviews with civil society and state actors. State actors interviewed included representatives of local and national governments and of law enforcement actors including Frontex (the European Border and Coast Guard Agency) and the Greek Coast Guard. CSAs interviewed included international NGOs, small grassroots organisations providing humanitarian aid, activists and watchdogs, SAR NGOs operating in the Central Mediterranean, and individuals who had been convicted or who were being prosecuted for various crimes, including human smuggling.

This thesis makes several key contributions to theory and the literature. First, I develop a typological framework of criminalisation and repression which responds to the conceptual underdevelopment of the term 'criminalisation' in the literature on pro-migrant civil society in Europe. Through the framework, I not only analyse state methods of repression and criminalisation in Europe but provide a tool to facilitate the differentiated analysis of the criminalisation of civil society in Europe and beyond which can be used by other researchers. Second, by drawing on literature about civil society repression in more authoritarian regimes in my typological framework, I bring together literature on criminalisation in liberal democracies and repression in more authoritarian states and bridge the separation of these in the literature which I argue is due to a Western liberal bias which reproduces binaries of 'us' and 'them'. Third, I analyse the mutually constitutive relationship between processes of politicisation, securitisation, and criminalisation, drawing on theories from Critical Security Studies and theorising that the relationships between these processes offer an explanation for why pro-migrant CSAs in Europe are being criminalised and repressed. Through this, I offer a novel understanding of the way in which these processes interact and are in tension with each other. Fourth and finally, I analyse the consequences of criminalisation and how CSAs respond to their criminalisation, focussing particularly on how this affects the humanitarian, political and radical nature of civil society and contributing to questions in the literature about the political and societal role of pro-migrant civil society.

Key terms and definitions

'Refugee crisis'

The context of this research is the European 2015 'refugee crisis'. Those events resulted in the civil society engagement which I analyse in this thesis, in which CSAs particularly aid and advocate for migrants in irregular situations and on the move, such as those living in formal refugee camps and informal settlements in border regions and cities, those attempting to reach Europe by boat, and those attempting to cross internal borders within the EU. I join others in placing the term 'refugee crisis' in inverted commas, however, in acknowledgement of the problematic nature of the term which is often accompanied by 'apocalyptic rhetoric' which seeks to inspire fear of migrants in order to justify the implementation of increasingly harsh policies and measures to address the 'emergency' situation (Roth, 2015; Hinger, 2016). The numbers involved were not only small in comparison to those experienced by states outside of the West but would have been easily surmountable given political will. We should therefore 'recognise that if there is a crisis, it is one of politics, not capacity' (Roth, 2015) and acknowledge that 'the humanitarian emergency is not a natural and unpredictable phenomenon, but the consequence of very specific policies' (Alcalde, 2016: 4).

Civil society

'Civil society' is a broad category which includes both formal and informal organisations and mobilisations, including NGOs, grassroots organisations, volunteers and individuals, social movements and activist groups and networks. Throughout this thesis I refer to this range of actors as civil society actors (CSAs). While civil society is a 'confusing and contested concept' with varying definitions and understandings, it offers a 'malleable framework' through which we can examine the 'patterns of collective action and interaction that provide societies with at least partial answers to questions of structure and authority, meaning and belonging, citizenship and self-direction' (Edwards, 2011: 3). It is a useful term to use in this thesis because it does not exclude specific forms of mobilisation and engagement, in the way in which terms like 'activist', 'humanitarian aid' and 'solidarity' do. Many of the organisations helping refugees and migrants, for example, define themselves as humanitarian organisations, which implies principles of impartiality, yet also engage in political advocacy work, while others define themselves as activists yet also carry out needs-based humanitarian aid. I specifically refer to 'pro-migrant' civil society, as there is also a significant body of civil society in Europe which mobilises against refugees, migrants and groups and people who work with them.

Pro-migrant civil society not only includes a range of organisations and groups of varying levels of formalisation, but also a range of activities. Very broadly, CSAs involved in the European ‘refugee crisis’ can be divided into three principal categories: border movement, humanitarian assistance, and advocacy and activism. It is important to note, however, that these categories often overlap. Many civil society organisations, for example, engage in campaigning and advocacy work alongside their more immediate aims (such as humanitarian assistance). Furthermore, activities related to border movement (such as conducting search and rescue operations in the Mediterranean) could equally be categorised as providing humanitarian assistance. It is useful, however, to differentiate humanitarian work conducted in relation to border crossings due to the differing legal and political contexts.

Activities in the ‘border movement’ category involve helping migrants and refugees who are crossing borders – both EU external and internal borders. This category especially refers to NGOs conducting search and rescue (SAR) missions in the Mediterranean and Aegean Seas, and those such as Alarm Phone who coordinate rescues when contacted by boats in distress. Humanitarian assistance is the most common form of civil society engagement within the context of the ‘refugee crisis’ and includes activities related to providing necessary services and provisions to migrants and refugees. This includes basic necessities such as shelter, food, medical services, and hygiene products and clothing, as well as information and legal advice and support. Finally, many CSAs engage in advocacy or activism. This broad category includes campaigning for policy changes, taking part in legal challenges to improve conditions for migrants, publishing reports about conditions for migrants and state actions at borders, and engaging in demonstrations and other protest actions.

Pro-migrant

I specify ‘pro-migrant’ civil society rather than ‘pro-refugee’ civil society in order to include all people on the move within the context of the ‘refugee crisis’. The differences between ‘refugee’, ‘asylum-seeker’ and ‘migrant’ are legal and bureaucratic distinctions which are often not visible on the ground (Bradley, 2014; Zetter, 1991). People in camps or on boats in the Mediterranean often include both refugees and migrants who are not fleeing direct political persecution. CSAs providing assistance generally do not differentiate between them but provide help on the basis of need.

Moreover, these bureaucratic and legal distinctions have ‘life or death’ implications for ‘the kind of legal and moral obligations receiving states and societies feel towards them’ (Sigona, 2018: 456-457). Whether a certain group, such as migrants crossing the Mediterranean by boat from

Libya for example, are perceived as migrants or refugees influences whether policies are put in place to either deter or protect them, despite the fact that international law dictates that asylum claims should be evaluated on an individual basis rather than based on country or region of origin (Sigona, 2018). Such policies are justified and made acceptable to the public through the popular 'binary representation of "deserving refugee" versus "undeserving migrant"' (del Valle, 2016: 30). So-called 'economic migrants' fleeing poverty, starvation, violence or a lack of opportunity are portrayed as, at best, opportunists who are not entitled to protection, while the term 'illegal migrant' has become almost ubiquitous in public and political discourses to refer to all people crossing borders irregularly.

In rejection of this binary, some seek to reclaim the word 'migrant', as argued in a response to Al Jazeera's decision to no longer use the term 'migrant' to refer to people crossing the Mediterranean because of its connotations with illegality and lack of deserving:

'Instead of rejecting 'migrant', we should reclaim it from those who have worked to turn it into a term of abuse. The term migrant ought to be accepted as a neutral descriptor which covers the situation of everyone who migrates, whether in exercise of a positive right as a citizen through to the desperate search for a safe haven. When we need to be more specific, 'refugee' and 'asylum' provide more of the detail of the phenomenon that must be understood.' (Vonberg, 2016)

In line with this, I will use the term 'migrant' in this thesis as a neutral descriptor for all people on the move, unless I am referring to issues specifically relating to refugees and asylum.

Criminalisation

Following the use of the term 'criminalisation' in academic literature and the wider public to refer to the phenomenon I am researching, I use the phrase 'the criminalisation of pro-migrant civil society' to refer to all ways in which CSAs are targeted and blocked by state actors. However, as I argue in chapters three and four, the term 'criminalisation' is difficult to define and there is a general disagreement regarding what exactly should be included in the term. In response, I develop a framework constituting six categories of criminalisation and repression which I present in chapter six. The six categories are legislative change, judicial harassment, police harassment, administrative sanctions and bureaucratic techniques, labels and stigmas, and co-optation. Throughout this thesis, I problematise the use of the word 'criminalisation' and associated emphases on notions and frameworks of legality, which risk obscuring the increasingly authoritarian nature of state actions around migration in Europe.

The state

Throughout this thesis I refer to 'the state' and to 'state actors' to refer to nation-states and national institutions, and to the EU and EU institutions. The state in this thesis is understood as a complex and multifaceted entity which has porous borders to the private and civil society sectors. This conceptualisation of the state is based on King and Liebermann's proposition of a 'multidimensional conceptual approach that locates "stateness" in a variety of places' (King and Lieberman, 2009: 566). Challenging traditional tendencies to equate the 'strong state' with centralised structures and the ability to exercise 'despotic' power, decentralised administrative bodies constitute sources of 'infrastructural power' which extend state powers through 'negotiated links with centralised power centres' (King and Lieberman, 2009: 566; Ziblatt, 2006). This builds on the dimensions of state power developed by Mann, who defines 'despotic power' as 'the range of actions which the [state] elite is empowered to undertake without routine, institutionalized negotiation with civil society groups', and 'infrastructural power' as 'the capacity of the state actually to penetrate civil society, and to implement logistically political decisions throughout the realm' (1984: 188-189). Within Western capitalist democracies today, the infrastructural power of the state tends to be 'immense', while the despotic power is weaker (Mann, 1984: 189). However, the great 'volume of binding rule-making' developed in states with strong infrastructural power leads to an increased likelihood of despotic power being used 'over individuals and perhaps also over marginal, minority groups' (Mann, 1984: 190). Analyses of the capitalist democratic state should, therefore, search both for the exercise of power through decentralised, negotiated and institutionalised processes, and the exercise of despotic power which is enabled through the structures created in the development of infrastructural power, and which lends itself especially to domination over individuals and marginal(ised) groups.

Furthermore, Hacker's (2002) analysis of the US as a 'divided welfare state' highlights the way in which public-private partnerships can lead to extensions of state power and resources, paving the way for including private organisations within expanded notions of the state and state power. Grzymala-Busse (2007) and King and Liebermann further problematise the position of the private sector as well as political parties and the civil society sector within conceptions of the state, identifying the presence of a 'porous boundary' between the state and institutions traditionally perceived as lying outside the boundaries of the state (King and Liebermann, 2009: 567).

Building on these analyses, I propose a disaggregated, multidimensional conceptualisation of 'the state', in which there are multiple levels of governance. Within the context of the European 'refugee crisis', governance occurs at the EU level, state level, municipal and local levels, and

institutional level. The state is not a cohesive monolith with singular priorities and interests. Rather, it is complex and multidimensional and includes a wide variety of institutions and authorities which may often promote contrasting interests. Second, the state has unclear and porous boundaries with both the private and the civil society sectors. There is a continuum between what constitutes the state and state power, and what does not. Private companies, such as G4S in the UK which is subcontracted to carry out deportations and run detention centres, are part of the state apparatus. Civil society organisations and NGOs enter into partnerships with the state and become, to some extent, part of the state apparatus. Political parties also lie on this porous boundary. The ruling parties are clearly part of executive state power, while opposition parties with elected representatives are on the one hand part of the state legislative apparatus and on the other present challenges and criticisms to the executive. The criminalisation and repression of CSAs is carried out by a whole complex of public and private actors, including state authorities and institutions, political parties, private companies, and parts of the media which propagate scapegoating accusations against civil society. At the same time, the state in Europe appears to be in conflict with itself as different actors and parts of the state disagree on responses to migration and as the European 'refugee crisis' becomes a 'crisis of legitimacy' of the EU system itself (Murray and Longo, 2018: 412).

Structure of the thesis

In the following chapter, chapter two, I present the findings of my pilot research, which constitutes the starting point from which the rest of my research developed. Due to the contemporary nature of my subject, very little had been published on the criminalisation of pro-migrant CSAs in the early stages of my research. Rather than beginning with a literature review, my research therefore began with a pilot field study to assess the scope of the phenomenon and its potential for further analysis.

In chapter three, the literature review, I give an overview of the literature analysing the criminalisation of pro-migrant civil society which has developed significantly since I began my research. I argue that it overemphasises the role of smuggling prosecutions and legislation and lacks a coherent conceptualisation of 'criminalisation' with which to analyse the phenomenon in a way conducive to comparability. In chapter four, I engage with analyses of criminalisation from different fields, including critical criminological theories of deviancy and labelling, literature on the criminalisation of migration, and literature on the repression of civil society in more authoritarian regimes. I argue that the conceptual gaps identified in the literature review

are reflected in the wider literature on criminalisation and make my case for the development of a new typological framework of criminalisation and repression.

In chapter five, I present my research methodology which is based on qualitative methods of participant observation research and semi-structured elite and expert interviews. I further describe and reflect on my principal field research phase. In chapter six, I present my typological framework of criminalisation and repression which constitutes both my theoretical framework and my first findings chapter, which answers the research question 'how does criminalisation operate?' It is divided into six sub-chapters in which I conduct comparative in-depth analyses of civil society/state relations in my case studies. The sub-chapters correspond to each category in the typology: legislative change, judicial harassment, police harassment, administrative sanctions and bureaucratic techniques, labels and stigmas, and co-optation.

In chapter seven I answer my research question 'why does criminalisation occur?' Drawing on explanative narratives which emerged from my interview data as well as on literature on the politicisation and securitisation of migration and critical security theory, I argue that CSAs are criminalised on the one hand for political and electoral gain, and on the other because of their ability to witness state and EU security structures and practices which systematically violate human rights and international laws.

In chapter eight, I answer the research question 'what are the consequences of criminalisation?' and particularly focus on the responses of CSAs and dynamics of resistance. I argue that more repressive tactics utilised in Greece result in a more subdued and silenced civil society whereas more direct forms of criminalisation, as experienced by CSAs in Calais and SAR NGOs in the Central Mediterranean, create a more resistant civil society space. Finally, in chapter 9, I summarise my conclusions and identify gaps in my research as well as opportunities for future research.

Chapter 2: The pilot study

Introduction

Due to the paucity of data, literature and studies on the criminalisation of pro-migrant civil society in Europe at the beginning of my PhD research period, I conducted a pilot field research trip in July and August 2018. The aim was to understand the scope of criminalisation and whether there was potential for deeper study and analysis. Reports analysing prior incidents of criminalisation by the Institute of Race Relations (IRR) and Forensic Architecture (FA) informed my research interest and prior available knowledge of the subject.

First, the Institute of Race Relations (IRR) published a report in 2017 focused 'on the systematised shrinking of space for humanitarian activism at Europe's borders' which constituted the most comprehensive study of the criminalisation of pro-migrant CSAs at the time of my pilot research (Fekete, Webber, and Edmond-Pettitt, 2017). The authors collected 26 case-studies involving 45 individuals in which members of CSAs and individuals have been prosecuted under anti-smuggling or immigration legislation since September 2015. The report identifies the 2002 Facilitation Directive, the EU framework for anti-smuggling legislation, as a tool which enables this criminalisation, due to its 'ambiguity and legal uncertainty' (Fekete, Webber, and Edmond-Pettitt, 2017: 7). This ambiguity is rooted in its lack of clear definitions, the optional nature of the humanitarian exemption by which actors engaging out of humanitarian concerns might be exempted from prosecution, and its failure to specify the requirement of material gain for an action to qualify as smuggling, thereby deviating from standard definitions of smuggling outlined in the UN Convention on Transnational Organised Crime (Fekete, Webber, and Edmond-Pettitt, 2017). The report details a wide variety of case studies in which national laws derived from the Facilitation Directive have been used to prosecute members of NGOs conducting search and rescue (SAR) operations in the Mediterranean and the Aegean Sea, people giving lifts to migrants across internal EU borders, and even people providing food, shelter and showers in different European countries. Prosecutions tend to be clustered around certain 'flare-up points on Europe's borders', including borders between France and Italy, France and the UK, Denmark and Sweden, and at the EU external border in Lesvos, Greece (Fekete, Webber, and Edmond-Pettitt, 2017: 4).

The report further describes other incidents in which CSAs face intimidation, harassment or barriers posed by state actors. In Italy, one researcher found that the intensely securitised and bureaucratised migrant reception system makes access to independent researchers, observers and activists, and thereby transparency, near impossible (Fekete, Webber, and Edmond-Pettitt,

2017: 28). In Calais, volunteers are targeted by the police and are subjected to 'arbitrary identity checks' and passport confiscation, CSA vehicles are targeted, fined and impounded, and in one case, volunteers were arrested and held at the police station while helping refugee children at the premises of an NGO (Fekete, Webber, and Edmond-Pettitt, 2017: 26). Locals and police in Calais perceive CSAs as 'enablers of irregular migration' because their activities are regarded as a 'pull factor' which encourage the migration to and nomadic existence at Calais' (Fekete, Webber, and Edmond-Pettitt, 2017: 23).

The role of negative narratives surrounding CSAs are further explored in a section on the public delegitimization of SAR NGOs throughout Europe. Far-right and Alternative Right narratives 'identifying themselves as brave patriots protecting European civilisation from mass invasion of immigrants and Muslim terrorists' set themselves against NGOs, who they accuse of colluding with human traffickers, and against humanitarianism, which is 'equated with a lack of patriotism' (Fekete, Webber, and Edmond-Pettitt, 2017: 31). What makes such rhetoric relevant to the criminalisation of pro-migrant CSAs, is the way in which they entered mainstream media and politics, and even judicial proceedings. The idea that NGOs were colluding with smugglers has been propagated by senior Frontex officials, in a (later redacted) article in the *Financial Times*, various EU interior ministers and European politicians, and Sicilian and German prosecutors who launched official investigations into the activities of SAR NGOs (Fekete, Webber, and Edmond-Pettitt, 2017). Fekete states that 'evidence is emerging that the hard Right is playing a role in instigating complaints against NGOs', with an investigation of the German NGO Mission Lifeline apparently having been prompted by the complaint of a 'private person', apparent connections between the private security company which 'is believed to have denounced' the crew of the Jugend Rettet SAR vessel the *Juventa* and the Identitarian movement, and the role of the French far-right party Front Nationale in opening a court case against a solidarity group operating near the French Italian border (Fekete, Webber, and Edmond-Pettitt, 2017: 36). The criminalisation of CSAs in Europe thereby appears to be at least partially linked to the rise of the anti-migrant far-right which perceive humanitarian actors as 'traitors to the nation' (Fekete, Webber, and Edmond-Pettitt, 2017: 31).

The second report which informed my pilots research was published by Forensic Oceanography (FO), a research team based within the Forensic Architecture (FA) agency at Goldsmiths (University of London) (Heller and Pezzani, 2017). The report uses empirical analysis to refute accusations against SAR NGOs and, similarly to the IRR report, claims that 'SAR NGOs have in recent months become the object of a de-legitimation and criminalisation campaign that has not only involved Frontex [...] high-level politicians, and the media, but has also led to the

opening of several exploratory inquiries by prosecutors in Italy' (Heller and Pezzani, 2017). The report primarily focuses on providing counter evidence to three accusations formulated by Frontex in its annual Risk Analysis Report, which claimed that SAR NGOs are 'constituting a "pull-factor" leading to more migrants attempting the dangerous crossing'; are "'unintentionally helping criminals" by encouraging smugglers to use even poorer quality boats and more dangerous tactics'; and are 'in turn making the crossing more dangerous for migrants' (Heller and Pezzani, 2017). The report claims that these accusations are in fact contrary to the available data, but that by targeting NGOs, repeating accusations, and relying on 'the credibility the Agency enjoys thanks to its institutional role and its advisory function to EU Member states, its attacks and allusions' have 'spread like a virus across media and policy circles' and have 'created a climate of mistrust that has raised heinous doubts about the NGOs' activities, generated hostility, and made further attacks possible' (Heller and Pezzani, 2017).

One of these further attacks constitutes the seizure of Jugend Rettet's SAR vessel the *Iuventa* in August 2017 and the investigation of its crew for colluding with smugglers, based on alleged events which had occurred during three different rescue operations in 2016 and 2017. A further investigation by FA and FO reconstructed the events identified in the prosecution's case using evidence such as photographs, videos, the ship logbook, wind and wave patterns, and recorded communications with the Coast Guard and other ships (Forensic Architecture, 2018). The FA investigation concluded that the accusations were false, and that the seizure of the vessel was 'emblematic of a new attempt by European authorities to stem the flow of migration' and related to its cooperation with the Libyan Coast Guard to enable them to 'pull back' migrants to Libya (Forensic Architecture, 2018). The findings of the FA reports suggest that the criminalisation of pro-migrant CSAs through smuggling-accusations goes beyond the implementation of the ambiguous Facilitation Directive and constitutes a calculated political move by European governments and agencies to criminalise and prevent the work of SAR NGOs.

The IRR and FA reports paint a picture in which a range of CSAs conducting activities from aid provision to search and rescue have been targeted through a variety of means in countries throughout Europe. In all cases, the word 'criminalisation' was used to describe incidents, despite the diverging ways in which CSAs were targeted – through smuggling related charges, police harassment, the blocking of access to camps and ports, and the propagation of anti-NGO and anti-humanitarian rhetoric. Different contextual information was offered by the authors of the reports and studies as well, including the role and influence of far-right and alt-right narratives and security practices and structures such as migrant camps in Italy, police operations

in Calais, and the European cooperation with the Libyan coastguard, aimed at preventing migrant arrivals.

These reports indicated that the criminalisation of pro-migrant CSAs in Europe is widespread and that they are targeted through a variety of methods employed by state actors. Through my pilot research, I aimed to further identify the pervasiveness of the issue – do the cases above represent the broad extent of criminalisation? Do the majority of CSAs in Europe feel that they are targeted, or at risk of being targeted, or do the cases above represent an unlucky minority? How are these cases perceived by other CSAs and how do they understand the situation? How have relations between CSAs and state actors changed since the onset of the ‘refugee crisis’?

In order to evaluate the potential of the subject for further research, I conducted 13 semi-structured interviews with representatives of CSAs in Greece (Athens and Thessaloniki), Germany (Berlin), Denmark (Copenhagen), and over Skype to Malta (precise location undisclosed). The interviews focussed on three main areas: CSAs in Greece, a first reception country at the EU border which has long been struggling to cope with the large number of arrivals while also still suffering from its economic crisis (7 interviews); CSAs in Denmark, primarily a receiving country which is economically stable and hosts far fewer migrants than Greece (3 interviews); and NGOs conducting SAR operations in the Central Mediterranean (3 interviews). For the latter category, interviews took place over skype to Malta, and in Germany where the headquarters of several SAR NGOs are based.

I chose to interview CSAs which I knew had experienced criminalisation (such as SAR NGOs) as well as CSAs who had been active in the field for extended periods of time but where I did not know of prior experiences of contentious relations with state authorities. This was in order to avoid confirmation bias, to discover the pervasiveness of criminalisation, and to gain the perspective of experienced actors who had an overview of the situation in their locations. I considered my interviews to be expert interviews, and not only asked them about their experiences, but also about their perspectives on my research topics and questions. The findings do not constitute a representative sample or exhaustive analysis of the situation in my research locations, but rather a first step towards understanding more of the broader picture than what had previously been available.

Interviewees were representatives of CSAs, ranging in size and formalisation, from small grassroots organisations which had emerged during the crisis to large international NGOs, and in closeness to the state, from independent activists to organisations working in close collaboration or proximity to state actors and infrastructures. For each research location, I

contacted as wide a range of CSAs as possible via e-mail, telephone and Facebook messenger to request research interviews. Further interviews were organised through contact snowballing. I asked each interviewee to describe their activities, the barriers they faced in conducting their work, what their relationships were like with different state actors, and whether they had any insight into, or more examples of, specific incidents of criminalisation I had come across. Interviewees signed consent forms and were offered anonymity. In this chapter, I present the results anonymously except for in the case of SAR NGOs where the unique circumstances experienced by the organisations make it impossible to analyse their experiences without including identifiable information.

Findings

Below I summarise some of the key findings of my pilot research. I focus particularly on barriers faced by CSAs imposed by the state, and on contentious relations between CSAs and state actors. In the conclusion, I evaluate the pervasiveness of the criminalisation and targeting of CSAs, and how my findings informed the course of my further research.

Charges and prosecutions

Interviewees in all three of my pilot research areas described incidents in which CSAs were targeted through charges and prosecutions related to human smuggling, including incidents I had known about, such as the Jugend Rettet case and the wave of prosecutions in Denmark, as well as cases I had not yet come across in Greece.

I interviewed a representative of Jugend Rettet, the German NGO which is at the centre of the Forensic Architecture reports and whose SAR vessel the *Iuventa* was confiscated on suspicions of human smuggling in August 2017. The interviewee described the day the *Iuventa* was confiscated. Jugend Rettet were in the search and rescue zone off the Libyan coast and had 'a handful of refugees on board' when they were 'ordered to Lampedusa' by the Italian Maritime Rescue and Coordination Centre (MRCC) (Interview, JR18). When they were near Lampedusa, they were ordered to drive a rescue pattern, perceived as a stalling tactic on the part of the Italian authorities:

'the Italians were holding us in position so that they could order us to Lampedusa as soon as they had all the papers ready to impound the vessel. So when we reached Lampedusa, we were awaited by 30 or 40 police officers, some civilians, some from the Guardia di Finanza, some in

Coast Guard uniforms, some from the local police. They had a search warrant for the vessel, they went over the vessel, and then a few hours later they handed over the paper for the confiscation.’ (Interview, JR18)

My interviewee believes that they had to have had a ‘long term agenda’ to confiscate the vessel. The *luventa* had been ordered to Lampedusa twice before in the months preceding the confiscation, enabling the police to place hidden bugs on the bridge of the vessel, as was revealed in the confiscation documents (Interview, JR18). Recordings from the bugs as well as photos taken by a private security officer on board another NGO rescue ship were used as evidence in the case against Jugend Rettet and the allegations that they were colluding with smugglers. My interviewee claimed that this evidence was ‘full of interpretation’ with images used taken out of context or even based on ‘fundamental mistakes’ in which smaller boats belonging to other vessels were mistaken for those belonging to the *luventa* (Interview, JR18). These claims are supported by the FA counter-investigation, which found that the authorities’ accusations operated ‘by decontextualizing factual elements and recombining them into a spurious chain of events’ and found through their own reconstruction that ‘the luventa crew did not return empty boats for re-use, nor communicate with anyone potentially connected with smuggling networks’ as the accusations stated (Heller and Pezzani, 2018).

Despite extensive evidence countering the accusations laid against Jugend Rettet, the *luventa* remained impounded. The legal basis of the confiscation of the vessel in the first place also appears tenuous:

‘The boat was confiscated on a very weird law that the Italians imposed a couple of years ago. It’s the anti-Mafia law. And for that they have to meet a few conditions. One of them is the possession of weapons. And so what they put into the confiscation [documents] was that we are in possession of weapons on board the *luventa*. Of course we weren’t, under no circumstances. But with that they were able to use this anti-Mafia law. And that allows them to confiscate a subject, just under the assumption that something illegal might have happened even though it has not been proven by the court. So the prosecutors make the first move and then the court has to find out whether that was right or wrong.’ (Interview, JR18)

This narrative suggests that the criminal case against Jugend Rettet and its vessel was the result of a calculated effort involving a wide range of actors including prosecutors and different police forces, including the Coast Guard, which is part of the Italian Navy and under the control of the Ministry of Infrastructure and Transport in Rome. The unusual use of the Anti-Mafia law, and the constructed and decontextualised nature of the evidence provided, suggests that this was

an attempt to stop the activity of Jugend Rettet for political, rather than law enforcement, purposes.

The apparently political nature of smuggling-related prosecutions also became clear during my pilot research in Denmark. In 2016, almost 300 people were charged and fined for human smuggling after helping refugees who were passing through Denmark from Germany to Sweden in 2015, when hundreds of Danish citizens and residents were spontaneously moved to help refugees by offering lifts, taking people into their homes, offering food, or simply buying them train tickets at the central station (Interview, D1R18; Nielsen, 2016). One interviewee in Copenhagen described how many Danes were 'really shocked to see all these cases being taken to court, and the very very high fines that people were getting for a very very small kind of help' (Interview, D1R18). For example, 'people got a high fine just for buying a ticket, helping people to buy a ticket in a machine at the Central Station. I mean, is that an active help of keeping people underground or transporting somebody? I think that's a very very rough understanding of the law' (Interview, D1R18).

The charges and fines were particularly shocking because, according to my interviewees, it contradicted the typical behaviour of Danish police and authorities in the face of civil disobedience. My interviewee described how 'relaxed' the authorities often are about many things, including ignoring red traffic lights when roads are empty, cannabis use, and people working 'small black jobs on the side' (Interview, D1R18). She explained that 'the court decisions also reflect on that. Usually the judge will always look at the circumstances and the situation and the purpose of the thing' (Interview, D1R18). Especially in the case of these smuggling charges, 'it says in the law that if you don't do it for your own good [profit], if you just do it to help somebody, the punishment should be lower' (Interview, D1R18). She felt that 'they should have taken that sentence [in the law] much more seriously in these cases. I mean people were really trying to help other people. [...] I mean it's the opposite of a human smuggler. It's humanitarian assistance to people in need' (Interview, D1R18).

The harsh reactions from the authorities did not occur immediately. During the actual moment of widespread humanitarian aid in Denmark, 'the police were just watching it and doing absolutely nothing' (Interview, D1R18). My interviewees had the sense that the police themselves did not know whether the actions were breaching any laws at the time. However, 'after some days, 'there must have been some kind of political pressure from the Ministry of Justice or the Prime Minister or somebody saying 'you got to stop this [...] we have to put down our foot somehow and stop this'. And they did. And it was done in a really surprisingly tough

way' (Interview, D1R18). The prosecutions were perceived as unusually and surprisingly harsh, and the result of political pressure with the aim of sending a message and preventing further activities related to aiding irregular migrants in Denmark.

Interviewees in Greece also described incidents of charges and attempted prosecutions laid against CSAs which, however, appeared to be less systematic than in the Danish case. In 2016, two Danish citizens, including Salam Aldeen, and three Spanish firefighters working for a search and rescue (SAR) CSA were arrested for human smuggling hours after rescuing 51 migrants off the coast of Lesbos. They were prosecuted and eventually acquitted in 2018. This was often treated as an exception, as a unique case of the criminalisation of volunteers in Greece, by my interviewees. However, several interviewees also reported other cases of CSAs being targeted through criminal charges, especially relating to smuggling accusations. One director of an NGO described an incident near the Macedonian border when a driver hired by the NGO was stopped by police and taken to court for smuggling, when they took a migrant back to the camp from hospital so that he could be with his children:

'so we took him back with our car and in the middle of the way we were stopped by the police. [...] And then our driver was accused, that he's part of an illegal smuggling network [...] do you think that moving a person from the hospital to the camp we are part of a smuggling network? But we were taken to the court! The trial took place a few months ago, and of course it was considered, sorry for my French, bullshit by the judge' (Interview, G1R18).

Finally, an interviewee who had initially dismissed the idea that people working with migrants in Greece were being criminalised, changed his mind during the interview when he recalled an incident in which 15 lawyers helping migrants at the land border to Turkey in Evros were arrested accused: 'this is criminalisation. I forgot it. [...] It's not a crime. For any lawyer, because the lawyer provides legal assistance. And they started an investigation concerning this, because the lawyers facilitated their access to the Greek territory. No, it's not the case.' (Interview, G7R18). Independent, non-NGO-affiliated lawyers aiding migrants might be considered on the boundary between civil society and the private sector, but this case is emblematic of the way in which Greek law enforcement (mis)use anti-smuggling legislation to target people perceived to be aiding migrants and refugees.

While these incidents in Greece appeared to be more sporadic than the slate of charges levelled at volunteers in Denmark, they revealed a pattern. While the individuals targeted varied, from lawyers to volunteers engaged in SAR activities to NGO employees, all were charged with crimes related to human smuggling, as was the case in Denmark and with Jugend Rettet. This suggests,

then, that smuggling legislation and its application constitutes a common aspect of CSA criminalisation in Europe. Further, the acquittal of the accused in the Greek cases taken to trial suggests the lack of legal legitimacy of the accusations, while the apparently unusual nature of the prosecutions in Denmark within the context of the Danish legal system and the calculated and evidentially unsound nature of the case against Jugend Rettet suggest that these incidents lie outside of the normal application of the law.

Police targeting

Similar to the reports of police harassment experienced by volunteers in Calais described in the IRR report, several interviewees in Greece described incidents of police targeting CSAs. At the time of the informal camp hosting thousands of refugees at Idomeni, near the Macedonian border, for example, Greek police often patrolled the area and also controlled the access point to the camp. According to one of my interviewees, the relationship between the police and the volunteers was often volatile, especially if volunteers were not deferent to the authorities: 'if you are not giving them the feeling that you respect their authority then it can turn very quickly. I know that they get violent or that they start to shout "I'm the police!" I heard this quite often that policemen were shouting in a very ridiculous way' (Interview, G3R18). Problems with the police were also described by interviewees in Athens. One interviewee, for example, reported cases of police targeting the distinctive graffiti-covered van the organisation used to buy supplies for their community centre: 'maybe because it looks dodgy, but I think it's well known. They [the police] know, the law enforcement, know what our van does, and who it serves, and it's often been stopped in the past' (Interview, G2R18). These accounts were supported by a variety of interviewees in Greece who also reported that they were targeted by police, especially through the targeted stop-and-searching of volunteer and organisation vehicles.

In some cases, interviewees reported incidents with the police which had the apparent aim of discovering evidence of criminal activities which they might use to present formal charges unrelated to human smuggling: 'in Chios they went into a house where one of these people volunteered, and they found some hash for personal use. They were saying, 'look, what drug users are coming here?!' So they tried to criminalise the people who work with the NGOs' (Interview, G1R18). Another interviewee described his own similar experience of police targeting when he was volunteering at the unofficial Idomeni camp in Northern Greece near the border to Macedonia and was sharing a house with a large group of volunteers working for an aid kitchen:

‘We had a very difficult relationship with the police. We were living in a little village 10 kilometres away from Idomeni. The police knew that we were there and were also passing by often in the evening with the police cars. There were also a lot of rumours about us, that we would distribute drugs and also that we visit brothels and stuff like this, completely absurd. At one point police forces, special police forces, were coming in and raiding the house at 8 o'clock in the morning. It was completely absurd. Some people came in shouting ‘police, police’ and yeah, it was special forces outside with machine guns and some dogs, drug dogs. The public prosecutor was also there to watch but she was just standing around not doing a lot actually’ (Interview, G3R18).

These reports suggest that there may be a pattern of police harassment against CSAs in locations with large numbers of migrants and refugees living irregularly, such as in Athens and in border locations like Idomeni. Further, the presence of the local prosecutor at one of the reported police raids of volunteer housing, and the apparent emphasis on finding illegal substances in both raids, suggests that there are deliberate attempts by local law enforcements to discover prosecutable offences. If this is indeed a pattern, I would expect that in future research phases there might be more reports of charges brought against CSAs which are unrelated to smuggling. This is where the barrier between police and judicial harassment might overlap, in which police targeting of CSA vehicles and accommodations, for example, can give way to judicial proceedings with potential long-lasting consequences.

One specific type of police targeting, likely also involving prosecutors, was mentioned by my interviewee at Jugend Rettet, who told me that the crew was being surveilled by the authorities and their phones bugged when they were on Malta: ‘they were actually taping our phone calls, at least everyone who was on Malta [...] they were listening to a lot of things’ (Interview, JR18). They also felt that they were being surveilled in Germany: ‘we observed a few very strange things happening with our phones and our phone calls’ (Interview, JR18). They were ‘pretty sure that a few phones of ours are being taped in Germany. We requested [information] at the German Bundestag and they said, ‘well the German state itself is not surveilling your phones but for that you better ask the institutions on the state [Federal state] level’ (Interview, JR18). While I was unable to verify these claims, the suspicion highlights the feelings of vulnerability and insecurity experienced by SAR NGOs, while the surveillance of CSAs in general presents a potential avenue for further research.

Administrative barriers and restricted access

One of the most significant and unexpected findings of my pilot research was the way in which many interviewees felt that the greatest problems they faced in their work lay in the imposition

of bureaucratic and administrative barriers by state authorities. Such issues were raised in all of the interviews I conducted in Greece, and also came up in interviews with SAR NGOs.

Many of my interviewees in Greece mentioned the Pikpa camp on Lesbos island, an informal, self-organised camp run by volunteers which has been hosting thousands of migrants since 2012, especially more vulnerable refugees including families, torture victims and LGBTQ people (Amnesty International, 2018). In June 2018, just weeks before my arrival in Athens, local authorities announced they would be shutting down the camp on the basis of poor hygiene. This was founded on a health and safety inspection which had been carried out during an emergency situation, after hundreds of people who had been forced to leave Moria camp following violent clashes and had been taken in at Pikpa, at the request of local police (Amnesty International, 2018). Inspectors discovered a broken net, a leak in a water tank and 'deficiencies in the common kitchen area' and called for its closure within 15 days (Lesvos Solidarity, 2018).

This use of bureaucratic regulations in attempts to shut down CSA-run spaces also occurred to a community centre for migrants and refugees in Athens. I did not know this prior to the interview I did with a representative of the centre who explained during the interview that they had been shut down:

'It got to the point where we got the attention of various groups like the Urban Planning Commission and the Fire Safety Commission. Groups from the municipality I guess. They were checking our building and the health and safety and general licensing of our building. So whether floors of our building were being used for their original purpose [...] Yeah, we had licensing issues in that the building wasn't being used for what it was intended for. This causes big problems with the state, you can't do it technically. So when the Urban Commission came, they said we had to pay fines, large fines, 300,000 euros worth of fines. And that was just because we were in violation, that wouldn't be to change the licenses which would cost another sizeable amount. But they gave us an option. As long as we closed the building for a certain date and stop all services, then we don't have to pay the fine.' (Interview, G2R18)

The organisation therefore had to shut the centre down and was searching for another building in which they could resume the project at the time of the interview. The interviewee also added: 'this is not an isolated incident. There are other groups that are also being shut down. I don't know whether for similar reasons, I don't know whether it's coincidental, but they seem to be being told that they have to close by a certain point at the same time' (Interview, G2R18). Other interviewees reported the eviction, and attempted eviction, of squats throughout Greece, and especially Athens, which hosted migrants. While squats, and the community centre, operate in a grey area of the law, squats have historically been tolerated in Greece and, regarding

bureaucratic issues such as licensing, the status quo among Greeks in general appears to be one of bureaucratic non-compliance within a weak bureaucratic infrastructure. This, however, enables authorities to find reasons to shut down spaces such as the community centre when there is sufficient motivation (Interview, G2R18). In Greece in particular, such bureaucratic techniques appeared to be an effective way for authorities to target pro-migrant CSAs.

The majority of interviewees in Greece, particularly those working for non-Greek organisations, also reported significant problems they were having with new requirements for CSAs working with migrants in Greece to register with the Ministry of Migration. Since early 2016, the Ministry required all organisations working with migrants to register online in a national NGO registry. My interviewees faced significant barriers to doing so. Two of my interviewees reported that the website where they had to do this was not functional for a long time and felt that the bureaucratic procedures involved were both expensive and 'ridiculous', in part due to constantly changing requirements: 'three times now since we've started this process they've changed the process on us' (Interview, G4R18). The requirements for registration were also often unclear and difficult to meet. For example, one interviewee found that several documents he had to provide from the home country of his NGO did not even exist in his country, and the process to provide proper documentation took a long time and was expensive (Interview, G3R18). Even then, they were unsuccessful:

'So it was a long story, it was expensive, it cost a lot of nerve and energy, but in the end it didn't work out. We had one lawyer for us asking quite recently, what is happening with our registration? And the answer is that the ministry will not give us the registration as a foreign NGO here in Greece, because the name of our foundation is a different name than the project here' (Interview, G3R18).

At the time of the interviews, both interviewees had been struggling to get registered for over two years and had so far been unsuccessful. The new bureaucratic rules requiring registration, and the lack of accessibility and transparency in the registration process, gives state actors the power to block the work of CSAs on a discretionary basis: 'I think there's intentional [bureaucratic] blocking now because there are organizations that have been working and doing things and they ticked off [someone] [...] and now they can't seem to be able to go in and do things, or they're being kicked out of places because they're not fully registered' (Interview, G4R18). Another interviewee perceived the regulations regarding registration, which also requires a CSA to gain NGO status, as a deliberate attempt to block civil society:

'You also have the criminalisation where we see all these barriers put in place, 'do you get permission from this authority or that authority?', in order to create difficulties for us. [...] they

say 'ok, you need to have permission' but you cannot have that permission. Or in order for you to do this you need to have the status of an NGO, and many people cannot have that, or they don't want to have that. They put bureaucratic barriers on purpose, in order to ban and stop people coming.' (Interview, G1R18)

The inability to register and comply with regulations has concrete consequences for CSAs operating in Greece, and often means that organisations are forced to 'operate in a grey area' (Interview, G3R18). For one organisation, for example, this means that when they go to camps and if the police there don't already know them, then the volunteers' passports are controlled and the camp guards decide at their own discretion whether the organisation would be allowed to enter the camp on that day or whether it would be stationed just outside the camp or even out of eyesight (Interview, G3R18). Being registered and thereby having the formally acknowledged right to work with migrants would give the organisation more security in their work without being at the mercy of the seemingly arbitrary whims of the camp guards who determine access to migrant spaces.

CSA access to camps in Greece was also a common topic in my interviews. Several of my interviewees said that one of the major barriers to the work of civil society groups is the attempt to restrict their access to camps. Arbitrary and discretionary decision-making by individual camp guards or managers, which could change on a daily basis, appeared to be the norm. One interviewee from a major Greek NGO told me: 'Because it's the way that from time to time, they are monitoring the entrance and the access to the reception centres. But from time to time, and from centre to centre, everything is open [laughs] for everyone' (Interview, G7R18). Meanwhile, an interviewee at a medical NGO told me: 'some situations we've been struggling getting access to some places. Like detention places in Samos, or at the land borders with police stations, so there are certain areas that are a bit more sensitive. That, you know, they always present security reasons behind or whatever' (Interview, G1R18). This lack of access is facilitated by a system in which CSAs are often unable to gain formal permission to work in state-run spaces in which their work is needed, and in which potential routes to such permission, such as the registration, remains inaccessible.

The use of bureaucratic tools to block the work of CSAs was also evident in my interview with a representative of Sea Watch's *Moonbird*, the reconnaissance aircraft used to identify migrant boats in distress in the Central Mediterranean. At the time of the interview, the *Moonbird* had been grounded in Malta for several weeks. My interviewee explained how this happened:

‘We got informed several weeks ago that we are not allowed to perform the operations like we have been doing for the last 18 months. No reason was given for this. There was a lot of discussion back and forth between us and the Malta Civil Aviation Authority. And different reasons were provided but none were applicable to what we do. So just to give an example. We received an email explaining to us that Italian registered aircraft and Italian operators are not allowed to fly inside the Libyan Flight Information Region, but as we are not an Italian operator, and not Italian-registered, this is not at all applicable for us.’ (Interview, SW18)

Unlike Jugend Rettet in Italy, Malta’s attempts to stop the work of Sea Watch were not focused on smuggling charges and accusations, but rather were founded on argumentation related to bureaucratic regulations such as registrations and flag-states which effectively hindered its operations in the summer months when attempted crossings are particularly high. My interviewee felt that these techniques constitute ‘the next step in this criminalisation’ and that ‘as they don't find anything [convincing smuggling evidence] with *Iuventa*, and also not with the others, they are now sticking to stupid questions of registration of ship. I mean, it's quite obvious that there are political reasons behind and not questions of registry’ (Interview, SW18).

The use of bureaucratic and administrative techniques to target the work of CSAs was an unexpected finding of my pilot research. The use of such tools in this variety of cases suggests that it may be a common, and insidious, way for state authorities to hinder the work of pro-migrant CSAs.

Narratives around CSAs in politics, the media and public opinion

In the IRR and FA reports, accusations against CSAs in politics and the media appeared to play an important role in processes of criminalisation. The reports especially identified that narratives around the ‘pull factor’ and smuggling were linked to criminalisation. I asked interviewees about how CSAs were portrayed in the media, politics and public opinion in order to find out how widespread these narratives are in other contexts, and to discover whether there are other stigmas surrounding pro-migrant civil society.

The pull-factor narrative was certainly also prominent in Greece and was mentioned in almost all of my interviews. One interviewee described how locals on Lesbos perceive the presence of CSAs on the island: ‘they don't want them there, because they say that if the situation is bad enough people will stop coming. Which we know is not true. OK. But their viewpoint on it is that having the NGOs there helping people, draws the asylum seekers from Turkey to Greece’ (Interview, G4R18). The idea is that CSAs ameliorate the poor conditions on the island, thereby

making it a more attractive destination for migrants. This narrative is also propagated by the media and the government: 'the media, and the local authorities and the ministry, accused the NGOs that were providing care to refugees, that that was the reason why refugees continued to come' (Interview, G7R18). Such statements, especially from government officials, paves the way for the scapegoating of CSAs: 'this means that the authorities, anytime that things are going bad they can shift the blame and say it's because the NGOs and the activists are there' (Interview, G1R18). Another interviewee gave me an example of this happening: 'in the winter of 2017, when 5 people died in Moria, the government accused UNHCR and NGOs, saying that 'we don't take the money, the NGOs are taking the money, so they're not doing a good job'. When in reality it's not true, because these are government run facilities' (Interview, G1R18).

Accordingly, public opinion around CSAs in Greece is often negative. In several of my interviews, it was mentioned that NGOs in Greece have a very bad reputation. Many people believe that NGOs operate 'in a very dodgy way', are taking money from the government and are involved in corruption (Interview, G5R18). One of my Greek interviewees told me that she is often reluctant to admit that she works for an NGO because she often gets 'negative and aggressive' responses (Interview, G5R18). Narratives around corruption and the misuse of public funds and money were a new finding of my research which I had not come across in prior reading, but which appear to be particularly prevalent in Greece.

Furthermore, my interviewee at Jugend Rettet felt that the confiscation of the *Iuventa* and the case against them had been a calculated 'smear campaign', a way to distract the people and the media from the fact that 'people are still coming to Europe and the dying and the media coverage about the dying in the Mediterranean continues' (Interview, JR18). So politicians, both in Italy and Germany, 'started to focus on the NGOs, because they were the enemy closest to them, located in the country where they have the most power to create a negative image' (Interview, JR18). SAR NGOs thereby became 'the new enemy of the politicians' like 'Thomas de Maizière and now Seehofer', the former and current German interior ministers (Interview, JR18). According to my interviewee, when Seehofer took over, his discourse was on 'a Trump/ Salvini level, in creating this image of fears against NGOs. He claimed that the crew of the Lifeline [another German SAR NGO] should have been arrested, and the ship should have been impounded so that no other refugees can be endangered by NGOs' (Interview, JR18). That 'makes it very clearly who the enemy now is. And that's, well, obviously us' (Interview, JR18). The stigmatisation of SAR NGOs, from this perspective, is a political tool used by politicians to change media and public narratives around migration and to turn CSAs into an 'enemy' against which politicians can wage a war and gain public attention and support. Within this rhetoric

NGOs are demonised, identified as a danger to the migrants they seek to help which, unlike the pull factor rhetoric, poses migrants as the victims of the NGOs.

Clearly, discursive attacks against CSAs are not limited to the popular pull-factor narrative identified in the IRR and FA reports. While the pull-factor narrative insidiously links the presence of CSAs to migration and enables the scapegoating of CSAs, narratives around the corruption of NGOs and the positioning of SAR NGOs as the 'enemy' constitute a step further in the public stigmatisation of civil society.

Other findings

In this section I explore further themes patterns I identified during my pilot research, which constitute potential explanatory or additional factors which appear important for understanding the landscape of the criminalisation and targeting of pro-migrant civil society in Europe.

Close relationships between CSAs and the state

The organisations I interviewed throughout my pilot research varied in their relationships with the state. Some were grassroots organisations with few connections to state actors, others had cooperated extensively with the state, received state funding, or were in official partnerships with state actors as implementing partners. The power dynamics between state actors and CSAs essentially working for them came up in several interviews. In Greece, several large NGOs were working on Lesbos in 2015, subcontracted by the government to provide certain services. One interviewee told me that once the government wanted to stop the NGOs from operating on the island, they ended the contracts: 'Médecins de Monde – Doctors of the World – they were working in Moria as a partner of the Greek government and they stopped their contracts. Praxis [Greek NGO] – they stopped their contracts' (Interview, G1R18). Another interviewee told me: 'when funding was stopped in June of last year [2017], all of the large international organisations left, they were kicked out' (Interview, G4R18). Formal collaboration between CSAs and state actors, then, puts the subcontracted NGOs into tenuous positions in which their funding and work can be terminated at the discretion of the state.

In Denmark, an interviewee described one such subcontracted relationship between the Red Cross, an NGO 'running half of the asylum camps in Denmark', and the state (Interview, D1R18). Their 'economic dependence on the government' puts them into a difficult position: 'they are participating in many of these discriminating and degrading practices which the government has introduced' and 'sometimes they do come out with some criticism, but they have to be very

careful, because if they are too open mouth about what they think and what they would recommend, they will just lose the contracts at some point' (Interview, D1R18). Subcontracted relationships between CSAs and the state therefore put state actors in positions of control over CSAs who are financially dependent, are required to carry out work considered to be contrary to a human rights-based ethos, and feel unable to criticise the system they are working within. The power-imbalance of this kind of relationship between state and CSAs, and the level of control it enables, warrants further research within the context of the targeting, marginalisation and criminalisation of civil society.

Politics

Politics and the influence or involvement of far-right parties were raised in a number of interviews as well as in the IRR and FA reports as a potential explanation for criminalisation. Interviewees often explained the targeting of CSAs by citing political motivations. In Greece, for example, interviewees understood the scapegoating of CSAs to be attempts by political actors to avoid responsibility, while the move to shut down Pikpa was seen a political decision, to show that the government is doing something in the face of public dissatisfaction and upcoming elections: '[it's] very political in a way. These elections are coming and some people on the island are complaining about Pikpa and Moria [government camp]. But of course, it's easier to attack Pikpa, because it's just volunteers' (Interview, G5R18). The targeting of CSAs was perceived as an easy way for local and national governments and politicians to demonstrate their ability to act decisively within the field of migration, which often has no clear solutions.

Political motivations also appear apparent in the case of Jugend Rettet. My interviewee told me: 'It was just for campaigning reasons [during the election campaign] and for the Home Affairs officer Minniti to show a strong hand towards the NGOs' (Interview, JR18). The prevalence of the pull factor narratives makes this a viable political move: 'because they [NGOs] were in the population perceived as the main factor bringing people to Italy, although that's not correct. But I think like this, the NGOs became the target of this whole campaign and discussions' (Interview, JR18). This was reflected in the calculated way in which the seizure of the *Luventa* played out. My interviewee perceived the whole affair as a 'well-planned media strategy' (Interview, JR18). Jugend Rettet found out about the confiscation only hours before the confiscation document was handed to the captain. The 'entire prosecution [document] was in the hands of the media first and so we were unable to react for the first 48 hours until we had fully understood the 500+ pages that were handed to us' (Interview, JR18). As a consequence, 'they had a time advantage and they made it a pretty big story in Italy. We were on the front page for days of all major

newspapers. We were the first news in every TV show. That was a big campaign. Nothing else, I'd say, than a smear campaign' (Interview, JR18).

Furthermore, the private security personnel on board another NGO ship whose photos had been used as evidence for the prosecution appeared to have ties to the far-right: 'this former policeman was taking pictures, writing reports [...] but he has strong connections to the Identitarian movement in Italy, and his boss was very well connected to the Identitarian movements in Austria and Italy. So we basically had a Nazi investigating us' (Interview, JR18). While numerous interviewees in Greece and Denmark mentioned the harassment they experienced from far-right and nationalist groups, Jugend Rettet represents a case in which state and actors connected to far-right movements appeared to work together to target an NGO, corresponding to findings of the IRR report which describe the way in which far-right narratives and groups have influenced both political discourse and the concrete targeting of SAR NGOs.

Witnessing, policies of deterrence and security

Several interviewees also mentioned the idea that CSAs function as 'witnesses' which state actors wish to remove from certain spaces. One interviewee in Greece told me that after the initial crisis phase in 2015, the Greek government wanted NGOs to stop operating on Lesbos so that they would 'stop witnessing situations' to which they might draw attention (Interview, G1R18). Overall, he felt that the criminalisation and targeting of CSAs throughout Europe was a 'systematic approach being done by both Greece and the European Union in order to have less witnesses' (Interview, G1R18). This concept was also raised in my interview with the Sea Watch representative about why the *Moonbird* aircraft had been grounded: 'we've been witnessing several incidents of European actors [perpetrating] human rights violations including non-assistance at sea' and therefore 'they just want to get rid of any civilian witnesses of the situation that is going on right now in the central Mediterranean' (Interview, SW18). Within this narrative, criminalisation occurs in order to remove civil society witnesses to national and EU border areas and the human rights violations which take place within them.

Another, related, explanation for the targeting of CSAs offered by various interviewees was the idea that CSAs were disrupting policies of deterrence implemented by governments to stop migrants from coming by maintaining or creating poor conditions. This argument also relies on the pull-factor narrative, in which CSAs are perceived as ameliorating conditions for migrants and making the places they are in more attractive: 'so for Greek authorities, no more people coming to the islands is a positive sign, so we'll keep [conditions] bad in Lesbos so they don't come, and we'll keep them bad in the mainland so they don't stay' (Interview, G1R18). Policies

of deterrence also came up in an interview in Denmark. After the initial months of the crisis, my interviewee told me that, in attempts to stop people from coming, every European country 'came up with this fantastic solution of making themselves unattractive to refugees' (Interview, D1R18). As a result, 'the main focus of the Danish policy and politicians has always been to make Denmark less attractive, to make it easier to get rid of people and to take away their rights somehow' (Interview, D1R18). In this light, the criminalisation of volunteers in Denmark, through the wave of prosecutions of people helping migrants, could be interpreted as an attempt to ensure Denmark remains an unattractive destination for migrants by preventing Danish citizens from performing acts of welcome.

In chapter 7 of the thesis, I draw on a critical security theory to analyse state and EU border and migration management policies and practices. Policies of deterrence and border control practices, such as naval and Frontex operations in the Mediterranean, constitute security policies aimed at controlling borders and deterring migrants (Fakhoury, 2016; Sørensen *et al.*, 2017). My interviewee's explanations for why they are being criminalised thereby relate to the way in which they feel their presence and actions interrupt or challenge European and state security policies: that CSAs are being criminalised because they witness state security practices which include the perpetration of human rights violations, and because they disrupt security policies of deterrence by ameliorating conditions in camps.

Conclusion

My pilot research made it clear that there was, indeed, much scope for further research on the topic of the criminalisation of pro-migrant CSAs. I found unexpected patterns beyond the scope of the existing literature. Most particularly I found that actors in both the Mediterranean and in Greece are targeted through bureaucratic and administrative techniques in attempts to stop or diminish their capacity to work. Throughout my research locations, I identified a variety of ways in which CSAs are criminalised, targeted, stigmatised and controlled: through charges and prosecutions, police targeting, techniques of bureaucracy, stigmatising narratives and scapegoating, and control through subcontracting.

But to what extent can all these phenomena be subsumed under the term 'criminalisation'? In the next chapter, the literature review, I outline how other researchers of the criminalisation of pro-migrant CSAs have conceptualised and defined criminalisation and highlight that they have equally struggled to subsume a range of state tactics under the term 'criminalisation'. In chapter five, I further engage with theories and literatures on criminalisation and conclude that there is

in general a conceptual underdevelopment of the term. In chapter six, I present my typological framework of criminalisation which seeks to fill this gap and facilitate the differentiated analysis of state tactics of criminalisation and repression. It builds on the categories identified throughout my pilot research phase and outlined in this chapter as well as on new insights gained through my principal research phase, literature, and secondary case studies.

Chapter 3: Literature Review

Introduction

I engage with a range of literatures throughout this thesis, including literature from the fields of critical criminology and the repression of civil society in less democratic states in the next chapter on theories of criminalisation; literature on judicialisation and co-optation in chapter six, my typology of criminalisation; and literature on the politicisation and securitisation of migration and on policies and practices of security in chapter seven, in which I present explanations for why criminalisation occurs. This literature review primarily gives an overview of literature within Refugee Studies and Migration Studies focusing on state and civil society responses to the refugee 'crisis' which my research contributes to, and academic literature which analyses the criminalisation of pro-migrant CSAs in Europe.

Since I began my research in 2018, several academic studies, articles and books have been published on the criminalisation of pro-migrant civil society in Europe. Due to the contemporary and constantly evolving nature of the subject of my research, this literature review, as indeed the thesis itself, has undergone an iterative process. In the following, I give an overview of literature which has emerged in Migration Studies and Refugee Studies which analyses state and civil society responses to the refugee 'crisis', as well as key literature informing the academic debate on the criminalisation of pro-migrant civil society, drawn from a range of disciplines. Much of this latter literature offers nuanced and in-depth analyses of specific aspects of the phenomenon by focussing on specific locations, concepts, and types of civil society engagement, and by approaching the subject through a range of analytical lenses. This has, however, resulted in the development of a multiplicity of terms, concepts and frameworks being developed and used which, I argue, risks the comparability of the studies. I particularly identify a gap in the conceptualisation of what constitutes 'criminalisation' (or other terms used to broadly refer to the phenomenon of CSAs being blocked and targeted by state actors). Furthermore, I argue that this body of literature overemphasises legal and criminal aspects of the phenomenon, in part due to the conceptual underdevelopment of the term 'criminalisation', and in particular overemphasises the role played by accusations and legal frameworks related to smuggling.

Civil society engagement and state responses to the refugee 'crisis'

This thesis contributes to a growing field of literature within Refugee Studies and Migration Studies which engages with both civil society and European state responses to the refugee

'crisis'. Regarding the former, since 2015 refugee and migration studies have produced a body of work analysing civil society responses to the refugee crisis, responding to the novel development of how civil society became a 'crucial actor in almost all European societies' in the response to the arrival of large numbers of refugees and migrants (Pries, 2018: 5). Many of these, especially early, analyses framed the role of civil society as stepping in to fill the gap left by state failures to adequately prepare for or respond to the 'crisis': they 'compensated for states' failure' and 'filled the gap left by state authorities that were not able or willing to guarantee refugee protection according to legal and moral standards' (Pries, 2018: 2). Karakayali and Kleist (2016), for example, describe the role of locals, volunteers and solidarity movements in responding to immediate needs of arriving migrants, thereby taking on state duties while becoming forces of integration.

Much of the literature particularly focused on analysing the demographics, activities and organisational structures of the new CSAs which emerged through the crisis. For example, Pries (2018) presented an empirical analysis of the organisational networks of CSAs involved in refugee protection in Europe, analysing the activities conducted by CSAs and tensions and ideological differences between different types of CSAs. Similarly, Kalogeraki (2020) focused on civil society engagement in the solidarity movement in Greece, analysing the organisational structures, activities, aims and means of CSAs involved. He found, for example, that most organisations studied were informal entities due to the lack of public funding opportunities in Greece, while those formal organisations present acted as a 'shadow state' to 'compensate the limited ability of the Greek welfare state in meeting basic needs' (2020: 802).

Beyond the analyses of the organisational nature and activities of pro-migrant CSAs, migration and refugee researchers have interpreted the contributions of CSAs in a range of ways, often focusing on location-specific case studies. Crepaz conducted a case study of a solidarity group in Northern Italy, arguing that civil society is a force for 'bottom-up Europeanization' based on the group's transnational collaboration on social media through which it became an active participant in how the public handled and received the 'refugee crisis' (2020: 1448). Sandri analysed what she termed 'volunteer humanitarianism' in the Jungle refugee camp in Calais, understood as an alternative to formal humanitarian aid which created a connection between humanitarianism and activism which 'stands in tension with neoliberal governmentality' (2017: 65). Similarly, Lafaut and Coene (2018) conducted a case study of civil society work in a temporary refugee camp in Brussels, concluding that within the context of the harsh state approach to migration and border enforcement, humanitarian work becomes politicised and through their work, humanitarian volunteers become political activists. Witcher conceptualised

informal volunteers in Athens and Lesbos as 'street-level bureaucrats' who help migrants access legal entitlements and who both reproduce and subvert state categorisations of people as 'refugee' or 'vulnerable person', categories which constitute 'a political battleground' which volunteers must navigate in pursuit of their own moral goals and in the face of exclusionary state policies (2021: 1540). Cantat (2021) conducted a discourse analysis of the solidarity movement along the Balkan route in Greece, Serbia and Hungary, analysing discourses of solidarity and hospitality which provide alternative narratives of asylum. These researchers have particularly engaged with the political contributions and natures of pro-migrant civil society activities and mobilisations.

This thesis furthermore contributes to analyses within Migration Studies and Refugee Studies of how states and the European Union have responded to the 'refugee crisis'. A significant body of literature has emerged since 2015 analysing state protectionist and exclusionary policies and practices which have been enacted in attempts to regain border control, and their effects on migrants and refugees. Morano-Foadi (2017) presents how in the face of a failure of solidarity among EU Member States in distributing and accommodating migrant arrivals, they have adopted protectionist strategies such as building walls and securitising borders. Gammeltoft-Hansen and Tan's analysis of the deterrence paradigm identifies restrictive migration policies aimed at preventing asylum-seekers from reaching states and claiming asylum as the main 'response of the developed world to rising numbers of asylum seekers and refugees' constituting 'a regime fundamentally based on the principle of deterrence rather than human rights protection' (2018: 28). Deterrence policies serve as 'state-made obstacles' which deny refugees the right to asylum with deadly consequences (Gammeltoft-Hansen and Tan, 2018: 28).

Scholars of Migration Studies and Refugee Studies have also analysed state migration policies and practices within the context of specific regions and hotspots, including those which I focus on in this thesis. Valenta et. al. specifically analyse policies of deterrence as implemented in Southeastern European countries, arguing that they have increased the number of 'stranded asylum seekers in the region, especially in Greece with clear and regrettable humanitarian consequences' (2019: 162). Meanwhile, Escarcena (2019) analyses how state actors created a hostile environment for migrants in Calais, using both security and humanitarian techniques in the attempt to expel migrants from the region by making their life their unsustainable. Techniques included violence against migrants as well as volunteers, and preventing NGOs from distributing food, tactics which I also engage with in this thesis.

These two fields of refugee and migration studies are united in the June 2021 Special Issue of *International Migration* on 'politics, humanitarianism and migration to Europe' which focusses on the 'humanitarian consequences of Europe's migration and asylum practices' and on the humanitarian responses of state, supranational and civil society actors (Jaspars and Hilhorst, 2021: 3). In the issue, Keen interprets European actions, particularly in Calais, as the 'instrumentalisation of disaster' in which 'suffering in Calais has been manipulated for the purpose of deterrence and for domestic political purposes' constituting 'part of a wider system of outsourcing violence and suffering' (2021: 9). Welander continues this analysis of the situation in Calais through an analysis of British border externalisation policies, which seek 'to deter, control and exclude certain groups of people from entering nation states in Europe' through the development of 'new and increasingly sophisticated forms of border control measures' (2021: 29). Focussing on Belgian policies and their citizens' response, Vandevordt demonstrates 'how the Belgian state has consciously produced a humanitarian crisis as part of a broader "politics of exhaustion"' and analyses how migrants, citizens and CSAs 'have continued to resist these efforts through a series of "political" actions' (2021: 47). Based on a study of two Norwegian CSAs which emerged through the crisis, Jumbert (2020) analysed the organisational trajectories of how the organisations transitioned from an immediate crisis response to find their longer-term roles, forging their organisational identities while working to remain appealing to volunteers seeking to help. Related explicitly to the topic of this thesis, Pusterla conducted a socio-legal analysis of the Italian response to migration between 2016 and 2019 and especially focusses on two pieces of governmental legislation through which the concept of a 'solidarity crime' shifted 'from a political to a legal dimension' which conflicts with Italy's prior international legal commitments (2021: 79). Finally, Hilhorst, Hagan and Quinn analyse how humanitarian actors, including pro-migrant CSAs, interact with the 'European migration regime as constituted by the Dublin regulation, the EU-Turkey deal and border deals with Libya' which create 'migration pressure points where migrants find themselves stuck and in desperate need of humanitarian assistance' (2021: 125). The authors identify 'how many humanitarians at these pressure points feel disempowered in the scope of their action beyond the provision of limited services, and abandoned by established agencies' (Hilhorst, Hagan and Quinn, 2021: 125).

These examples exemplify how state responses to the European refugee 'crisis' and the emergence of pro-migrant CSAs as key humanitarian and political actors within this context have become salient issues within Refugee Studies and Migration Studies. My thesis contributes to this literature in several ways. In chapter 6, I develop a conceptual framework of repression and criminalisation which provides deeper insights into the nature of CSA/state relations within the

context of the 'refugee crisis' and provides a number of case studies focussing on specific CSAs, their activities, and how they interfere with state policies and practices. In chapter 7, I provide explanations for why criminalisation is occurring by focussing on the relationship between the activities of pro-migrant CSAs and state bordering policies and practices including deterrence, externalisation and securitisation. I also argue that the politicisation of migration which intensified through the 'crisis' provides a motivation for especially domestic political actors to criminalise CSAs. Finally, in chapter 8, I contribute to literature which analyses the humanitarian versus political activist nature of civil society engagement, by analysing CSA responses to criminalisation and their radical transformative potential.

'Civil society', 'humanitarian assistance' or 'solidarity'?

Literature has also emerged from a range of disciplines, including Refugee Studies and Migration Studies, which specifically analyses the criminalisation of pro-migrant civil society in Europe. This literature has referred to and conceptualised pro-migrant CSAs (as I refer to them) in a range of ways. The terminology used often carries with it connotations related to, for example, the (political) role of the individuals and organisations in question. Carrera *et al.* (2018; 2019) for example, use the term 'mobility society' to refer to 'those traditionally falling under the label of NGOs, but also more informal civil society groups which play a crucial role in service provision through EU or nationally funded programmes and projects' as well as 'more loosely structured social movements of activists and individual volunteers, who constitute civic movements and activist initiatives' (2019: 4).

Others refer specifically to 'humanitarian assistance', 'humanitarian aid' (Jalušič, 2019) and 'humanitarian actors' (Allsopp, Vosyliūtė and Smialowski, 2021), with the term 'humanitarian' particularly connoting acts of providing necessary help and aid, such as food, shelter, medical attention, clothing, and search and rescue, often also perceived as 'filling the gap' left by state neglect (Jalušič, 2019: 106). While the term 'humanitarian' has connotations of political impartiality and neutrality and the needs-based provision of help (del Valle, 2016), within the context of the literature cited above, the label 'humanitarian' generally refers to the humanitarian activities engaged in rather than any implied apolitical nature of the CSAs involved.

In direct contrast to the term 'humanitarian', the term 'solidarity' has overtly political connotations. The term 'solidarity', and especially (though not always) in combination as 'the criminalisation of solidarity', is particularly common in the literature (Chapman, 2021; Fekete, Webber, and Edmond-Pettitt, 2017; López-Sala and Barbero, 2021; Mainwaring and DeBono, 2021; Tazzioli, 2018b). Like the term 'humanitarian' in the literature cited above, 'solidarity' is

often used as a catch-all phrase to describe civil society engagement with migrants; sometimes the two terms are even used more or less interchangeably:

'refugee solidarity groups, which have been filling gaps in state provision in many border towns, are finding themselves regarded as an anti-social presence, targeted and harassed by the police. As we report, just providing food, water and shelter (in the form of sleeping bags) can be enough to single humanitarian workers out to the police' (Fekete, Webber, and Edmond-Pettitt, 2017: 2, my emphasis).

However, while solidarity is a contested concept with a history of varied usage and meanings, it has specific connotations related to political struggle which should not be conflated with all types of CSA engagement. Indeed, Tazzioli and Walters call for 're-inscribing the notion of solidarity within the 'fabric' of social and political struggles', noting that historically the concept appears as 'a rallying cry, a social philosophy, or a practice' which 'always happens in a field of struggle' (2019: 180-181). Within the Greek context, for example, the migrant solidarity movement emerged from community responses to austerity following the 2009 economic crisis and, while the term has been appropriated by the larger pro-migrant movement, particularly refers to 'anti-hierarchical and politicized efforts' to help migrants 'on terms of radical inclusivity and equality' (Schack and Witcher, 2021: 479; Rozakou, 2016). Within feminist and postcolonial studies, solidarity has been defined as a 'praxis-oriented, active political struggle' which 'foregrounds communities of people who have chosen to work and fight together' and embraces 'diversity and difference' (Mohanty, 2003: 7). This definition is reflected in a more recent analysis of the practices of migrant solidarity groups within a postcolonial Europe which similarly understands solidarity as an active struggle in which 'the border and postcolonial locations in which solidarity work is undertaken' have become 'symbols of contemporary battlefields around freedom of movement' (English, Grazioli and Martignoni, 2019: 202). The authors distinguish migrant solidarity work from other forms of pro-migrant civil society engagement in Europe: 'The aim of migrant solidarity activists, unlike the charities, is to foster freedom of mobility not inspired by a humanitarian spirit, but as a profoundly political movement, a constituent movement able to defy postcolonial disparities and racisms, and national sovereignty itself' (English, Grazioli and Martignoni, 2019: 197). While charities are largely limited to 'charitable acts exerted within the frame of stated governmentality, and then hidden beyond the veil of human rights', autonomous solidarity actors work with, not for, migrants, challenge borders, and practice everyday social justice by strengthening 'the autonomous capacity of people on the move' (English, Grazioli and Martignoni, 2019: 203 & 196).

It is clear that the term 'solidarity' should not be used to subsume all forms of pro-migrant civil society engagement. Indeed, some analyses have focused on the differences between the solidarity and the humanitarian approach to engagement, as well as on the differing effects which criminalisation has had on them. Tazzioli and Walters argue that while, due to the relational aspect of solidarity, activities which might formerly have been dismissed by activists as humanitarian might now be considered to constitute solidarity through their very criminalisation, this criminalisation has created a 'multiple split of humanitarianism' in which 'independent and grassroots movements as well as individual acts are under attack, while established NGOs and IGOs take part more than ever in the governing of migration' (2019: 181). Dadusc and Mudu, in a similar vein, argue that differentiating the two concepts is important, and argue that 'autonomous solidarity', as a 'form of political resistance', is criminalised, while 'humanitarian assistance' is 'often complicit in the harms and violence of borders' (2020: 1-3). Clearly, it is important to maintain an analytical distinction between 'solidarity' and 'humanitarianism'.

In my research, I study both solidarity and humanitarian actors as well as those which do not necessarily belong to either group or constitute something in between; indeed, both concepts are contested and do not have defined boundaries. Instead, I join Carrera *et al.* (2019) and use the term civil society actors (CSAs) to subsume all forms of pro-migrant solidarity, humanitarian, activist, formal and informal organisations, mobilisations, and activities.

'Criminalisation', 'policing' or 'crimmigration'?

While the term 'criminalisation' is particularly common (Chapman, 2021; Cusumano and Bell, 2021; Carrera *et al.*, 2018; Jalušič, 2019; López-Sala and Barbero, 2021; Mainwaring and DeBono, 2021; Tazzioli, 2018b; Schack and Witcher, 2020), a wide range of terms has also been used to describe the targeting and blocking of pro-migrant CSAs, with or without resorting to criminal law mechanisms, including the 'crackdown on NGOs and volunteers' (Vosyliūtė and Conte, 2019), 'policing humanitarianism' (Allsopp, Vosyliūtė and Smialowski, 2021; Carrera, Allsopp and Vosyliute, 2018), 'lawfare' (Chapman, 2021), 'marginalisation and disqualification' (Cantat, 2020), 'shrinking civil society spaces' (Szuleka, 2018), and 'blaming the rescuers' (Heller and Pezzani, 2017).

I argue that these terms all address the same broad phenomenon. The wide range of terms used is therefore problematic, because there is a risk connections will be overlooked and that the subjects of the individual studies are treated as distinct phenomena, unique to certain subjects

or regions, such as the police targeting of activists in Spain (López-Sala and Barbero, 2021), democratic backsliding in Hungary and Poland leading to a ‘shrinking civil society space’ for state-critical CSAs (Szuleka, 2018), or the scapegoating of SAR NGOs in the Mediterranean (Cusumano and Bell, 2021; Heller and Pezzani, 2017).

I argue that the reason for this broad range of concepts which creates a lack of cohesion and comparability in the literature, lies with the term ‘criminalisation’. Above all others, it is the one most used to describe the phenomenon in question and thereby has the most potential for providing an overarching concept under which analyses can be subsumed. However, it also has very specific criminal law connotations, which, I argue, are further exacerbated by an overemphasis in the literature on investigations and prosecutions related to human smuggling, so-called ‘crimes of solidarity’, and their relation to the Facilitation Directive, the EU framework for smuggling legislation (Carrera *et al.*, 2016; 2018; 2019; Carrera, Allsopp and Vosyliute, 2018; Chapman, 2021; Cusumano and Bell, 2021; Cusumano and Villa, 2021; Fekete, 2009; Fekete, Webber, and Edmond-Pettitt, 2017; Heller and Pezzani, 2017; Lacy and Houtum, 2020; Mainwaring and DeBono, 2021; Tazzioli, 2018b). While the term ‘crimes of solidarity [...] stands not just for a narrowly legal but a wider movement on the part of governments and political movements to harass, deter, penalise and suppress support for migrants’ (Tazzioli and Walters, 2019: 177), it seems clear to me that the term’s overtly criminal and legal emphasis might make authors seeking to analyse a far broader set of mechanisms used to target pro-migrant CSAs wary of subsuming them under the term ‘criminalisation’, thereby leading to the multiplicity of terms used under which to analyse what is, essentially, a closely related transnational phenomenon.

This problem already became clear to me during my pilot research phase when I unexpectedly encountered a range of different methods through which the work of pro-migrant CSAs was targeted, such as bureaucratic tools related to registration in Greece, which did not rest on criminal law mechanisms. Can the imposition of bureaucratic barriers be subsumed under the heading ‘criminalisation’? Other researchers conducting comparable field research and analyses have also attempted to reconcile this problem through the development of conceptual frameworks aimed at enabling comparative analysis of a range of methods of blocking the work of CSAs.

First, a group of researchers who co-authored a study commissioned by the European Parliament’s Policy Department for Citizens’ Rights and Constitutional Affairs evaluating the Facilitation Directive, developed a framework under the terminology ‘policing humanitarianism’

(Carrera *et al.*, 2016; 2018; 2019; Carrera, Allsopp and Vosyliute, 2018). The framework theorises three 'faces' or 'modes' of policing: 'intimidation and suspicion', constituting 'non-formal law enforcement and policing practices' including surveillance and intimidation as well as narratives and discourses such as that CSAs constitute pull factors; 'disciplining' which includes practices which 'call for more centralised coordination' such as mandatory registration and 'increased demands for financial accountability and transparency'; and third, 'formal criminalisation' corresponding to 'traditional criminal justice and/or criminal justice-like approaches' in which CSAs may be suspected of criminal activities, or even face criminal prosecution or penalisation, or other 'administrative' sanctions such as fines or financial penalties' (Carrera *et al.*, 2019: 174-175). These 'policing modalities' are understood as consequences of EU anti-smuggling policies and their national implementations (Carrera *et al.*, 2019: 176). They constitute a 'theoretical framework' and are positioned on a continuum from the proliferation of 'suspicion' around smuggling, particularly based on the 'pull factor' narrative, to the increased 'preventative' policing and disciplining of CSAs, all the way to 'fully fledged criminal prosecutions of civil society actors for migrant smuggling' (Allsopp, Vosyliūtė and Smialowski, 2021: 70; Carrera *et al.*, 2019).

The body of literature from Carrera *et al.* (2016; 2018; 2019) constitutes a highly valuable resource which provides detailed analysis of EU and national smuggling legislation and their implementation as well as of case studies from a wide range of EU Member States of many different ways in which pro-migrant CSAs have been criminalised, policed, targeted or otherwise blocked. However, I argue that the framework of 'policing humanitarianism' is insufficient because it replicates the original issues of the term 'criminalisation': the term 'policing' similarly has very specific connotations related to law enforcement and thereby also remains in the 'criminal' realm. While the framework seeks to accommodate a range of different methods of targeting CSAs, including discursive tactics, registration requirements and administrative sanctions, they are subsumed into a framework which privileges the smuggling narrative and prosecutions for facilitating stay or entry as the start and end points of a continuum. That the framework places smuggling legislation in centre place is hardly surprising, considering the origins of the research in an evaluation of the Facilitation Directive, yet this appears to have resulted in a path dependency which vastly overstates its role.

Jalušič also develops a 'continuum of criminalization' building on Carrera *et al.*'s framework by elaborating 'five main types of "policing"' of CSAs in Slovenia and its four neighbouring countries (2019: 118). These 'stages' constitute 'discursive criminalization, involving intimidation and suspicion'; the 'bureaucratic tightening of the space for civic actions' such as registration requirements; 'banning access and the possibility of monitoring'; 'lists of suspects' which 'create

the living targets of governmental and nongovernmental attacks'; and 'the introduction of substantial restrictions, both administrative and penal, and attempts to justify the whole process of penalization and surveillance by legal means' including 'direct criminalization through legislation' which constitutes 'a consequence of previous steps which prepare the ground for it' (2019: 118-119). While the onus of this framework is no longer on smuggling narratives and legislation, the parameters and boundaries of the framework and its categories are not clearly demarcated, it does not clearly differentiate between which actors are doing the 'policing', conflates administrative and penal sanctions and, like Carrera *et al.*'s framework, perceives all as leading to the endpoint of 'direct criminalization through legislation' (Jalušič, 2019: 119). These frameworks do not consider, for example, that bureaucratic and administrative methods of targeting CSAs may constitute endpoints in themselves, conducted for reasons or goals outside of the criminal and legal logics connoted through the 'criminalisation' and 'policing' terminologies.

Jalušič (2019) also positions her continuum as an extension of the continuum of 'crimmigration', a conceptual framework shared by López-Sala and Barbero who analyse the 'crimmigration of activism(s) and protest against border control in Spain' (2021: 678). They argue that 'the growing legal, bureaucratic and police repression of solidarity with immigrants reveals a new approach to irregular immigration and migration control tactics' (López-Sala and Barbero, 2021: 679). This perspective understands the criminalisation of pro-migrant CSAs as an extension of the criminalisation of migrants and infrastructures of detention and control which define the Spanish, and European, response to migration. López-Sala and Barbero particularly focus on 'the repression of migrant rights activists, particularly those monitoring border and internal control sites' (2021: 679). Accordingly, they elaborate a framework of four methods: 'informal dissuasion' practices by police, such as questioning and verbal threats; 'formal dissuasion tactics' such as bringing charges and detaining activists; 'bureau-repression' in which 'administrative sanction proceedings are formalized' which 'allows varying degrees of coercion to be applied to defendants'; and the 'severest category of repression' of 'criminal prosecution' in which 'large fines or even a prison sentence can be imposed' (López-Sala and Barbero, 2021: 688- 689). This framework particularly focuses on repressive methods by police against activists – although, ironically, the authors have moved away from the term 'policing' used in the previous two frameworks, which conversely did not as clearly differentiate the role of the police from the role of other actors.

The conceptualisation of the criminalisation of pro-migrant CSAs as an extension of 'crimmigration', 'the merging of criminal and immigration procedures and corresponding

policies, and the creating of special border regimes and a parallel legal system for the groups of undesirable migrants' (Jalušič, 2019: 107), makes the connection between the criminalisation of pro-migrant CSAs and the systematic criminalisation of migrants and the border and reception infrastructure explicit. However, understanding the former as an extension of the latter does not fill the evident gap in the literature which seeks a conceptual framework for analysing the 'criminalisation' of pro-migrant CSAs in a way which enables the structured and systematic analysis of a range of methods used against CSAs which go beyond criminal and legal tactics.

The key problem here is that there lacks a clear definition and conceptualisation of 'criminalisation' throughout the literature. A majority of the literature, including that which particularly focuses on smuggling prosecutions, subsumes a range of phenomenon under the term 'criminalisation', especially discursive targeting, but often also administrative sanctions, policing tactics, and registration requirements. Furthermore, the frameworks analysed above often feel the need to include an additional qualifier for the term 'criminalisation', such as 'direct criminalization through legislation' (Jalušič, 2019: 119) and 'formal criminalisation' (Carrera *et al.*, 2019: 175). This implies, then, that criminalisation which is not 'direct' or 'formal', i.e. other tactics and methods, still constitutes 'criminalisation'.

In the following chapter on theories of criminalisation, I analyse the conceptualisation of criminalisation within the fields of critical criminological and socio-legal studies (Cohen, 1972; Haglund, 2012; Hirschfield and Celinska, 2011; Lemert, 1951; Muncie, 2008; Palidda, 2011; Tannenbaum, 1938). I conclude that the conceptual underdevelopment which I identified in this chapter can also be found within these literatures. However, I also identify and give an overview of a set of literature which provides useful tools and concepts for the analysis of the criminalisation of pro-migrant CSAs in Europe: literature on the repression of civil society in more authoritarian states, which I draw on in the development of my typological framework of criminalisation and repression in chapter six (Buyse, 2018; Doyle, 2017; Gershman and Allen, 2006; van der Borgh and Terwindt, 2014). This literature offers analyses of patterns of criminalisation and repression which I observed during my field research, but which have generally been absent in the literature on the criminalisation of pro-migrant CSAs in Europe.

Furthermore, and in part due to this conceptual underdevelopment, the literature on the criminalisation of pro-migrant CSAs overemphasises, as a body of work, the role played by smuggling legislation. As I found in my pilot research, and as identified in the conceptual frameworks analysed above, prosecutions for smuggling only constitute one aspect of the targeting of pro-migrant CSAs. The preoccupation in the literature with 'crimes of solidarity',

however, leads to phenomena such as NGO registration in Greece, and the arbitrary and discretionary nature of its enforcement, being under-analysed in the literature. Furthermore, it results in the literature focusing, time and again, on the role played by the Facilitation Directive, often leading to the skewed notion that the problem of attacks on civil society freedoms in Europe is one of faulty legislation rather than one of politics and repression. Furthermore, it focuses the debate around whether or not the action of helping migrants is 'legal', rather than engaging in asking more fundamental questions of right and wrong. Rather, 'the 'crimes' in question concern an ethical and political dimension that exceeds the legal one: why do solidarity practices effectively disturb states' politics and actions?' (Tazzioli and Walters, 2019: 185).

Why criminalise: monitoring and resistance?

The Facilitation Directive is identified in many studies as a source of the criminalisation of pro-migrant CSAs and much of the literature focuses especially on analysing the legal and other mechanisms of criminalisation or developing a conceptual framework through which to understand it. However, the literature has also proffered some answers as to why certain CSAs are targeted. While Carrera *et al.* overwhelmingly focus on the role played by smuggling legislation, they identify that the 'wider punitive dynamics' affecting CSAs especially target 'those critically monitoring and politically mobilising for the rights of migrants' (Carrera, Allsopp and Vosyliute, 2018: 236). Similarly, López-Sala and Barbero's analysis particularly focuses on 'migrant rights activists, particularly those monitoring border and internal control sites' (2021: 679), while Mainwaring and DeBono argue that SAR NGOs are 'constructed as enemies as they act as critical monitoring forces, revealing the EU's politics of neglect that causes deaths at sea and the Libyan coastguard's violence against migrants and NGOs' (2021: 1039). SAR NGOs were criminalised as 'states and the EU reasserted their control over the Mediterranean, claiming it as *mare nostrum*' – our sea (Mainwaring and DeBono, 2021: 1040).

Bringing together various strains relating to smuggling, monitoring, crimmigration, and EU border practices, including outsourcing to the Libyan Coast Guard, Dadusc and Mudu argue that autonomous solidarity practices are targeted and accused of 'facilitating illegal migration' due to their resistance against 'the militarisation of borders', 'the criminalisation of migration', and the 'externalisation and multiplication of borders [which] have operated through securitisation, militarisation and crimmigration', as well as their 'intrinsic character of opposition' to 'humanitarian technologies of government' (2020: 1-2). In the chapter on why criminalisation occurs, I analyse my research findings through (critical) lenses of security and securitisation, in

which state policies and practices related to migration and borders, including the emphasis on fighting smuggling as well as the militarisation and externalisation of borders, constitute policies and practices of security. I furthermore analyse the criminalisation of dissent and monitoring through the relation of these practices to security infrastructures.

What are the consequences? Do CSAs resist or submit?

A range of consequences of the criminalisation of pro-migrant CSAs have been identified in the literature, including the contribution to ‘a high mortality rate among those crossing the Mediterranean without SAR capabilities and the heightened risk of violence against migrants and those who help them’ (Gordon and Larsen, 2022: 3). On a broader societal scale, it has created a ‘climate of fear and insecurity regarding irregular immigration’, jeopardising ‘the citizen’s right to assist’ those in need of humanitarian aid as a key function of democracy’ (Carrera *et al.*, 2016: 63-64). Indeed, an examination of the ‘ethical consequences of criminalizing solidarity in the EU’ finds that it has a ‘blending’ effect by spreading ‘the perception of illegality among several types of immigrants’; that it ‘discourages acts of solidarity with immigrants in general’ by ‘[discharging] people from their duty to help foreigners by conditioning this duty to group membership and belonging’; and has a polarising affect through the exacerbation of ‘the existing divide between citizens and immigrants currently causing conflicts and social fragmenting’ (Duarte, 2020: 28 and 40).

Allsopp, Vosyliūtė and Smialowski conclude that measures of criminalisation ‘pose a threat to civil society’s independence and impartiality from government interference’ and thereby ‘impact the efficiency of operations and disincentivize certain humanitarian actors from conducting life-saving work’ (2021: 65). Indeed, criminalisation has resulted in the (voluntary and involuntary) removal of CSAs from different fields, and has resulted in a, rather passively phrased, ‘shrinking space’ for civil society action. Other literatures, however, have identified ‘unintended effects’ of criminalisation, including ‘encouraging and mobilising volunteers’ as well as ‘generating public attention and support for migrants’ (Gordon and Larsen, 2022: 3). Tazzioli and Walters argue that criminalisation might ‘allow for unexpected political opportunities’ in which ‘new hybrid forums concerning migration, citizenship and borders questions are emerging’, such as ‘when citizens are prosecuted for acts of assistance’ and their ‘trials have potential to become public scenes and spaces of counter-politics where it is not only the citizen but Europe that is in the dock’ (2019: 175). Indeed, Chapman elaborates the way in which CSAs have responded to their criminalisation through ‘legal mobilization’ and have not only ‘been

involved in cases defending humanitarians against criminalization, but they have also looked to initiate cases against states in an attempt to overturn the undercriminalization of the harms committed against migrants and SAR personnel' (2021: 122). This includes, for example, a case filed against Greece at the European Court of Human Rights against the Greek government's 'crackdown and arbitrary prosecution of human rights defenders working to make aid to persons in distress at sea' (Chapman, 2021: 123). In chapter eight, which focuses on civil society responses to criminalisation, I build on findings from these literatures to explore the effects of criminalisation on different CSAs and dynamics of civil society resistance.

Conclusion

In this chapter I have given an overview of Refugee Studies and Migration Studies literature on responses to the refugee 'crisis' by state and civil society actors which provides important context to this research and constitutes a key body of literature which this thesis contributes to. I have also analysed literature on the criminalisation of pro-migrant CSAs in Europe, which utilises a range of terms to refer both to civil society actors and to criminalisation. While there is, in general, an overemphasis on smuggling accusations and on SAR NGOs in the Mediterranean, this literature offers valuable in-depth analysis of dynamics occurring in a range of contexts, including different locations and different forms of civil society engagement. My research contributes to this literature through the in-depth analysis of related case studies, focussing particularly on volunteers in Calais, SAR NGOs in the Mediterranean, and humanitarian CSAs in Greece. Based on this analysis, I further elaborate explanations for why criminalisation is occurring in chapter seven, especially focussing on CSA relations to security infrastructures, and further analyse civil society responses to criminalisation in chapter eight.

I furthermore develop a framework of criminalisation in chapter six, which offers a typology of different methods through which CSAs are targeted. This framework includes the range of methods of 'criminalising', 'policing', and 'shrinking the space' of CSAs and is intended as an analytical tool which can be used by researchers analysing the criminalisation of pro-migrant CSAs in Europe as well as of civil society in other contexts and regions, with the aim of facilitating comparability between analyses. It builds on the literature analysed in this chapter and is based on my field research findings as well as on theories of critical criminology and literature on the repression of civil society in more authoritarian states, which I analyse in the next chapter on theories of criminalisation.

Chapter 4: Theories of criminalisation

Introduction

This chapter further identifies, and responds to, the conceptual gap around the term 'criminalisation'. Which mechanisms or ways in which CSAs are targeted can be subsumed under the term? In the previous chapter I identified the use of a range of different terms, including 'criminalisation', 'policing' and 'shrinking space', used to describe the same or highly related phenomena throughout the literature. I further analysed the development of several conceptual frameworks seeking to facilitate the analysis of a range of methods, which, however, tended to conflate clearly different phenomena, such as criminal prosecutions and administrative sanctions, were tailored to specific contexts and therefore lacked more universal applicability, and/or placed methods of targeting CSAs on continuums or cycles which presented them as stepping-stones to criminal prosecutions.

Like the literature review as well as my own typology of criminalisation developed in chapter six, this chapter critically engaging with theories of criminalisation is the result of an iterative process as I have responded to the emergence of new research, my own discovery of the applicability of existing research, and to the findings of both my field research phases. Drawing on literature and theory from diverse fields, including critical criminology and labelling theories, literature on the criminalisation of migration, literature on the repression of CSAs in more authoritarian countries, and even literature on school criminalisation in the USA, I make the case for my own typology of criminalisation and repression which I develop in chapter six and which facilitates the differentiated analysis of related but distinct methods of targeting pro-migrant CSAs.

Critical criminology, labelling theory and crimmigration

Finding a working definition of 'criminalisation' is surprisingly difficult: in standard criminology textbooks, the term is generally used without being defined (Carrabine, 2009; Newburn, 2017). As a starting point, then, I utilise dictionary definitions of criminalisation in which criminalisation constitutes 'the action of turning an activity into a criminal offence by making it illegal' or 'the action of turning someone into a criminal by making their activities illegal' (Oxford Dictionaries). The standard definition of criminalisation, then, involves legislative change making certain activities into criminal offences. However, as the previous chapter made clear and as I further elaborate in this chapter, there is a lack of consensus in academic literature regarding what

exactly constitutes criminalisation while there is an obvious instinct to address a broader range of phenomena under the concept of 'criminalisation' than pure legislative changes. This is not a new phenomenon: the critical approach to criminology and criminalisation, which understands discursive and policing tactics as key in the process of criminalisation, has its roots in the academic debate around the nature of deviancy which began as early as the 1930s.

Challenging perceptions of deviancy and crime as objective categories, Tannenbaum (1938) and later Lemert (1951) argued that deviancy is the product of social reactions, the imposition of social judgements, and ensuing discursive name-calling and stereotyping. This provided the foundation for labelling theory, which was developed as a critical theory of criminalisation in the 1960s, most notably by the sociologist Becker who argued that 'social groups create deviance by making the rules whose infraction constitutes deviance, and by applying those rules to particular people and labelling them as outsiders' (1963: 9). Accordingly, deviancy is not inherent in any action, but the consequence of the application of rules and labels by others. These labels, however, were often internalised by those labelled as deviant, who respond to the 'personal crisis' of an externally imposed identity by accepting their deviant status, thereby becoming more likely to engage in deviant behaviour (Lemert, 1951). In the 1960s and 70s, ethnographic studies focussing on the processes of becoming a deviant, of '*becoming* a marijuana smoker, a prostitute, a homosexual, a prisoner', argued that it was the stigma attached to imposed labels which was central in influencing future behaviour (Muncie, 2008: 13). The result is a 'self-fulfilling prophecy' in which the criminal label itself leads to the development of 'criminal careers' (Muncie, 2008: 14). This is especially reinforced as those labelled as 'deviants' or 'outsiders' come to 'epitomise what is considered to be criminal', and criminality is then sought solely in those labelled as criminal (Muncie, 2008: 14). Crucially, this involves tactics of policing, as those labelled as criminals are subject to increased police targeting on the basis that they belong to the criminalised group rather than on the basis of any suspected crime committed.

Labelling theory 'opened up new lines of critical enquiry' which questioned the ways in which rules and laws are created and in whose interests these are enforced, drawing attention 'to the complex process by which moral entrepreneurs and agencies of social and crime control are able to realise the public identification of certain people as criminal' (Muncie, 2008: 14). Cohen's 1972 'moral panic' theory, for example, describes how deviant labels are developed with a focus on the role played by influential elites and the media: 'a condition, episode, person or group of persons emerges to become defined as a threat to societal values and interests: its nature is presented in a stylised and stereotypical fashion by the mass media; the moral barricades are manned by editors, bishops, politicians and other right thinking people' (Cohen, 2011: 1). These

theoretical developments constituted the 'politicisation of criminology', in which the study of criminology shifted away from a focus on 'behavioural and correctional issues' towards 'questions of political and social control' (Muncie, 2008: 14). Mainstream criminology was accused of 'lending the state a spurious legitimacy and functioning as little more than a justification for oppressive power', while critical research attempted to expose the "power to criminalise' through the systematic and consistent empowerment of some groups and the criminalisation of others' (Muncie, 2008: 14).

In Europe today, which group is more systematically criminalised, that is labelled as and treated as, criminal, than the 'illegal migrant'? Haglund (2012) analyses the criminalisation of asylum seekers in the UK through the lens of labelling theory, analysing the role of the media in both labelling asylum seekers as deviants and constructing a moral panic which serves to legitimise the self-perpetuating cycle of deviancy and criminality ensured by the government. Within this cycle, asylum seekers are systematically treated as criminals through 'the use of fingerprinting, compulsory biometric measurements, restraint with handcuffs, sedation, and the widespread confinement of asylum seekers within prisons and immigration removal centres', while they are also put into situations of forced destitution in which they are forced to use criminal means to survive, such as through seeking illegal work and acquiring false documents (Haglund, 2012: 11-12). This conceptualisation of criminalisation, derived from critical criminology's labelling theory, has two key elements: first, the treatment of those criminalised (i.e. migrants or asylum seekers) as criminals, using a whole range of infrastructures and practices associated with law enforcement and criminality, and second, processes which force those criminalised onto criminal pathways. While I will return to this latter element later in this thesis when exploring the consequences of, and responses to criminalisation, this chapter will primarily focus on the former element which understands a range of state practices as constituting 'criminalisation', none of which include legislative changes making particular activities criminal, nor attempted prosecutions of those criminalised.

Indeed, Haglund's analysis is closely linked to 'cimmigration' frameworks mentioned in the previous chapter, the term, of course, combining 'criminalisation' and 'migration' and which is used by authors interchangeably with the phrase 'criminalization of migration' (Jalušič, 2019; López-Sala and Barbero, 2021). Jalušič argues that within this framework, 'criminal law is conflated with that of migration management' (2019: 107) and draws on Provera's definition of the criminalisation of migration:

‘Criminalisation includes detention, discourse and criminal law measures directed towards irregular migrants as well as identifying penalties which may be grounded in civil law. Criminalisation of migration means the adoption of criminal law characteristics in immigration enforcement’ (Provera 2015: i).

This definition, and the crimmigration framework in general, provides a broad conceptualisation of criminalisation, including not only the labelling and treatment of migrants as criminal, but also the use of ‘civil law’ penalties which are not explicitly related to criminal mechanisms. Meanwhile, and drawing on a range of literature from different disciplines, López-Sala and Barbero understand crimmigration as ‘a culture of control and repression that permeates policies, legal systems, public discourses and social practices’ and argue that ‘crimmigration includes legal and socio-political aspects’ (2021: 679). This is reminiscent of Palidda’s definition:

‘By the criminalization of migrants, we mean all the discourses, facts and practices made by the police, judicial authorities, but also local governments, media, and a part of the population that hold immigrants/aliens responsible for a large share of criminal offences. Thus it is evident that the problem has to be seen in a polysemic context as we are dealing with a *total social phenomenon*’ (Palidda, 2011: 23).

Clearly, the instinct to subsume more than ‘pure’ legislative changes, or even prosecutorial and judicial procedures, under the heading ‘criminalisation’ is not unique to the area of criminalising pro-migrant CSAs. Developments in critical criminological literature paved the way for this expansion of the concept by focussing especially on the processes by which certain groups become constituted socially as ‘criminal’, and studies of the criminalisation of migration have, indeed, subsumed a wide range of phenomena as well as a wide range of actors, as Palidda (2011) demonstrates, into the analysis of criminalisation.

But how much is too much? In my search for an analytical framework of criminalisation, before I determined that I would need to create my own, I came across literature on the criminalisation of schools in the USA in which the authors had identified essentially the same conceptual problems in their own field: in a review of sociological studies of the criminalisation of school discipline in the USA, Hirschfield and Celinska identified that a broad range of practices were being analysed without offering ‘a clear or precise definition of criminalization’ and that ‘most sociologists subsume within school criminalization not only policies and practices that sanction student conduct *as* crime but also those that merely *associate* students and their problems with crime’ (2011: 2). The authors argue that ‘overly inclusive conceptions’ of criminalisation ‘may foster overly uniform depictions of school criminalization patterns across America’s highly

stratified social landscape' (Hirschfield and Celinska, 2011: 4). This 'conceptual underdevelopment' in which the field 'has offered disappointingly few conceptions or measures that recognize distinctions or gradations in the quality, severity, or functions of various criminalizing school practices' is problematic because 'it hampers efforts to theorize and examine variation in theoretically distinct types of criminalization across time and place' (Hirschfield and Celinska, 2011: 3-4).

This makes an important case against overly inclusive conceptualisations of criminalisation, or at least against conceptions which do not include frameworks facilitating a differentiated analysis of distinct phenomena related to criminalisation. The problem with the existing frameworks addressing the criminalisation of pro-migrant CSAs is not necessarily that they are too expansive, but that they do not sufficiently differentiate between methods of targeting CSAs and conflate distinct phenomena such as administrative sanctions and bureaucratic registration requirements with criminal law mechanisms. While techniques related to criminal law mechanisms and narratives of criminality are well defined and constitute the focus and often the imagined endpoint of the frameworks, techniques which are external to and independent of 'the criminal' are under-conceptualised and underexamined. In the following section I introduce a field of literature which has thoroughly examined a range of tools used against civil society actors.

The repression of CSAs outside of the West

Only after my second, and primary, field research trip did I think to look up existing literature on civil society repression in illiberal and partial democracies, hybrid regimes, and (semi-) authoritarian states. I found that I often recognised dynamics and patterns identified throughout my research phases more within this literature than in the literature on the criminalisation of solidarity in Europe. It was useful for both identifying and differentiating different phenomena I had come across. For example, Daucé's (2014) analysis of the relationship between Russian authorities and human rights CSAs from 2000 to 2013 and Doyle's (2017) analysis of the government co-option of civil society in Turkey led me to add the category 'co-optation' into my typology, constituting a missing puzzle piece which shifted certain dynamics I had observed during my field research in Greece into focus.

Meanwhile, dynamics related to NGO registration which I had already observed in my pilot research in Greece were aptly described in Van der Borgh and Terwindt's (2014) book *NGOs under Pressure in Partial Democracies* in which the authors present a particularly useful

framework of repressive practices, including the use of 'bureaucratic power to obstruct NGOs from pursuing their operations' (2014: 45-46). Buyse (2018) also analyses the use of restrictive registration procedures, among other tactics I observed through my own research in Europe such as the use of stigmas and labels to delegitimise CSAs and the legislative targeting and judicial harassment of organisations considered too critical or bothersome, by governments of states including Russia, Ethiopia, Azerbaijan and Uzbekistan. Similarly, in their analysis of the repression of NGOs providing democracy assistance in hybrid regimes, with both authoritarian and democratic characteristics, Gershman and Allen identify 'arbitrary interference in NGO internal affairs' as a method through which governments restrict their activities, in which 'failure to comply with the state's demands may prompt sanctions and penalties. NGOs are frequently impeded and harassed by bureaucratic red tape, visits from tax inspectors, and other below-the-radar tactics used to thwart the efforts of democratic and civil society actors' (2006: 43). Throughout this literature I recognised state/ CSA relations and techniques which had been used against interviewees and CSAs I had encountered during research phases.

It is notable, however, that the literature on repression of civil society in less democratic states has not yet been brought into analyses of criminalisation in liberal democracies. The parallels of what is occurring in Europe and the EU are clear. Indeed, in partial democracies criminalisation functions in the same way as understood by critical criminologists and those studying the criminalisation of migration in the West. Van der Borgh and Terwindt understand criminalisation as a:

'political strategy of using technical [formal or legislative] criminalization to define political opponents and their actions or projects as criminal and applying the criminal law apparatus to enforce this definition. This applies to the (systematic) efforts of state agents or political actors to use the criminal law apparatus vis-à-vis particular groups seen as threats to order and security because of their political demands or projects' (van der Borgh and Terwindt, 2014: 43-44).

Indeed, the relevance of this literature for the subject at hand might be explained through the phenomenon of 'lateral learning' between governments or the 'contagion' effect in which 'just [as] civil society organisations cooperate across state borders and learn from each other on how to efficiently organise and mobilise, states are also looking at other states to see what functions effectively' (Buyse, 2018: 973). So why has the literature on repression outside the West and the literature on criminalisation not been brought together? I argue that this might be a consequence of a bias in the literature, an 'us versus them' phenomenon which continues to perceive the repression of civil society as an attribute of Other, more authoritarian, non-

Western states, while comparable phenomena in the West are analysed under the term 'criminalisation' which implies at least a semblance of legitimacy provided by the law.

It is clear, however, that literature on civil society repression in less democratic states is key to further understanding the blocking of pro-migrant CSAs in Europe, and I draw on it in the elaboration of my own typology in chapter six of this thesis in which I present six methods of blocking CSAs, including legislative change, judicial harassment, police harassment, administrative sanctions and techniques of bureaucracy, labelling and stigmatising discourse, and co-optation.

But can co-optation and administrative and bureaucratic techniques constitute 'criminalisation'? After all, Hirschfield and Celinska (2011) argue against overly inclusive conceptualisations of the term. Indeed, I would argue that while such techniques might certainly constitute repression, they do not constitute criminalisation because they do not invoke the criminal. It is necessary, however, to include them in a framework analysing the state targeting of pro-migrant CSAs in Europe, as they constitute key methods used by state actors to block the work of CSAs and are variously utilised both in combination with and independently of methods of criminalisation in a range of contexts. My typology which I develop in chapter six, therefore, essentially constitutes a typology of repressive tactics used by the state against CSAs, some of which also constitute criminalisation: criminalisation is a form of repression, not all repressive tactics are criminalising.

And yet, how important is this distinction? Both methods which do and do not invoke notions of criminality are used in order to prevent the work of civil society actors helping or acting in solidarity with migrants and refugees in Europe and constitute the exercise of oppressive state power and an attack on the freedom and independence of civil society. What is most important is to identify the various methods and dynamics through which state actors seek to block and control the work of pro-migrant CSAs: criminalisation constitutes one of the methods of doing so. What is missing within the literature is a typology which facilitates the differentiated analysis of these methods. Furthermore, such a typology might further answer the question of why a distinction between 'criminalisation' and other methods is important: does criminalisation offer different opportunities to criminalising state actors, or even to targeted CSAs, than repressive methods which do not constitute criminalisation? Or vice versa, do repressive methods which are independent of criminal mechanisms and narratives offer particular powers to oppress and control?

Within the context of a typology which clearly differentiates between methods and allows these to be analysed independently of their relationship to criminality, I argue that the phenomenon as a whole might still be referred to as 'the criminalisation of pro-migrant civil society'. First, this is desirable for practical reasons: it is already the term most commonly used, in both academic literature and the wider public, including in the media. For purposes of comparability and recognisability, it would be counterproductive to introduce new terminology. However, it is also accurate in the sense that on a wider scale CSAs throughout Europe are indeed being criminalised: through the proliferation of narratives of criminality, such as the smuggling narrative, through targeted policing and police tactics, and through criminal investigations and charges. Studies of this phenomenon, however, should also include the differentiated analysis of repressive tactics which do not constitute criminalisation.

Conclusion

In this chapter I have engaged with theories and conceptualisations of criminalisation and have made the case for the development of a new typology which, rather than focusing on the relationship to notions and structures of criminality, provides a framework of methods used by state actors to target and block the work of CSAs. I develop this typology in chapter six. It constitutes the principal theoretical contribution of this thesis by providing a theoretical and conceptual framework which can be used by other researchers to analyse the repression of civil society in a range of contexts and regions. It furthermore fills a gap in the wider literature on criminalisation, which generally attempts to subsume a wider range of phenomena under the term 'criminalisation', thereby simultaneously diluting the meaning of the term through over inclusivity while risking the analytical usefulness of frameworks due to their criminological determinism and the conflation and subsuming of methods unrelated to the criminal. Furthermore, they risk repressive methods which do not fit in to the narrative of criminalisation remaining under-identified and under-analysed.

While I continue referring to the wider phenomenon under study as the 'criminalisation of pro-migrant civil society', the typology which I present in chapter six is structured around different methods of targeting state actors, often also corresponding to branches of the state, including the government and legislature, the criminal justice system, the police and law enforcement, and administrative and bureaucratic branches of the state. The typology therefore seeks to both identify and locate the sources and mechanisms of the exercise of oppressive power used against pro-migrant CSAs in Europe. Furthermore, by distinguishing between different methods

and allowing them to be analysed independently of the term 'criminalisation' I seek to answer questions including: do methods which draw on the criminal offer different opportunities to other repressive tactics? Do they stem from the same parts of the state? And do they have different consequences, or do they offer different opportunities for CSAs to resist?

Through the development of this typology, I provide an analytical tool which can be used by researchers to analyse the repression and criminalisation of civil society actors engaging in different activities in different contexts, both inside and outside of the West. This will facilitate comparable and comparative analyses and constitutes a step away from 'us versus them' binaries in the literature between 'repression' in less democratic states and 'criminalisation' in the West. Furthermore, I argue that such a framework enabling the differentiated analysis of repressive tools will lead to the development of a deeper understanding of the nature of criminalisation itself.

Chapter 5: Methodology and Field Research

Introduction

In this chapter I give a detailed overview of my research methodology and my principal field research trip which was conducted between May and August 2019 and in which I conducted 6 weeks of participant observation research as a volunteer in Calais and on Lesvos and conducted 77 semi-structured interviews. Accordingly, the research constituted qualitative case study research using methods of semi-structured expert and elite interviews and participant observation. Overall, responding to the contemporary, evolving and correspondingly under-researched nature of the criminalisation of pro-migrant CSAs, my methodology can be described as qualitative, interpretative, exploratory, inductive, and iterative.

Case Study Research and Case Selection

I used a qualitative case study research method, following Gerring's definition of a case study as 'the intensive study of a single unit wherever the aim is to shed light on a question pertaining to a broader class of units' (Gerring, 2004: 344). Case study research involves the observation of cases, or units, which form a sample of the population under study; these terms are 'generally in flux' and case study research will often involve changes in the levels of analysis (Gerring, 2004: 342). Indeed, my research operates on a variety of levels, focussing on the analysis of three case studies with the aim of shedding light on tactics and dynamics of criminalisation within the wider European context. I conducted intensive research for three key case studies: the criminalisation of pro-migrant CSAs in Calais, Lesvos and within the context of search and rescue in the Central Mediterranean. These were chosen as microcosms in which dynamics are concentrated, due to high numbers of migrants on the move and civil society engagement in those locations, and the high concentration of state migration and security practices and infrastructures at these border locations. Through the analysis of these case studies, I seek to understand dynamics and tactics of the criminalisation and repression of pro-migrant CSAs and the intersubjective relationships and context which influence these dynamics.

However, I also understand the criminalisation of pro-migrant civil society to be a transnational, European phenomenon. Events occurring in my case study locations are not independent of actors and policies outside of those locations. Migration, civil society engagement, and European migration governance are all transnational in nature and, in the case of the latter, often centralised at a supra-national level. For example, in the case of the criminalisation of SAR NGOs which I present in chapter six, the NGO actors criminalised are from countries including Italy,

Spain and Germany; the countries involved in criminalising them include Italy, Malta, Germany and the Netherlands, with some evidence pointing towards a centralised approach from the EU level; and legislation affecting their ability to work include national, EU and international legal frameworks. The case studies themselves, therefore, include dynamics and relationships beyond their geographical focus. The purpose of this thesis is to further the understanding of the criminalisation and repression of pro-migrant civil society in Europe as a whole. I will naturally be unable to capture the full scope of variation throughout all European countries. However, the case studies serve to demonstrate the potential range of criminalising and repressive tactics used by European state actors against pro-migrant CSAs.

As I show in chapter six, there are common patterns across research locations, while there is also variation corresponding to the national contexts of the case studies. I identify and categorise various tactics, all of which represent state actions against CSAs which occur in Europe within specific yet transnational contexts. In the typology, I therefore highlight the roles played by different national, foreign or supranational state actors in cases of repression or criminalisation, and also draw on secondary case studies from other locations drawn from literature, the media or interviews conducted outside of my main research locations, to build the typology. My case studies thereby seek to 'shed light on a question pertaining to a broader class of units', i.e. Europe as a whole (Gerring, 2004: 344).

Through identifying common patterns of criminalisation and repression in my contrasting research locations, and supplementing these with secondary cases outside of these locations, I develop a framework constituting a toolkit for identifying and analysing repressive tactics used against pro-migrant CSAs in Europe. My expectation is that many of these tactics will be found in countries and locations outside of my key case studies, and that further case studies conducted by other researchers applying my typology will be able to confirm their use in other research locations while filling in missing gaps not yet captured in my typology. Similarly, regarding the explanations I offer in chapter 7 for why criminalisation is occurring, and the consequences of criminalisation which I analyse in chapter 8, I expect that these patterns will be identified in other locations outside of my key case studies, as they are rooted in political and structural processes which are not location-specific but rather European and transnational in nature. The purpose of my case studies is not to offer a complete analysis of the criminalisation and repression of pro-migrant CSAs in Europe, but to develop frameworks and concepts which facilitate the analysis of the phenomenon within its wider, transnational context, corresponding to its transnational and European nature.

The European, rather than national or location-specific, focus of the thesis reflects how the refugee crisis, associated policies and practices, civil society involvement, and civil society repression and criminalisation are transnational European phenomena. To only focus on individual locations or nations would obscure both the transnational nature of the issues under study and the systematic nature of the criminalisation and repression of pro-migrant civil society in Europe. When viewed through a narrow lens, such as local, regional or national studies of criminalisation which have previously been published in the literature or reports of incidents of criminalisation in the media, criminalisation risks being perceived as sporadic and isolated. It is only when looking at the broader picture, that a pattern of the systematic targeting of pro-migrant civil society in Europe becomes clear.

On a broad level, this thesis therefore constitutes a case study of the criminalisation of pro-migrant civil society in Europe. The results of this research theorise processes, explanations and consequences of criminalisation which can be applied to other contexts. As it would be impossible within the scope of this thesis to conduct research in all European countries, or with all relevant actors, the research I conduct in specific locations and with specific actors will comprise a sample from which I will attempt to draw conclusions applicable to the population at hand – pro-migrant civil society in Europe. Similarly, the research locations I choose in a specific country, such as Lesbos in Greece, act as the sample for reaching conclusions about that country, and the interview partners I select in a specific location act as a sample for reaching conclusions about relations in that location.

The sample of cases studied should therefore be representative so that findings can be generalised to broader contexts. Cases should be chosen according to two principal objectives of sampling, in which ‘one desires (1) a representative sample and (2) useful variation on the dimensions of theoretical interest’ (Seawright and Gerring, 2008: 296). These methods, however, depend on access to relevant data about the population in question: there is no database of pro-migrant CSAs operating in Europe, which makes it impossible to select participants based on statistical measures for ensuring representativeness. I therefore undertook case selection according to principles of representativeness and variation as much as possible.

First, while my field research only took place in a small selection of locations (in comparison to the population, i.e., Europe), I used secondary or ‘background cases’ (Seawright and Gerring, 2008: 294) or ‘informal units’ (Gerring, 2004: 344) in my analyses. These are cases found in secondary literature (reports, news articles, other academic studies) which ‘provide a full range

of variation as well as a more representative picture of the population' (Seawright and Gerring, 2008: 301). I draw from a range of literature which have analysed case studies of criminalisation in other locations such as Spain, Serbia and Hungary, and supplement my typology of criminalisation and repression with cases from outside of my key research locations, including Hungary, Belgium and Malta. Commonalities between such background cases and the intensive cases I studied help to determine which features may be generalisable and which are particular to specific cases.

Second, I chose locations according to two principal factors: difference and potential sample size. I focused on three principal case studies: Calais in France, Lesvos in Greece, and SAR NGOs in the Mediterranean (generally operating from Italy). The case studies contrast each other in a range of ways. First, they differ in terms of immigration politics: at the time of research, Italy's anti-migrant government contrasted to Greece's left-wing and more open policies. Second, they differ in relation to EU external borders: Greece and Italy remain two of the principal countries for new refugee and migrant arrivals with Lesvos and the Central Mediterranean route, where SAR NGOs operate, constituting primary points of entry, while France is a destination and transit country, with Calais a transit area for migrants wishing to cross to the UK. Third, they vary in terms of the type of civil society involvement: Greece has a large presence of both Greek and foreign volunteers and CSAs, many of which emerged in response to the initial 'crisis'; France has a strong pro-migrant activist and grassroots movement, with many French and British CSAs active in and around Calais; and in Italy, CSAs constitute mostly foreign SAR NGOs operating in the Mediterranean, while the voluntary field around migrants in Italy is largely centred around the Catholic church, albeit with various activist and welcome groups active in different towns, cities and border regions.

The locations were also chosen according to available sample size. France, Greece and Italy all have large populations of migrants on the move and a significant presence of CSAs seeking to support them. These either remain in formal and informal camps and settlements (such as formal camps on Lesvos and throughout Greece, and informal settlements in Calais, Paris and Rome), or they are in transit (arriving in Greece or Italy by boat or over the land border from Turkey to North-Eastern Greece, or attempting to cross into other European countries, for example from Calais to Britain, from Italy to France or Switzerland, from Greece to Macedonia). As a result, these countries also have higher levels of civil society engagement and therefore higher levels of potential cases of criminalisation due to greater numbers and tensions. I chose them as microcosms in which state border practices, their relationship to CSAs, and patterns of criminalisation and repression are concentrated, thereby enabling an analysis of the potential

range of tactics and relationships which are and can be used by European state actors. Indeed, one study identified that France, Greece and Italy were the top three locations for investigations and prosecutions against CSAs on smuggling charges, indicating their usefulness for analysing (contentious) relations between state and civil society actors (Vosyliūtė and Conte, 2019). These case studies therefore offer a greater potential sample size of organisations to interview while also acting as microcosms in which larger trends across Europe (as demonstrated through background cases) might be concentrated and more clearly visible.

In addition to background and principal case studies (Calais, Lesvos, and SAR NGOs in the Central Mediterranean), I also conducted research in secondary locations complementary to the principal case studies: in France I conducted interviews in Paris; in Greece I conducted various interviews in Athens, Thessaloniki and other areas on the mainland; and in Italy I interviewed CSAs (including those not conducting SAR activities) in Sicily and Rome. This secondary research was conducted so that I could situate my case studies in their wider (national) contexts, form comparisons, and understand to what extent certain phenomena are a result of the contentious border regions comprising my primary case studies. Due to the transborder nature of pro-migrant CSAs and their activities in Europe, the research was not always tied to location, and I conducted several interviews via phone and Skype to interviewees in other locations who were or had been active in my area of interest.

At the research locations, interview partners were selected in a way to approximate representativeness, relevance and variation as much as possible. Seawright and Gerring (2008) propose seven techniques of case study selection. While these are based on an ability to apply statistical mechanisms in order to select cases to research, which is not possible in my case, these present a variety of options which I used to guide my case selection. Of the seven types described by the authors, my case was guided by three: the typical case, the diverse case and the extreme case (Seawright and Gerring, 2008). In order to reduce the risk of confirmation bias, ensure as much representability as possible, and in order to determine how common different types of criminalisation are, I interviewed representatives of as many CSAs as possible operating in my research locations, regardless of whether or not I had prior knowledge of their being in anyway targeted or criminalised by the authorities (the typical case). Second, I interviewed as diverse a range of such organisations as possible, from activists and local, informal grassroots organisations to major national and international NGOs, conducting a wide range of different activities (the diverse case). Third, I sought out interviews with actors of whom I was aware that they have been subject to criminalisation, in the form of attempted prosecutions for example, such as search and rescue NGOs in the Mediterranean (the extreme case). In this way I sought

to determine which aspects of criminalisation are common within and across research locations, and which are exceptional cases which may be less generalisable. Finally, I conducted interviews with representatives from local, national, and supranational authorities and institutions wherever possible, such as mayor's offices, the Greek ministry of migration, the Greek Coast Guard, UNHCR, IOM and Frontex, on the basis that including the perspectives of actors involved in migration governance, but who are not part of civil society, might lead to a deeper insight into broader mechanisms.

Field research: semi-structured interviews and participant observation

My principal field research took place in France, Greece and Italy between May and September 2019. I conducted 77 semi-structured interviews and 6 weeks of participant observation research as a volunteer.

Semi-structured elite and expert interviews

I consider my interviews to constitute 'expert' or 'elite' interviews, the latter constituting a methodology with a long-standing tradition in which interviews are used to 'study those at the 'top' of any stratification system' (Moyser, 2006: 85; Bogner, Littig and Menz, 2018). Elites may also 'serve as experts' when 'individuals have unique experiences as 'insiders', enabling them to comment upon events or evidence, provide interpretations and suggest fruitful lines of further inquiry' (Moyser, 2006: 85). While many of my interviewees might be described as at or near the 'top' of a civil-society stratification system, in that many were founders, directors, representatives or inhabited other positions of some authority in the field and within their own organisations, I draw on the methodology of 'elite' interviews not because of the social power my interviewees may or may not hold, but because of the forms of knowledge I sought from the interviews, and because 'expert and elite interviews are characterised by a particular interaction structure': while 'ordinary' interviews are 'seen as having a certain kind of unbalanced power relations' in which there is 'often a situation of 'studying down', 'conversations with experts and elites are different' and, while some consider them to be 'studying up', I considered my interviewees to be on an equal footing with me, to the extent that I considered them to be informed subjects with authoritative knowledge and experience of the topics of my research (Bogner, Littig and Menz, 2018: 11-12). I therefore regularly involved interviewees in the research process, for example by sharing and discussing my specific research questions and my research findings and tentative theories so far.

Accordingly, I sought different forms of knowledge through the interviews. First, I sought 'process knowledge' about 'sequences of actions, interaction routines, organisational constellations, and past or current events, in which the interviewee is directly involved or which at least are closely related to his or her field of action' (Bogner et al, 2018: 8). For example, I asked interviewees to describe their operations and how they interacted with state actors. I also asked interviewees about specific events and cases which they had been involved in or which had occurred in their fields, such as the Jungle camp eviction in Calais, the ERCI case on Lesbos, in which volunteers had been imprisoned and accused of smuggling, and the effects of Salvini's Security Decrees on NGOs on Italy. I regarded CSA interviewees, especially those who had been there for longer periods of time and/or held positions of authority, to be sources of expert knowledge about interactions, relationships and cases I was interested in. I also sought 'technical knowledge' comprising 'facts and information about operations and events', for example through interviews with lawyers in which I asked questions about specificities of legal cases about which there was little accessible public information (Bogner, Littig and Menz, 2018: 8).

However, I also sought 'interpretative knowledge' which 'entails subjective orientations, rules, points of view and interpretations' (Bogner, Littig and Menz, 2018: 9). I was interested in interviewees' perspectives on my research questions and preliminary findings, as well as their interpretations of the reasons for criminalisation and *why* they, or CSAs around them, were being targeted. Such interpretive knowledge 'does not presume that the expert or the elite has a 'better' access to reality' than the interviewer. However, understanding my interviewees as (sometimes elite) experts of my research topic means theories generated from my research are grounded in the experiences, knowledge and perspectives of the subjects of my research as well as my own interpretations based on the literature I have read, my theoretical framework, the data analysis of my interviews, and my own experiences conducting participant observation research.

Accordingly, I conducted semi-structured interviews with a 'rough topic guide' containing 'the central dimensions of the planned conversation' (Bogner, Littig and Menz, 2018: 13). I generally adapted the list of questions I planned to ask according to the interviewee and the context, and the list of questions functioned more as a reminder of which topics to cover than a strict guide to adhere to. I conducted the interviews as 'openly as possible, in order to make it possible to gather unexpected information and interpretations, which could not have been imagined when constructing the topic guide', and therefore allowed discussions in interviews to develop organically (Bogner, Littig and Menz, 2018: 13). I tended to start the interview with more general

questions about their work, then asked questions related to technical and process knowledge, such as about certain cases or incidents which the interviewee had been involved in or was likely to have knowledge about and ended with questions related to interpretative knowledge.

I first asked all CSA interviewees, for example, what kind of barriers they faced in their work (not necessarily coming from the state), and about their relationships with the state and state actors. The purpose of starting with more general questions was to establish the salience of issues related to criminalisation to the interviewee. In Calais, for example, every interviewee mentioned problems with the police when asked questions about general barriers faced, whereas on Lesbos interviewees would sometimes focus on problems unrelated to state actors, such as funding. Even though police harassment of volunteers occurred in both locations, the unprompted salience of an issue in the interview is revealing about the extent to which a repressive phenomenon affects the daily functioning of a CSA. I therefore reserved more specific questions related to the interviewee's perspective on criminalisation, why it happens and what its consequences are for later on in the interview. I also either avoided or defined the word 'criminalisation', following a tendency which became obvious in my pilot study of interviewees either focussing on 'crimes of solidarity' related to smuggling, or understanding the word to imply actual criminal behaviour of CSAs. I therefore avoided the term, especially at the beginning of interviews or before interviews by, for example, using the phrase 'barriers faced by pro-migrant civil society' to describe my research, including on the consent form I asked interviewees to sign. When asking more specifically about interviewee's perspectives on processes, explanations and consequences of criminalisation, I specified what I meant by the term, i.e., the broader phenomenon of state actors blocking the work of CSAs through a range of different methods. In this way I structured my interviews in an intentional way addressed at gaining, on the one hand, technical and process knowledge and an understanding of the salience (or lack thereof) of issues related to criminalisation to interviewees without asking leading questions directing interviewees in a certain direction, while, on the other hand, gaining interpretative knowledge with the benefit of being able to then situate interviewee's perspectives and interpretations within the context of a more general understanding of their work, their relationships to different actors, and the issue-salience of criminalisation to them.

Elite and expert interviews also give a lot of leeway in terms of interview style and relational dynamics between interviewer and interviewee. The 'image of the potential interviewer' can affect the way in which the interviewee responds, and 'perceived ideological, social or even sartorial or gender similarities' may be helpful in conducting a successful interview (Moyser, 2006: 85-86). Meanwhile, regarding elite and expert interviews where there is a power

asymmetry where the researcher is 'studying up', while some argue that appearing to be 'equal' to the interviewee 'in respect of age and qualifications' might be important to avoid a 'patronising attitude towards the interviewer', others suggest that (especially young female) researchers might turn 'discriminatory paternalism to their strategic advantage' and that 'naïve questions stand a good chance of producing the most interesting and productive answers' (Bogner, Littig and Menz, 2018: 12). While I was not able to change my age or gender, I adapted my interviewing approach according to the interviewee and other context such as location, with the aim of encouraging more open and forthcoming discussions. This also involved, of course, taking cues from my interviewees. On Lesbos, for example, many interviewees from CSAs invited me to conduct the interview in cafes or bars around Mytilene. I generally approached these interviews in a more informal manner, in terms of both dress and address, than interviews where I had been invited to meet interviewees in their offices and places of work. Meanwhile, while I presented myself in a more neutral fashion to interviewees from state and supra-state institutions and large NGOs, my participant observation research as a volunteer often allowed me to interview CSAs as peers.

I used a variety of methods to establish interview contacts, including contacting potential interviewees and organisations online via e-mail and Facebook, where many smaller and grassroots CSAs working with migrants have pages and are contactable via Messenger as an organisation, and snowballing from a variety of entry points with established contacts. At the end of a successful interview, for example, interviewees would regularly give me the WhatsApp numbers of other potential CSA interviewees. I also directly went to certain locations to ask for interviews, responding to the more relaxed nature of interactions in Greece, including the offices of the Greek Coast Guard on Lesbos, which gained me a short interview with a coastguard official (other attempts were less successful, including a trip to the Ministry of Migration offices in Mytilene where they did not understand what I wanted and tried to send me to the police to apply for a visa extension).

I met with some obstacles to access. Some locations, such as Lesbos, had already experienced a high level of research interest and so some actors were reluctant to do more interviews or did not have the time to meet. Furthermore in elite interviews, 'access is also influenced by the research agenda, some agendas being very sensitive in particular circumstances or to particular elites' which 'may lead to outright (and revealing) refusals or to a reduced level of cooperativeness that may not be immediately apparent' (Moyser, 2006: 85-86). Indeed, I received such outright refusals from several CSAs in Greece, who replied to my interview requests by asking for more specific questions in advance and then, revealingly, informed me

that their relationships to state actors were too precarious to risk through an interview with me. Meanwhile, in interviews with state actors, I tended to leave more controversial questions till the end of the interview. When issues related to criminalisation, pushbacks or police violence against migrants were raised, for example, interviewees tended to, unsurprisingly, become more reticent or shorter in their answers. Gaining access to state and institutional actors was especially difficult in France, where my requests for interviews generally remained unanswered, and in Italy where it was often impossible to even find contact information for state actors I was interested in interviewing and where I unfortunately conducted my research in August during a time when most offices are closed for summer. I therefore only conducted a small number of interviews with state and supra-state actors and institutions in Italy.

Furthermore, language barriers posed a challenge, especially in France and Italy where English is not as commonly spoken by officials or even activists as in Greece. I therefore conducted one interview in French, with the director of the Grande-Synthe mayor's office, a municipality adjacent to Calais, jointly with another researcher who was fluent in French; my French skills sufficed to explain the purpose of my research and to ask questions. I paid a translator to transcribe and translate the interview into English. Another interview in Paris, in which I interviewed three activists from the same group who spoke a combination of English and French, was also transcribed and translated by the translator. Meanwhile, six interviews were conducted entirely or partially in German and were subsequently transcribed and translated into English by me, as I have native fluency and professional translation experience. While these interviewees were all able to speak in English, they felt more comfortable conversing in German and doing so led to more open and detailed interviews. Similarly, a range of secondary sources, such as newspaper articles about particular cases or government websites, were only available in other languages. I translated sources in German myself and used online translation tools to auto-translate sources in French, Greek, Italian and Dutch and clarified any ambiguous meanings and phrases with native speakers.

In the following section, I describe and reflect on my time in the field and outline how many and what kind of interviews I conducted in each location. In the appendix of this thesis, I include a table offering an anonymised overview of all the interviews I conducted, including location, the interviewee's position, their primary activity, and their country of origin. The information is deliberately sparse to avoid interviewees being identifiable. I recorded all interviews on my smartphone, and they varied in length considerably with a range from 16 minutes to two hours, with an approximate average length of 45 minutes.

Participant observation and the research trips

While the interviews constituted my primary method of data collection, I also conducted participant observation research as a volunteer for CSAs in Calais and on Lesvos. The CSAs and other volunteers I worked with were always aware of my role as a researcher. Participant observation 'is inherently a qualitative and interactive experience and relatively unstructured' and is 'associated with exploratory and explanatory research objectives'; the 'data generated are often free flowing and the analysis much more interpretative than in direct observation' (Guest *et al.*, 2013: 5). Through the participant observation I sought to enrich my contextual and experiential knowledge through which I would analyse and interpret my data. I recorded knowledge, insights, overviews of conversations, and patterns observed during all of my field research, but especially during the periods of participant observation, in a field research diary updated daily. Outside of my pre-planned periods of participant observation research volunteering in Calais and Lesvos, I also took advantage of opportunities which presented themselves throughout my research trip. For example, I joined a CSA in Paris for a night distribution of necessary items to migrants living on the streets; in Thessaloniki I similarly joined an independent volunteer for a pre-distribution day of 'scoping' out informal settlements and speaking to 'community leaders' regarding what items were needed and how best to distribute them; and while I did not conduct any interviews in that area, I spent several days around the Italian/ French border between Ventimiglia and Menton, where I had informal conversations with migrants and CSAs and crossed the border several times by train and foot.

While CSAs and not migrants were the primary subject of my field research, conversations with migrants often also provided additional contextual and experiential knowledge. However, while I often asked other volunteers direct questions in order to gain more knowledge relevant to my research, I did not ask migrants questions about their experiences and allowed conversations to develop more organically (or to be foregone entirely for games of football or volleyball in Calais). In compulsory fieldwork training sessions in Calais, which I also attended as part of my participant observation research, volunteers were advised against asking migrants questions about their experiences, journeys or reasons for being in Calais, all of which might be associated with trauma. Similarly, in the community centre where I volunteered on Lesvos, many migrants were 'tired' of being research objects due to the large number of researchers on the island, or of being questioned by volunteers about their traumatic experiences in ways which came across as voyeuristic and intrusive. Accordingly, I interacted with migrants as a volunteer, rather than as a researcher, and on terms of equality so far as this might be possible in a field defined by

extreme inequality (the power asymmetry in the volunteer/'beneficiary' dynamic was also a frequent topic of discussion and debate among CSAs and interviewees throughout my research). While in some conversations, negative experiences with police during police evictions in Calais, for example, were described to me by a migrant I was conversing with, I did not seek out such divulgements and, indeed, avoided hearing too many stories related to traumatic or distressing events on a migrant's journey. This was both because this was not directly relevant to my research and I did not want to participate in a form of 'disaster voyeurism' (which were both also reasons why I did not go into the Moria camp on Lesbos, where migrants reported sometimes feeling like zoo animals on display), and in order to avoid the emotional burnout I witnessed in many other volunteers and CSAs throughout my field research.

Calais and Paris

My field research began in May 2019 with three weeks of participant observation and interview research in Calais. I volunteered at a warehouse rented by the charity Help Refugees/Choose Love which also hosted a range of French and British CSAs who ran their operations from the warehouse. The activities of the CSAs primarily addressed the provision of food and necessary items like clothing, sleeping bags, and firewood in the winter, but some were also engaged in advocacy work, information provision, and monitoring the human rights situation on the ground, including police violence against migrants. While I refer to 'Calais' throughout this research, many of the CSAs also went to the nearby Grande-Synthe, a municipality of Dunkirk, which also has informal migrant settlements. When I refer to 'Calais' in this thesis, then, I subsume the surrounding area including Dunkirk into the term – which constitutes a specific geographical location, of course, but also evokes more generally the situation at the French/British border. At the time of my research, the well-known 'Jungle' camp had long since been dismantled (in October 2016), and instead there were approximately 800 - 1000 migrants living in a range of informal tent settlements in forests, among sand dunes, next to large roads, and even in former industrial toxic waste dumps (Rullman, 2020). At the time of my research, these camps were facing systematic police evictions, every other day in Calais, and twice weekly in Grande-Synthe, in which migrants would be forced to pack up and move, and in which tents and migrants' belongings were regularly confiscated or destroyed. Migrants in Calais regularly tried to cross the border to Britain in a variety of ways, including trying to jump onto lorries on the motorway towards the port; the day after I completed my field research in Calais a young Eritrean man died on the motorway while attempting the crossing.



Photo 1: A wall surrounding a petrol station in Calais to prevent migrants from boarding vehicles heading to the UK (photo taken by the author, May 2019)

The different CSAs at the warehouse were largely run by long-term volunteers and supported by short-term volunteers, hundreds of whom would pass through the warehouse every year. I was able to volunteer with different organisations at the warehouse, and not only spent days chopping vegetables in the kitchen and sorting donations in the warehouse, but also regularly joined longer-term volunteers on distributions in the field to different sites around Calais and Grande-Synthe. I especially frequently joined a team of French volunteers on distributions to a site nicknamed 'BMX', due to its proximity to a BMX biking track, near an informal tent settlement inhabited primarily by Eritrean migrants. The distributions (of clothing and other non-food items) with the French CSA in question was particularly interesting to me because, while distributions with other CSAs were often hectic and busy and did not provide much opportunity to observe or talk to people as four volunteers served food to 300 migrants in two hours for example, the French CSA generally spent two hours at each site in order to allow migrants to charge their phones using the generator brought by the CSA on distributions. This gave me the opportunity to spend more time in the field and to develop a rapport and familiarity both with the other volunteers and with the migrants living at BMX. I also joined a peaceful protest march as a participant observer, which was attended by many of the CSAs as well as

migrants in Calais to demonstrate against police violence against migrants and the Dublin Regulations (Dublin III). This allowed me to observe, for example, the large number of different types of police (including municipal police, national police, riot police, and unsubtle secret police) present who almost outnumbered the protesters.

I participated in volunteering activities on almost every day of my three weeks in Calais, but the flexible and informal atmosphere at the warehouse meant that I was able to allocate my time freely and prioritise conducting research interviews. I chose to volunteer at the warehouse for a range of reasons, but most particularly because it hosted a range of different CSAs and thereby facilitated access to interviewees from a range of CSAs. During my time in Calais, I conducted 15 interviews. One was with a state actor, the director of the mayor's office of Grande-Synthe, which was conducted in French and in coordination with another researcher. The remaining 14 interviews were conducted with interviewees from eight different civil society organisations, five of which were part of the warehouse where I volunteered and three were external. While volunteers working with the different CSAs came from a range of different countries, most of the organisations were either French or British: two of the organisations interviewed were French, and six were from the UK (or established in Calais by British volunteers). Due to 2002 border externalisation agreements between France and the UK, the border was perceived by interviewees as being British as much as French, accounting for the large proportion of British organisations and volunteers in the area. Of the eight CSAs interviewed, the primary activity of five was 'humanitarian' in nature, that is, primarily concerned with the provision of aid including food, clothing, tents, and other items addressing fundamental needs. Two of the CSAs were primarily engaged in providing information and legal help to migrants and one was primarily focused on monitoring the human rights situation on the ground. While these constituted the primary focus of the CSAs, most were also engaged in other activities, such as advocacy work. Finally, of the 14 interviewees from CSAs, eight were co-ordinators, a term I use to refer to interviewees with positions of responsibility and/or authority within their organisations or networks, three were volunteers who had sufficient experience in the field to have useful and interesting insights to share or who had experience of specific incidents or events, such as the dismantling of the Jungle or certain contentious encounters with the police, and three were directors or founders of the CSA organisations in question.

After my time in Calais I spent one week in Paris where I conducted a further five interviews with interviewees from five different CSAs: four French and one UK; two humanitarian; two advocacy and campaigning CSAs; and one legal and information CSA. I interviewed two directors or founders; two researchers (for an advocacy CSA, in the same interview); and four co-ordinators,

three of whom I interviewed at the same time and who could also be categorised as activists. Paris constituted an interesting comparison to Calais. I also conducted some participant observation research and joined two CSAs on distributions to informal migrant settlements on the streets of Paris, especially in the North of the city around the La Chapelle district where there were different informal tent settlements along the sides of large roads, under bridges and in squares. While migrants in Calais were generally attempting to cross to the UK, most migrants living in informal settlements on the streets of Paris were seeking to claim asylum in France but were not able to access state services or were avoiding being deported to the country where they had first entered the EU based on the provisions of the Dublin Regulations (Dublin III). Compared to interviewees in Calais, interviewees in Paris faced different challenges, including higher and more serious levels of drug abuse, violence, and the greater presence of organised crime, as criminal gangs sought control and influence in the settlements and drew in or exploited migrants in vulnerable positions. This was also a feature of the landscape in Athens, where it is not uncommon for young migrants and asylum-seekers unable to work legally to end up as drug dealers for street gangs and mafia groups. CSAs working with migrants in large cities and outside of first reception or transit border regions like Calais and Lesvos thereby often work in a very different context.

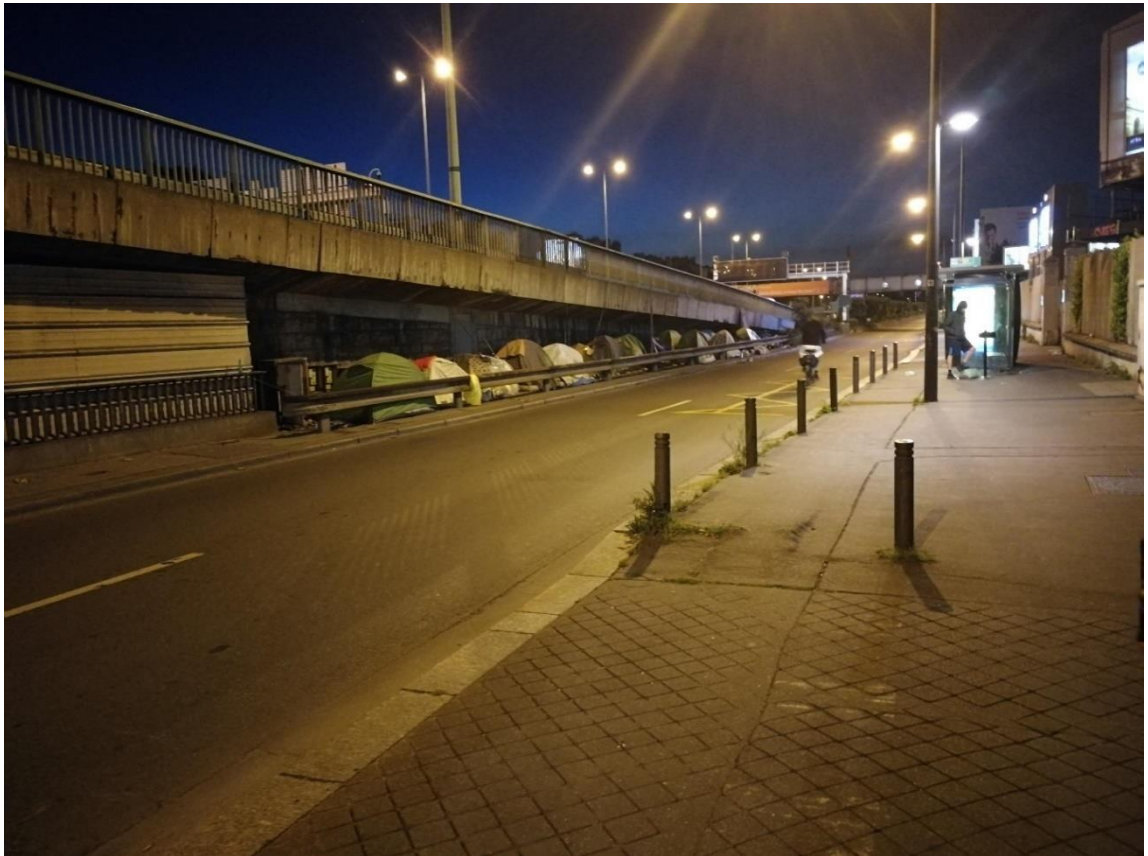


Photo 2: An informal tent settlement by the side of the road in Paris (photo taken by the author in June 2019)

Lesvos, Athens and Thessaloniki

I spent three weeks conducting participant observation and interview research on Lesvos island in June 2019. I volunteered at a Swiss CSA-run community centre called One Happy Family (OHF), which also hosted a range of different CSAs including a school and a mobile medical clinic. The context was very different from Calais: while migrants in Calais lived in informal settlements with the aim of moving on quickly, migrants on Lesvos lived in state-run refugee camps as part of the EU hotspot approach and stayed on the island for months and even years waiting for decisions on their asylum applications. The needs of the migrants on Lesvos were therefore different and more varied than those in Calais. Furthermore, while there were approximately 800 to 1000 migrants present in Calais and Dunkirk, there were far more on Lesvos: 5000 lived in the state-run Moria camp (which has an official capacity of 3000) and 1200 in the municipality run Kara Tepe camp (which does not take more than its capacity and is especially intended for families, although there were many families and children in Moria too). These statistics already represented dangerous overcrowding in Moria in which at least eight people were sharing 4-bed tents and there were 70 people per toilet and shower, according to my orientation seminar at OHF. By November 2019, there were approximately 18,000 people on the island and 15,000 people living in Moria (Talakhadze, 2019). Boats were still arriving on the shores of Lesvos throughout my research phase on the island, and even though the shores of Turkey were easily visible from the island, people were still drowning: the night after my arrival, seven people, including two young children, drowned attempting the journey (IOM, 2019).

Due to the different context and far greater number of migrants present, there were also far more CSAs on Lesvos with more diverse activities than in Calais. There were many CSAs engaged in service provision in and around camps, like OHF, providing education and community activity projects to counteract the lack of structures and services for migrants essentially trapped on the island. Other CSAs responded to basic needs, as in Calais, which state actors were not sufficiently fulfilling, including the provision of medical care, clothing and other necessary items. Others were involved in boat-spotting on the shores, an SAR-related activity, or advocacy and activism activities, or in the provision of legal aid to migrants in order to help, for example, in appeal cases. While there was no accessible database of CSAs, there were dozens active on the island during my time there.

OHF was situated about an hour walk from Mytilene, close to the municipality's Kara Tepe refugee camp and a two hour walk from Moria camp. While I was there, up to 800 migrants would come daily from both camps. Like many CSAs on the island, due to the long-term nature of the residency of many of the migrants, migrants were often involved in the CSA projects,

blurring the line between migrant and CSA (a problematic line anyway, as migrants can and do certainly constitute civil society and organise as such, yet an important line for the purposes of analytical distinction between phenomena). At OHF, ‘helpers’ were migrants living on the island who essentially ran the centre and led their own initiatives and projects for the ‘guests’ coming from the camps – including a barbershop, a shisha bar, a café, a shop, a gym, a women’s centre, a nursery etc. ‘Co-ordinators’ were a few long-term volunteers who directed the operation of the centre as a whole, and ‘volunteers’ like me tended to be shorter term volunteers (from a few weeks to a few months) and supported the daily operation of the projects and did the daily cleaning. OHF had more rigorous protocols and timetables for volunteers, and I worked at the centre nine hours per day, for four days a week.



Photo 3: A view from OHF, including accommodation containers from the Kara Tepe camp, the Aegean Sea, and the Turkish coastline (photo taken by the author in June 2019)

Alongside this, I conducted 30 research interviews – on my days off or before/after my volunteering schedule. Twelve of my interviewees were Greek, and 18 came from other countries. Five of these were with state or supra-state actors: one with the Frontex spokeswoman over Skype to Frontex headquarters in Poland; one with two Frontex officers in a bar in Mytilene; one with an officer of the Greek Coast Guard; one with an advisor to the mayor of Mytilene; and one with a representative of the UNHCR office on Lesbos. I conducted 24

interviews with interviewees from 23 different CSAs. The primary activities of the CSAs were as followed: five search and rescue (involved in boat spotting or NGO vessels in the water); five involved in the running of community centres and projects; four humanitarian (provision of necessary items, or involvement in camp management); three providing legal help and/or information services; two providing medical help; two conducting human rights and state monitoring activities; one CSA run school; one advocacy organisation; and one activist organisation. Of these, two worked inside Moria camp, and at least four of my interviewees were being investigated for criminal charges in relation with the ERCI case (which I will analyse in the following chapter), although I often did not discover that they were among the 30+ people being investigated until after the interviews. I also interviewed another researcher on the island working at a local institution. Of the CSA interviewees, 10 were co-ordinators, five were directors or founders, four were volunteers, two were lawyers, two were activists, one was a researcher, and one was a translator. CSA interviewees also included paid employees of NGOs.

I also presented my research project and preliminary findings, including an earlier version of my typology of criminalisation, as part of an event series for volunteers organised by OHF in Mytilene, at the prompting of my co-ordinators at OHF. Over 60 volunteers and members of CSAs came to my talk and participated in a question-and-answer session, and many gave me feedback after the talk. This was particularly useful in regard to evaluating the salience of 'criminalisation' and related issues among volunteers, many of whom were unaware of potentially contentious relationships between state actors and CSAs.

Following these very intense three weeks on Lesbos, I spent another two weeks conducting research interviews on the Greek mainland: first in Thessaloniki and then in and around Athens. I conducted 12 further interviews, five with Greeks and seven were from other countries. Once with an IOM representative, and one with a civil servant at the Greek Ministry of Migration Policy. Of the 10 CSA interviews, five were with humanitarian actors, two with medical actors, one with a representative from a community centre adjacent to a camp, one was with an activist, and one with a CSA involved in integration work. Two of the CSAs were subcontracted by the state to provide services such as camp management. Of the CSA interviewees, four were directors or founders; four were co-ordinators; one was an activist; and one was an independent volunteer who conducted her own operations and distributions. During my time researching on the mainland, I witnessed the Greek general election in which the centre-right New Democracy party unseated the previous left-wing Syriza coalition, and experienced a storm in the North which killed seven people while I was in Thessaloniki and an earthquake while I was in Athens.

Italy and SAR NGOs in the Mediterranean

Following my time in Greece, I flew straight to Sicily in August to continue my field research there. I did not undertake participant observation research in Italy and conducted fewer interviews during my time there. This was for a variety of reasons. I was particularly interested in SAR NGOs, which constituted the third of my key case studies, and participant observation onboard a ship is much more difficult to gain access to as there are limited places and crewmembers with specific technical skills are particularly sought after. Instead, I conducted a range of interviews with different SAR NGOs. Some of these took place in person in Sicily and Rome, however the majority took place in different locations and via phone and Skype at various points throughout my principal research phase. I also interviewed non-SAR actors during my time in Italy. However, as previously mentioned, I had difficulties with access due to the poor timing of my research visit as Italy essentially comes to a standstill throughout August. Nevertheless, I conducted 10 interviews in Sicily and Rome: one with the UNHCR in Rome, and nine interviews with CSAs. Of the nine, two were engaged in SAR activities; two provided legal aid and information; one was engaged in advocacy; one was an activist organisation; and one was a community and accommodation centre. Six of the interviewees were co-ordinator; two were activists (interviewed at the same time); one was a director; and one was a lawyer. All but one interviewee was Italian.

I further conducted an additional five interviews with SAR actors, including two co-ordinators, one activist, one crewmember, and one researcher who had also spent time on board an SAR NGO. In combination with the two SAR NGOs interviewed in Italy, I interviewed representatives of four different SAR NGOs operating vessels (Sea Watch, Mission Lifeline, Mediterranea Saving Humans, and the *Aquarius*, jointly operated by SOS Mediterranee and MSF), as well as a representative of Alarm Phone, a transnational network operating a satellite phone service which migrants in boats in distress can call and which attempts to coordinate rescue missions by mobilising state authorities. While the Aegean islands like Lesbos in the Aegean Sea are also technically in the Mediterranean, when I refer to the 'Mediterranean' in this thesis, I mean the SAR NGOs operating around the Central Mediterranean route between Libya and Italy. My field research trip ended in the Italian border town of Ventimiglia, a key crossing point for migrants seeking to reach France and where migrants are repeatedly pushed back into Italy by French police. I had informal conversations with activists at the border and crossed the border several times by train (which was always searched by the police once it crossed the border) and once on foot.



Photo 4: A view of the border from the French side. A French police station lies just behind me. After I had crossed the border, I met a migrant who had just had his phone stolen from him by police at the station before they had returned him to Italy (photo taken by the author in August 2019)

Research ethics and anonymity

Protecting my interviewees and their anonymity was a primary concern throughout my research which is, of course, situated within a context in which CSAs are regularly targeted by state actors in a range of ways including through criminal investigations and prosecutions. All participants were informed of the purpose of the research verbally and asked to sign a consent form (see appendix). All interviewees were offered anonymity, and, corresponding both to the volume of requests for anonymity and to the nature of the research, most of the interview data has been anonymised. Identifying information (both specific and contextual) was included only when there was a specific reason to do so and if this fit within the parameters of anonymity discussed with the interviewee. Accordingly, the SAR NGOs in the Mediterranean interviewed are identified due to the unique nature of each of their cases, in which any in-depth discussion regarding their circumstances would suffice to identify the NGO in question. These interviewees were also generally media trained and functioned as representatives of the NGOs and generally therefore did not share information which might be sensitive. In general, I exercised discretion

in terms of what I would or would not include in the research, especially regarding ongoing criminal cases about which I avoided including potentially sensitive or unverified information and speculation by interviewees. In rare cases, I further anonymised certain quotations with the reference '(Interview, anon)' to de-contextualise the quotation from other quotations or information from the same interviewee, especially in cases where the interviewee expressed an opinion they did not want associated with themselves or their organisation.

I took precautions to ensure the interview recordings and transcripts remained confidential both during and after my field research trips. Immediately after conducting an interview, I moved the recording to an encrypted folder on my phone. I removed fingerprint unlock from my devices and kept them password protected. I used encryption software to protect recordings, transcripts, and the list of who I interviewed on my laptop and external hard drive. I ensured that the tools I used for transcription (otranscribe.com) and for coding (NVivo 11) only stored data locally (i.e. on my devices).

Before embarking on my research trip, I completed a full ethical review which was approved by the university's ethics committee, as well as a departmental risk assessment evaluation. Both the consent form and an anonymised list of my interviews can be found in the appendix.

Data Analysis

The interviews were transcribed and then coded using NVivo 11 software. As my data does not hold any statistical representativeness, the codes rather functioned as a tool with which to organise my interview data and notes from my field research diary, and through which to identify patterns. The coding was an open and iterative process. While I started the coding process having already created a set of codes corresponding to my principal research questions and to patterns I had identified throughout the research process so far, I added new codes throughout the coding process as new patterns emerged from the data. My final codebook can be found in the appendix.

I used an interpretivist data analysis methodology rather than a positivist one (Fujii, 2017). While a positivist might seek to anonymise data and analyse it uniformly in order to ensure inter-coder reliability, the interpretivist tradition emphasises that 'context and data are intricately interwoven' and that 'the point of analysis is to decipher, decode, and interpret the meanings and logics across all [different] forms of data' (Fujii, 2017: 73-74). The data I gathered during my field research cannot be analysed independently of individual context. For example, I often

discussed the same case with a variety of actors – a No Borders activist, the director of a small non-profit, a representative of an international NGO, a lawyer working on the case, and an advisor to the local mayor. Within each interview, specific details of the case and causal explanations will differ and sometimes directly contradict each other. When analysing the data, it was therefore important to consider which accounts are likely to carry bias and which are informed by first-hand experience or greater knowledge of legal or political context. The identity of the interviewee, their role, experience, and political and ideological backgrounds, were key elements to analysing the interview data.

However, the epistemology of my research diverges from the interpretivist data analysis tradition, which does not generally seek to ‘achieve a singularly accurate, *objective* snapshot of the world’ but instead adopts a constructivist perspective and seeks to ‘develop an explanation of how people *socially* – that is, intersubjectively – construct and understand the worlds in which they are embedded and the logics they use to navigate those worlds’ (Fujii, 2017: 74). This is not the case in my research, which rather constitutes a hybrid between interpretivist and realist methodologies. I aim, as far as is possible, to present, analyse and explain concrete processes, explanations, and consequences of the criminalisation and repression of pro-migrant civil society in Europe, and, to this extent, operate within a materialist, realist tradition (Gibbs, 2007). At the same time, however, I do not claim to be presenting an ‘objective snapshot of the world’ to the extent that I understand all research and analyses to be informed by underlying subjective assumptions and would argue that claims of objectivity in research might often obscure underlying biases and assumptions. I interpret my data through the lens of technical and process knowledge I gained in the field, but also based on the subjective interpretative and experiential knowledge I gained through participant observation activities and other time spent in the field. Furthermore, the direction of my research was influenced by foundational normative values and perspectives. For example, while my perspective might be based on a foundation which places greatest importance on values of the rights of individuals to life and freedom from torture, or on democratic values related to the freedom of civil society, another researcher whose foundational values place primary emphasis on the right of a sovereign state to control its borders and choose who to admit into its society would likely write a very different thesis even if they had interviewed the same people as me and conducted comparable participant observation research. In drawing on critical perspectives throughout my thesis, while acknowledging normative values underpinning my research, I respond to Price and Sanz Sabido’s argument that in ‘an inequitable social order, the unthinking reproduction of normative

standards is more problematic than those approaches that begin their analysis from a critical stance' (2015: 2).

The subject of my research is situated within a multifaceted space defined by a wide range of actors, competing narratives, unclear boundaries, and complex political and legal contexts. Developing a clearer picture of this space, and processes within it, required nuanced and context-based interpretation of the data and different analysis processes corresponding to my different research enquiries. My analysis of the interview data was informed by knowledge and insights I gained during my participant observation research as well as by secondary data, including other literature, media sources and public information.

I sought two principal types of information through my data analysis: contextual and diagnostic (Gibbs, 2007). First, contextual information relates to technical and process knowledge and was particularly key to answering my first research question 'how does criminalisation operate?', which sought to understand what is happening. Interview data with experienced actors and those directly involved in specific case studies offered 'rich' or 'thick' description of processes, relationships, and events which my research is interested in (Gibbs, 2007: 4). Accumulating and coding this data was key to understanding various mechanisms and processes of criminalisation and repression, and to the identification of common patterns and the subsequent inference of trends. Contextual information further helped answer questions regarding the consequences of criminalisation and how CSAs responded to criminalisation.

Second, diagnostic information relates especially to the research question 'why does criminalisation occur' and is largely based on interpretative knowledge. Answers to this question by interviewees generally constitute their perspectives and interpretations of the situation, and of, for example, the motivations and decision-making processes of actors and agencies about which there is little public information and transparency. However, in many cases the 'rich description' offered by interviewees also makes 'it possible to go one stage further and offer an explanation for what is happening' (Gibbs, 2007: 4). For example, an interviewee might connect a change in policy with a change in the occurrence of criminalisation, such as the involvement and operational support of the Libyan coastguard by the EU with the change in attitudes towards SAR NGOs. I elaborated upon theories regarding the why criminalisation happens based on the patterns of common narratives which emerged from my interview data.

I thereby join a 'growing field' of interpretive researchers who have 'turned toward causal inquiry while stressing the importance of shared understandings, identities, and social practices for their explanations' (Norman, 2021: 936). In chapter seven, I present constitutive

explanations for why criminalisation is occurring and analyse two phenomena which offer explanations for why state actors might perceive criminalising or repressing CSAs as beneficial: politicisation and the state security approach to migration. These explanations are rooted in the interpretations of interviewees of the intersubjective relationships and driving forces of their criminalisation, and are supported by theories drawn from the literature, and process and technical knowledge derived through my research. My causal inquiries into why criminalisation occurs constitute intersubjective explanations which are constitutive as they 'capture structural conditions of particular social systems and speak to the latent dispositions and causal capacities of such systems' (Norman, 2021: 937). I focus on two systems, broadly defined: that of the politicisation of migration which makes it politically advantageous for political actors to position pro-migrant CSAs as the enemy, and that of the state security approach to migration which depends on a lack of public visibility and accountability.

Conclusions and introducing the findings chapters

I planned the methodology for my field research in such a way as to leave open a range of possibilities and directions for my research findings, responding to the contemporary and exploratory nature of the research. Rather than pre-determining the scope or limits of my research and my potential findings, I rather went into the field with an open set of research and interview questions, and some initial tentative theories based on my pilot research and literature review, all of which were adapted in an iterative process throughout my research phase to respond to new information and ideas. My research findings are neither representative (statistically) of CSAs in the field, nor are they exhaustive: in a broad, transnational, constantly evolving, and under-researched field, they complete parts of a broader picture and offer typological and theoretical frameworks which can be used by other researchers to conduct comparable research which further completes the broader picture. The parts of the picture which I have completed correspond to the scope offered by my research locations, interviewees (in part determined by access) and participant observation experiences.

In the following three chapters, I present my research findings. Each chapter answers one of my broad research questions. In chapter 6, I answer the question 'how does criminalisation operate?' and present my typology of criminalisation and repression which simultaneously constitutes my theoretical framework. This constitutes the longest chapter of my thesis and is divided into six sub-chapters for each of the categories in the typology. In each subchapter I analyse mechanisms and patterns identified in my field research which are revealing of the nature of repressive and criminalising dynamics in my research locations and beyond.

In chapter 7, I answer the question ‘why does criminalisation occur?’ and focus particularly on narratives which emerged from my interviews related to processes of politicisation and securitisation, and to CSA interactions with European security infrastructures and practices. In chapter 8, I answer the questions ‘what are the consequences of criminalisation?’ focusing particularly on CSA responses to criminalisation and dynamics of resistance. Throughout, I focus on the different dynamics inherent in the different methods of targeting and find that distinguishing methods related to the ‘criminal’ from other repressive dynamics was key to understanding the differences between research locations.

Chapter 6: How does criminalisation operate?

This chapter constitutes both my theoretical framework and my first findings chapter and answers the research question ‘how does criminalisation operate?’. I present my typological framework which responds to the gaps identified in the literature review in chapter three and in my analysis of theories of criminalisation in chapter four by providing a framework facilitating the differentiated analysis of different methods through which state actors target CSAs. By facilitating the analysis of methods of criminalisation, which particularly involve the mobilisation of mechanisms and narratives related to criminal law, as well as repressive tactics operating independently of logics of criminality, the framework brings together literature on the repression of civil society in more authoritarian states and criminalisation in the West.

This framework has been developed through an iterative process throughout my research phases. The first iteration constituted a tentative framework based on my pilot research findings presented in chapter two, which has since been reassessed and adapted at regular intervals according to new insights gained from the literature and responding to the findings of my principal field research phase in 2019. The framework constitutes both my theoretical framework through which I analyse my research findings, and a product of my research intended as an analytical tool which can be used by other researchers to examine dynamics of repression and criminalisation in different contexts.

In the following, I present each of the six categories in this typology: legislative change, judicial harassment, police harassment, administrative sanctions and bureaucratic techniques, labels and stigmas, and co-optation. I present key findings and case studies from my field research, identify patterns of how these techniques are used, analyse the opportunities offered by different methods, and the ways in which the categories relate and are used in conjunction with each other. The table below presents a basic overview of the key patterns and differences between research locations.

	Calais (France)	Lesvos (Greece)	SAR NGOs (Italy)
Legislative Change	Judicialisation: legislative change is difficult	Secondary Legislation: Ministerial Decisions create NGO Registries	Salvini's Security Decrees Dutch and German administrative legislation
Judicial Harassment	"Anything they can hold against us they will"	SAR NGOs are smugglers, spies and money-launderers	SAR NGOs are smugglers (and waste traffickers) But no convictions
Police Harassment	Systematic	Targeted: activists and observers	Coast Guard involved in administrative sanctions and judicial harassment
Administrative sanctions and bureaucratic techniques	Sporadic attempts	The Sword of Damocles and the systematic maintenance of bureaucratic grey areas	Transnational coordination: 'safety' certifications and flag- state registration
Labels and stigmas	Activists	Money	Smugglers
Co-optation (and co-operation, complementarity and confrontation)	Confrontation	Co-operation → Systematic Co-optation	Co-operation → Complementarity → Confrontation

Figure 1: The typological framework and an overview of key case studies

6.1 Legislative Change

This category corresponds most clearly with the traditional definition of criminalisation, i.e. ‘the action of turning an activity into a criminal offence by making it illegal’ or ‘the action of turning someone into a criminal by making their activities illegal’ (Oxford Dictionaries, 2022). A report by the Expert Council on NGO Law for the Council of Europe defines criminalisation as ‘the practice of state legislators to enact legislation which determines particular acts or omissions to be criminal law offences’ (Ferstman, 2019). As I will further expand upon in the next section on judicial harassment, pro-migrant CSAs in Europe have certainly been targeted using criminal law, most especially but not only through smuggling legislation. However, most of the new legislation which has been passed to target pro-migrant CSAs since the beginning of the ‘refugee crisis’ has been administrative or civil law, rather than criminal. This was especially the case in my principal research locations of France, Greece and Italy, so I also analyse case studies from Hungary, Germany and Belgium in this chapter where governments have attempted to pass (and in the case of Hungary successfully passed) primary legislation which criminalises pro-migrant CSA activities.

I argue that the scarceness and relative lack of success of criminal legislative change as a means of criminalisation can be partially explained as a symptom of judicialisation which poses barriers, both legal and based on the power of liberal-democratic norms in the West, to the passing of legislation which would clearly violate fundamental human rights, for example by explicitly making helping migrants a criminal act. Such norms are increasingly being tested, however, within a context of rising populism, authoritarian tactics, and norm-breaking throughout the West in recent years, in which leaders celebrating their status as political outsiders or opponents of liberal-democratic norms and institutions have broken both formal and informal rules with relative impunity. Both Hungary’s Orbán and Italy’s Salvini constitute such far-right populist leaders who have introduced legislation targeting pro-migrant CSAs, through criminal law in the case of Orbán and through administrative law passed as an emergency security decree in the case of Salvini. These case studies suggest that we should not take for granted that liberal-democratic systems and norms in place are sufficient to prevent the enactment of norm-violating legislation within the context of the contemporary political landscape.

Orbán’s legislation which explicitly criminalises helping asylum seekers, however, represents an outlier case: the majority of legislative changes which have been passed have been administrative in nature and by states such as Greece, Germany and the Netherlands. These changes have allowed state actors to block or constrain the work of CSAs without directly making

CSA activities into criminal offences, and have generally done so to far less international, institutional, and media attention than the legislations passed by Salvini and Orbán. State actors thereby use the introduction of administrative legislation, often by ministerial decrees which do not need to be ratified by parliament, to target CSAs in more subtle and insidious ways which raise less alarm and allow state actors to maintain the appearance of commitment to liberal-democratic norms such as civil society freedoms. Focusing predominantly on criminal law and notions of criminality thereby risks ignoring or underemphasising other crucial state tactics against CSAs in analyses, including administrative legislative change as well as the other categories in this typology of criminalisation and repression.

Judicialisation and legislative change

The concept of judicialisation posits that, unlike more authoritarian states, liberal-democratic states face greater 'limitation[s] on state discretion' regarding practices, policies and legislation which they might wish to introduce (Gibney, 2003: 35). This is because 'in functionally differentiated societies, legal systems are autonomous and operate according to system-specific codes and principles, which are different from those that govern the political system' (Joppke, 2001: 359). These legal systems should restrict the abilities of governments to act with impunity, particularly as processes of judicialisation have resulted in the expansion of both rights and judicial powers in liberal-democratic states. Domestically, governments are often bound by their constitutions and decisions made by courts.

Increasingly, however, 'the judicialization of public policy-making has also proliferated at the international level' with the 'establishment of numerous transnational courts and quasijudicial tribunals, panels, and commissions dealing with human rights', for example (Hirschl, 2011: 256). This is especially the case for Member States of the EU, in which the judgements of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECHR) in Strasbourg 'carry great symbolic weight and have forced many countries to incorporate transnational legal standards into their domestic legal system' (Hirschl, 2011: 256). Indeed, within the EU, 'civil society space is protected via freedom of expression, freedom of assembly and freedom of association provisions' under regional and international regulatory frameworks including the International Covenant on Civil and Political Rights (OHCHR), the European Convention on Human Rights, and the EU Charter of Fundamental Rights (CFR) (Vosyliute and Luk, 2020: 15).

EU Member States should therefore be bound by both internal and external legal frameworks which restrict their ability to pass more oppressive legislation. Hungary's populist and anti-migrant prime minister Viktor Orbán, however, has put these concepts to the test: are European institutions, legal frameworks, and liberal-democratic norms sufficient to prevent the introduction of laws criminalising civil society? In June 2018, Hungary passed the Stop Soros law which specifically targeted pro-migrant CSAs: 'under the new law, anyone could be jailed for working for or with non-governmental organisations that are involved in helping or campaigning for asylum seekers' (BBC, 2018a). By criminalising the act of helping 'an illegal immigrant claim asylum', the legislation 'restricts the ability of [NGOs] to act in asylum cases', while also violating the rights of asylum-seekers to information and legal support (Reuters, 2018b). The 'vaguely worded amendment to Hungary's Criminal Code' further 'criminalized a range of legitimate activities related to migration' including: "border monitoring", "preparation or distribution of information materials", and "building or operating a network in support of facilitating illegal immigration" (Amnesty International, 2021c). With his right-wing party Fidesz holding a two-thirds majority, Orbán's party was able to pass the law, amending the criminal code to make helping migrants claim asylum into a criminal offence (Ferstman, 2019; Reuters, 2018b). While the move certainly violated liberal-democratic norms, it had public support, based on Orbán's re-election campaign which attacked 'the US billionaire George Soros and the liberal NGOs he supports', based on the claim that 'Soros has encouraged mass immigration in order to undermine Europe', an antisemitic ethnic replacement conspiracy theory, which I write more about in the section on discursive criminalisation (Reuters, 2018b).

So what of judicialisation? The Stop Soros law undoubtedly violates EU and international laws and, accordingly, one month after the Stop Soros law was passed, the EU Commission 'sent a letter of formal notice to Hungary' and, following an 'unsatisfactory response, the Commission followed-up with a reasoned opinion in January 2019' which also failed to have an effect, leading the Commission to 'refer Hungary to the Court of Justice of the EU' (CJEU) in July 2019, over a year after the law was passed (European Commission, 2019). In November 2021, more than three years after the law was passed, the CJEU ruled that Hungary indeed broke EU law and should therefore amend or repeal it; if the government 'doesn't comply, the Commission can ask the court to impose financial penalties' (Euronews, 2021). A government spokesperson responded by saying that 'Budapest accepts the ruling' but that 'Hungary's position on migration remains unchanged [...] migration to Europe must be stopped', and that the government 'reserve[s] the right to take action against the activities of foreign-funded NGOs, including those

funded by George Soros, seeking to gain political influence and interference or even to promote migration' (Euronews, 2021).

This unpromising statement is further compounded by the fate of Hungary's LexNGO, a 2017 law imposing stigmatising and restrictive tax and registration rules on NGOs receiving funding from abroad. While Hungary announced it would repeal the LexNGO in 2021 after the European Commission began infringement proceedings, the 'Hungarian government has already submitted a proposal to replace LexNGO with another bill which also threatens the independence and work of civil society' through selective and discriminatory auditing procedures (Amnesty International, 2021b). As of March 2022, four months after the CJEU's ruling on the Stop Soros law, no further action appears to have been taken on either side. The process, however, reveals that while there are certainly measures in place to challenge and penalise the introduction of oppressive legislation, these measures are long-winded and potentially ineffective, if a government can simply replace repealed legislation with comparable laws. Judicialisation, in the form of EU and international norms and legislation, does not appear to be a hard and fast barrier to oppressive legislative change, providing that, as Orbán does, a government has sufficient domestic support and is not afraid to be perceived as authoritarian or norm-violating from the outside. Essentially, limits offered by judicialisation, at least within the supranational context of the EU, are themselves limited by how powerful the norms are. Recent years have shown the willingness and apparent ability of populist leaders of Western countries to discard norms and break written and unwritten rules with relative impunity.

And what of the national context? Indeed, while narratives of judicialisation have tendentially been one-directional, evidence from Hungary and Poland, obviously younger democracies than Western EU states, suggest that 'populism disrupts the judicialization teleology' (Petrov, 2021: 4). Almost as soon as Orbán's Fidesz party came to power in 2010, it targeted the Hungarian Constitutional Court (HCC), working to 'gradually weaken it and essentially 'tame' its veto capacity', while enabling the government to pack the court with its own candidates (Petrov, 2021: 6). In their first three years in power, Fidesz were able to select 9 HCC judges. It is no great wonder, then, that when Amnesty International challenged the constitutionality of the Stop Soros law in court, the HCC 'dismissed the complaint by not finding the legislation in breach of Hungary's constitution' (Amnesty International, 2021b).

Within other contexts, however, governments have failed to pass legislation which would have targeted pro-migrant CSA activities. In Belgium, a legislative amendment was proposed by the anti-migrant and populist politician Theo Francken, the Secretary of State for Asylum Policy and

Migration, which would allow ‘the police to enter private households to search for migrants with expulsion orders without the proper house search order issued by an independent judge’ (Carrera *et al.*, 2018: 16). This bill especially targeted the large solidarity movement of private citizens offering shelter to homeless migrants at night which emerged in Brussels, while painting the movement as one, in the words of Francken, of ‘people who offer a roof to ‘illegals’’, a criminal offence (Carrera *et al.*, 2018: 66). Meanwhile in Germany, the Interior Minister Horst Seehofer proposed measures, as part of a deportation bill, which criminalised the sharing of information about planned deportations to Afghanistan by classifying them as state secrets, punishable by up to three years in prison (Prantl, 2019). This would have especially criminalised civil society groups working with migrants for sharing vital information with clients, and anti-deportation activists for organising demonstrations against planned deportations.

In both cases, following significant criticisms from CSAs and the judiciary, the Ministers responsible stepped the plans back. In Germany, following extensive criticism from CSAs as well as the migration expert of the conservative government’s centre-left coalition partner, the bill was ‘softened’ so that the primary perpetrators of the crime are state officials and bureaucrats, rather than NGOs and other CSAs (Welt, 2019). These state officials, however, could still receive a prison sentence of up to 5 years for sharing such ‘secrets’, while accomplices, such as NGO employees and volunteers helping asylum-seekers, could still be sanctioned for crimes of accessory or incitement (Pro Asyl, 2019). This new ‘softer’ version of the bill was consequently still subject to criticism by the human rights commissioner of the Council of Europe, to no avail (von Salzen and Dernbach, 2019). Similarly, in Belgium the bill was condemned by, among others, a magistrate who addressed the federal parliament warning that ‘one day we will wake up in a country where fundamental rights no longer exist’ (Nielsen, 2018). Such ‘negative resonance’ resulted in ‘half of the *communes* (Belgium local authorities) to vote for a motion to prevent the advancement of this legislation’ (Carrera *et al.*, 2018: 66). Consequently negotiations over the bill were frozen indefinitely, with the Minister of Justice announcing to the Flemish press: ‘in French-speaking Belgium, the law seems inaudible or taboo’ while a source close to the Prime Minister saying that ‘it is useless [...] we have lost the battle of communication’ (Crivellaro, 2018, translated from French).

In both the German and Belgian case, then, the government were unable to pass legislation which targeted the activities of pro-migrant CSAs. Exactly why Seehofer softened his bill is unclear, but in the Belgian case, the intervention of members of the judiciary resulted in a national uproar against the bill which made attempting to do so politically unviable. Furthermore, in both cases the governments in questions were coalition governments, and did

not, as in the Hungarian case, enjoy a comfortable majority as a political party which may well have resulted in the bills in question failing to pass even if they had not been withdrawn. These cases demonstrate that it is certainly not simple to pass legislation which limits the freedom of civil society in liberal-democratic states, even though the impulse in government is certainly there.

Does judicialisation therefore prevent oppressive legislation being passed in the more established and older democracies of Western Europe? While it is true that the last decade has seen increasing attacks on judicial independence particularly in Central and Eastern Europe, especially in Poland, Hungary and the Czech-Republic, the UK and US governments have also been guilty of aiming to constrain judicial independence and undermining public trust in the judiciary (Moliterno and Čuroš, 2021; Petrov, 2021). In the UK, the government attempted to pass a bill which would curb judicial reviews of the actions of public bodies and that would 'prevent judicial review of controversial immigration cases' (The Economist, 2021). Further, the government is planning to replace the Human Rights Act, the act which converted the European Convention on Human Rights into domestic law, in an attempt to 'distance the UK from European ideas of human rights' and any involvement of the European Court of Justice (Fenwick, 2021). One aim of the new bill is to prevent 'foreign criminals' from 'exploiting human rights claims' to 'resist deportations' (Fenwick, 2021) or, in the words of a national pro-government British newspaper, scrapping the Human Rights Act, 'one of the main obstacles to tackling the migrant crisis' will 'help curb the number of costly judicial reviews brought by leftwing activist lawyers' (Maddox, 2021).

These developments challenge teleological notions of judicialisation: while governments certainly remain constrained by national constitutions, judiciaries, and legislation, and by EU and international laws and norms, a pattern has clearly emerged over the last decade of democratic backsliding in which populist- and authoritarian-leaning governments have attacked and undermined judicial independence and have rejected supranational laws and norms. The case of Hungary, however, makes it clear that even as populist and authoritarian movements undermine norms and standards which have increasingly been taken for granted as a new naturalised normal, Member States wishing to pass oppressive primary legislation must be prepared for a fight.

Salvini's Security Decrees

One method of avoiding such a fight is through the use of powers reserved for emergencies, enabling governments to bypass ordinary legislative procedures and accompanying checks and balances which should hinder the passing of unconstitutional legislation. Alongside Hungary's Stop Soros law, Salvini's Security Decrees, which impose fines on SAR NGOs who have rescued migrants and includes provisions allowing them to be blocked from ports, are most well-known and have been most covered in the press as an example of the criminalisation of pro-migrant CSAs in Europe. This new legislation introduced by Matteo Salvini, the now former Interior Minister of Italy, a far-right populist politician who built his career on anti-migrant sentiment and the vilification of SAR NGOs and who joins Orbán in the propagation of ethnic replacement conspiracy theories, imposes administrative rather than criminal sanctions on CSA activities – in Salvini's case, on the search and rescue activities by NGOs.

However, unlike other uses of administrative legislation (discussed below), which target CSAs in more subtle and quiet ways outside of the public eye, Salvini issued ministerial decrees, legal instruments reserved by the Italian Constitution for 'extraordinary cases of necessity and of urgency', allowing him to bypass normal legislative process (Corsi, 2019: 1). The decree is 'an emergency government measure, which is immediately in force for up to 90 days' and which then expires 'unless the Parliament converts it into law' (ECNL, 2019). In 2018 and 2019, the then Interior Minister Salvini passed two 'Security Decrees', the first targeting the rights of asylum seekers, and the second (Law Decree 53/2019) increasing 'penalties related to protests' and especially targeting SAR NGOs (ECNL, 2019). The second decree was transposed into Law 77/2019 in August 2019 following a vote of confidence by the parliament in July 2019. This further allowed the government to bypass normal legislative procedures: 'By calling a confidence vote on the decree, the government forced legislation through the house, truncating debate and sweeping away opposition amendments' (Reuters, 2019). It is clear, however, that the use of these extraordinary measures did not, in fact, reflect an emergency situation regarding irregular entry into Italy: 'asylum and refugees are a relatively small sub-section of total immigration to Italy and actually, by 2019, these flows had returned to historically low levels' (Geddes and Pettrachin, 2020: 228).

The law granted powers to the 'Ministries of the Interiors, Defence and Transport, who will now jointly be able to restrict or prohibit the entry, transit or docking of ships in the territorial sea, except for military or government non-commercial vessels' in cases where the crime of facilitating illegal immigration is suspected (ECNL, 2019). Any vessels violating such a prohibition are subject to administrative fines of 150,000 to 1 million euros (on top of the existing criminal

sanctions against the facilitation of illegal immigration), and are liable to be confiscated by the authorities on any repeat violation (ECNL, 2019). As soon as the ministerial decree was passed in June 2019, it was implemented against the *Sea-Watch 3* in a conflict between the NGO and the government which captured global attention and made the vessel's captain, Carola Rackete, a household name (Povoledo, 2019b). Two days before the decree was passed, the vessel had rescued 53 migrants off the coast of Libya and Rackete had refused to return them to Libya, on the basis that this would be violating international law, and instead headed towards Lampedusa where the vessel was denied entry. Following a two-week stand-off and citing a state of emergency on board the ship, Rackete decided to break the blockade and dock at the port, colliding with a border patrol vessel on the way. On arrival, she was arrested, but released by a judge days later (Geddes and Pettrachin, 2020; Povoledo, 2019a). In the next two months, four more NGO ships were prohibited from entering Italian waters. In three of those cases, 'the ships were authorized to disembark after waiting for an average of 14 days at sea' and in the other, 'the ship disembarked 356 migrants in Malta after 13 days' (Cusumano and Villa, 2020: 9). In all of those cases, the ship was seized before being released again, in several cases not until 6 months later (Cusumano and Villa, 2020: 11). In September 2019, two more ships were seized and presented with a 300,000 euro fine based on the provisions passed in Salvini's security decree (Cusumano and Villa, 2020: 11).

The new security decree law significantly increased the rate at which ships were confiscated, increased the maximum fine imposed on vessels from 50,000 to 1 million euros, and created legal provisions enabling the blocking of entry to Italian ports. However, while the passing of the decree caused an outcry about the criminalisation of NGOs and search and rescue activities, I would argue that the decree and the legislative change, in practice, did not contribute a great deal to the criminalisation and repression of SAR NGOs in Italy and the Mediterranean. First, if one were to take the term 'criminalisation' to refer only to criminal law and the designation of criminal acts, the security decrees merely imposed administrative sanctions while the actual 'crime' involved continued to be that of the pre-existing crime of facilitating irregular entry, which I will discuss in the following section on legislative harassment. Second, Salvini had already been blocking NGO ships from entering ports and, through charges related to facilitating entry, i.e. smuggling, ships were already being confiscated for extended periods of time prior to the introduction of the law. This was highlighted in an interview I conducted in Sicily with the co-founder of an SAR NGO in August 2019:

'So now we have three boats, two that are taken by the judge [...] They did three missions, and so we had 6 people, 2 for each mission, that are under trial for mass smuggling, for not obeying the order

of a military boat, and other things that I don't remember, but they are at least of 20 years of prison. Our boat was taken by the judge and now we have a fine for just the last operation of €64,000' (Interview, S1R)

The NGO's principal ship, the *Mare Jonio*, was confiscated twice prior to the issuing of the security decree, and twice again after, indicating that the new law itself is not a requirement for the seizing of vessels (Cusumano and Villa, 2020: 11). Further, the most serious threat facing the NGO are the charges for human smuggling which are unrelated to the provisions in the new law. Salvini's security decree merely created a further legislative framework which provides additional legal provisions with which to target and sanction SAR NGOs. Rather than fundamentally enabling, or causing, the criminalisation of SAR NGOs, the new legislation appears to have more of a legitimising function: 'They decided that we are criminals and so they are trying to approve law that makes us criminals. Of course, it's very hard for them to achieve this aim because we have a constitution and we have international law saying that rescuing boats in distress is something that you must do' (Interview, S1R).

The new legislation escalated the rate at which NGO vessels were (mostly temporarily) blocked from entry and confiscated in the months following the issuing of the decree. However, as SAR NGOs act according to international maritime laws, Italian judges and courts have consistently ruled in their favour, ordering the release of confiscated vessels. The *Mare Jonio*, for example, was released in February 2020 in what was described as 'another defeat for Salvini and his security decrees' by a Democratic Party MP (ANSA, 2020). Further, 'some public prosecutors who considered it illegal to leave migrants at sea for too long arguably enacted a strategy of seizing ships in order to facilitate the disembarkation of those on board', releasing the ships in question soon after, thereby thwarting Salvini's aim of stopping the arrival of migrants via SAR NGOs (Cusumano and Villa, 2020: 11). The judicial system in Italy was thereby able to partially ameliorate the effects of the criminalising legislation introduced by Salvini, demonstrating how judicial powers can challenge oppressive governments.

Furthermore, as I analyse in the section on administrative sanctions and bureaucratic harassment, from May 2020 Italian state actors started using a different tactic, related to technical ship safety regulations, to confiscate NGO boats and put them under administrative detention. This shift in tactic came after the new Italian government formed based on a 'pact of "discontinuity" with the previous government, especially in the field of migration policies' signalling the end of 'the season of Salvini's "closed ports"'; and in December 2020 Italy's Chamber of Deputies voted to scrap Salvini's Security Decrees (Merli, 2021; Lania, 2020). In practice, this merely meant the use of different legislation to achieve the same ends. Clearly,

the introduction of new legislation targeting the work of SAR NGOs was not a major required component in the campaign against SAR NGOs in Italy. Accordingly, several Italian interviewees were more concerned about the message sent by the new legislation: 'I think that the problem is not the law [...] the problem is that the people are beginning to change their opinion about migration, that the migrants are criminal, the migrants are terrorists, we cannot have a lots of migrants in Italy' (Interview, R2R). Another interviewee pointed out that SAR NGOs are protected by the constitution, meaning that 'it's not like you will 100% have to pay [the fine], because if you go to the court and you have a good lawyer [you will be acquitted] [...] the thing is that [the law] is intimidating, because if like a fisherman that has his little boat in Sicily, and he sees a migrant that is drowning in the sea, he will think about it and say 'Ok, shit, what do I do? If I save him, what happens to my boat?'' (Interview, R3R). Rather than preventing SAR NGOs from conducting their work, the law further served to stigmatise migrants (and NGOs), and to make people with fewer resources than NGOs more afraid of helping migrants.

Ministerial Decisions and secondary and administrative legislation

One of the biggest issues raised by interviewees in Greece in both my pilot and primary research phases was the issue of registration with the Ministry of Migration: in both 2018 and 2019 I interviewed CSAs who had been trying to register for months and even years but felt they were being directed to jump through a series of never ending and increasingly impossible bureaucratic hoops, often leaving them in a bureaucratic and legal grey area for extended periods of time, a phenomenon which I analyse more closely in the section on administrative sanctions and bureaucratic techniques.

This Kafkaesque registration process is based on several Ministerial Decisions which were passed requiring NGOs working with migrants to register with the Ministry of Migration. The measure is therefore already inherently discriminatory: in the absence of any existing national NGO register, one has been created which applies only to those wishing to work with migrants. Ministerial Decisions are secondary legislation based on laws which set out general goals. Parliament delegates legislative power to the executive branch, enabling government ministers to issue regulatory and technical legislation effective immediately and not necessitating parliamentary debate and approval (Panezi, 2017). Several ministerial decisions have been passed since 2016 requiring NGOs 'responding to a humanitarian 'crisis' and assisting asylum seekers to register with local authorities', including one in 2018 which established the Ministry of Migration's NGO registry (Vosyliute and Luk, 2020: 55). The most significant of these was

preceded, in November 2019, with the Greek Parliament passing ‘a new law [Law No. 4636/19] that has enabled the Ministry of Migration and Asylum to establish a special ‘transparency’ registry for NGOs working in the field of international protection, migration and social inclusion’ (Vosyliute and Luk, 2020: 55). Consequently, in February 2020 ‘Greek law introduced many additional requirements to register, and in April 2020 a new ministerial decision (3063/2020) was passed creating registries, ‘one for legal ‘persons’ (NGOs, associations) and another for individuals working with them (staff and volunteers)’ (Vosyliute and Luk, 2020: 56).

The government thereby has a significant degree of discretionary power in the actual execution and details of the new legislation which, on the surface, may appear perfectly innocuous: several of my Greek interviewees who had experienced the ‘chaos’ of NGOs descending on Lesvos in 2015 felt that the creation of a register of CSAs involved in ameliorating the ‘refugee crisis’ was a perfectly understandable move by the government (Interviews, L16R and L21V). However, the specific requirements laid out in the Ministerial Decisions made registration essentially impossible for CSAs who had operated for less than two years and for small organisations with limited resources due to ‘the cost and complexity’ of the documents they needed to produce (Expert Council on NGO Law, 2020a: 19). Furthermore, due to the ‘vague, highly discretionary and open-ended criteria decided upon by decision-makers who lack independence from government’, the new regulations facilitated the ‘arbitrary rejection of both registration and certification requests by NGOs and individual members’ (Expert Council on NGO Law, 2020a: 19). This corresponded to an interview I conducted with the person at the Ministry of Migration Policy who appeared to be solely responsible for implementing a previous Ministerial Decision on NGO registration and who described a rather discretionary approach to registration decision making, based partially on how cooperative the NGOs in question appeared to be:

‘Look, some NGOs when I have contact with them in order to tell them that you have to send this, this, this, they are not cooperating in a manner I can give them access, that's why. Some of them are usually complaining that you need this, this, I can't send it now, I will send it to you the next day, or next week, or next month. Some of the NGOs are cooperating in a manner that I can verify that OK, move on, and let's issue the decision to register and to give them access at the register code’ (Interview, A4S).

According to a document I retrieved from the Ministry of Migration Policy website in March 2020, of 86 successfully registered NGOs, only 13 were foreign (Ministry of Migration Policy, 2020). The new Ministerial Decision of 2020, however, further imposed a strict two-month deadline within which organisations were required to register, at the end of which 22 migrant support groups were told to stop their operations for failing to register in time for the ‘first

approval phase' (Wallis, 2020). 70 organisations made it through to a second phase of evaluation, in which, after having registered, they will 'have their budgets scrutinized and their staff checked for criminal records' (Wallis, 2020). By May 2021 there were 78 rejected applications (RSA, 2021). In December 2021, 19 CSAs in Greece published a joint statement expressing concern regarding the denial of registration to the organisation Refugee Support Aegean, on the grounds that its activities 'in support of persons under deportation', i.e. the provision of legal aid to asylum-seekers facing deportation, are 'contrary to Greek legislation' – a sentiment not far off the Hungarian approach (Refugee Legal Support, 2021).

These provisions have been met with criticisms from human rights groups and international bodies, such as the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe who found that the new regulations breached several articles of the European Convention of Human Rights, relating especially to the freedom of association and the protection of civil society space, and called for law to be 'substantially revised' (Expert Council on NGO Law, 2020a: 23). The new regulations were revised through a new Ministerial Decision in September 2020 (10616/2020) which, however, imposes 'even stricter and more intrusive rules on the registration and certification of NGOs and their members, and will further impede their work' (Expert Council on NGO Law, 2020b: 3).

A further Ministerial Decision (23/13532) was passed in December 2020, introducing a new 'confidentiality law'. The law 'prevents all workers, including volunteers and government civil servants, from publicly sharing any information related to the operations or residents of refugee camps in the country, also after they have stopped working there' (Euro-Med Monitor, 2020). Civil society organisations working in camps will be unable to share information about 'abuse, neglect or deprivation' they observe (Lindsay, 2020). This essentially forbids a key subsection of civil society work, especially of critical civil society who engage in watchdog and advocacy activities or publish reports about the situation in Greece, from conducting their core activities. However, how the new law will be implemented, and what the consequences for violation will be, remains unclear at the time of writing. This part of the law, however, is embedded deep within the very detailed Ministerial Decision entitled 'General Regulation for the Operation of Temporary Reception and Accommodation Facilities for third countries nationals or stateless persons, operating under the care of the Reception and Identification Service' (Greek Council for Refugees, 2021). The government thereby passed a highly repressive law through a piece of secondary legislation setting out 'general regulations' for the operation of camps in Greece.

In this way, legislation has been passed in Greece which represses the work of pro-migrant CSAs without requiring the approval of parliament (who would have approved a much vaguer piece of primary legislation) and while remaining in the realm of administrative and regulatory legislation, rather than criminal law. Similar tactics have also been used in Germany and the Netherlands: in both cases, ministries simply changed their administrative legislations relating to ship registrations and safety certificates, an act not requiring the approval of parliament, in order to block SAR NGOs registered under their flags and prevent them from leaving ports in order to conduct search and rescue missions.

I explain these developments in Germany and the Netherlands in the section on administrative sanctions and bureaucratic techniques. It was an unexpected finding of my primary field research phase, that the category of 'legislative change' was more closely connected to that of administrative sanctions and bureaucratic techniques than to the category of 'judicial harassment'. Judicialisation, the role of international laws, institutions and norms, and democratic checks and balances including parliamentary oversight make the introduction of repressive legislation rendering targeted groups or their activities criminal no easy feat to achieve. As Hungary demonstrates, it is possible with a majority in parliament and the deliberate erosion of liberal-democratic institutions, such as an independent judiciary, although even then Hungary will likely face financial sanctions from the European Commission via the CJEU.

So, do state actors resort to administrative tactics and legislative changes because judicialisation makes it too difficult to just make pro-migrant CSAs criminal through the passing of new legislation? This might be the case with actors like Salvini, for example, who share Orbán's authoritarian leanings and rhetoric. However, other governments, such as Merkel's German government which changed its ship legislation to block SAR NGOs in 2019 while publicly criticising Salvini for his approach, might wish to avoid appearing like they are criminalising or repressing civil society actors (Tondo and Le Blond, 2019). Legislative changes which do not directly criminalise, then, have their own advantages and strike a balance, allowing state actors to block the work of CSAs in more subtle and insidious ways which include an element of deniability.

This section already demonstrates that the most basic definition of 'criminalisation', i.e. to render an activity criminal through legislative change, does not reflect what is occurring within the context of pro-migrant civil society in Europe and is perhaps increasingly not applicable in an increasingly judicialized world. A basic understanding of the term criminalisation, then, is not particularly useful for an understanding of the mechanisms of criminalisation and repression of

pro-migrant CSAs in Europe. Rather, as this typology presents, a whole range of tactics, both those associated and not associated with criminal legal frameworks, are used to target and block their work.

6.2 Judicial Harassment

Judicial harassment refers to the use of the law, especially through criminal investigations, charges and prosecutions, to target pro-migrant CSAs. Lacey differentiates between ‘formal criminalisation’, constituting ‘legislation, judicial decisions, [and] international treaties’, and ‘substantive criminalisation’, the ‘actual implementation of formal norms’ (2009: 943). Within this conceptualisation, then, legislative change constitutes ‘formal criminalisation’ while judicial harassment constitutes ‘substantive criminalisation’.

However, as I argue throughout this section, judicial harassment within this case study constitutes more than the simple implementation of laws. Such an interpretation tends to overemphasise the role of the legislation used rather than the repressive aim of its implementation. Much of the literature on the criminalisation of pro-migrant CSAs in Europe, for example, particularly emphasises the role played by the EU Facilitation Directive, the EU legislative framework for tackling smuggling, which can overshadow the fact of targeted implementation with the aim of ending civil society engagement with migrants (Carrera *et al.*, 2018; Carrera, Allsopp and Vosyliute, 2018; Fekete, Webber and Edmond-Pettitt, 2017; Schack, 2020).

This section is divided into three parts. In the first two sections, I argue that, despite the prevalence of its use and the emphasis placed on it in the literature, smuggling legislation is just one tactic within the legal toolkit used to target pro-migrant CSAs. While the legislation itself could certainly be improved at the EU level, the main problem does not lie with faulty legislation but with the evident will of prosecutors throughout Europe to (mis)use a diverse set of legislation in order to target the activities of pro-migrant CSAs. In the third section I argue that while, due in part to judicialisation and the continued (albeit under threat) rule of law in my research locations, judicial harassment often fails in terms of successful prosecutions. Nevertheless, judicial harassment still effectively halts or ends the activities of targeted, and associated, CSAs and, despite the lack of criminal convictions, spreads the narrative that helping migrants is a criminal act.

Humanitarian Smugglers?

The use of smuggling charges against pro-migrant CSAs already constituted a major part of my pilot research, in which I analysed the case against the SAR NGO Jugend Rettet (whose crew will be going to trial as was finally announced in 2021, four years after the confiscation of their vessel

in 2017); the prosecution and fining of almost 300 people in Denmark for human smuggling; and the prosecution for smuggling and eventual acquittal of five Danish and Spanish volunteers on Lesbos after they had rescued migrants in distress. In the pilot research chapter I also outlined the legal source of the smuggling legislation which is used in these cases, the 2002 EU Facilitation Directive, which lays out the crimes of facilitating the entry and facilitating the stay of irregular migrants but which, in a defection from UN standards, does not require prosecutors to prove the existence of a material benefit for an act to constitute smuggling, and which includes a humanitarian exemption which is only optional. The vague and definitionally weak directive means that national implementations into smuggling law facilitates the prosecution of humanitarian actors for smuggling offences (Fekete, Webber, and Edmond-Pettitt, 2017; Carrera *et al.*, 2018; Schack, 2020).

Smuggling-related judicial harassment was also a prominent theme during my principal field research phase and was brought up as a prime example of the criminalisation of CSAs by the majority of interviewees, predominantly, perhaps, because such cases are particularly prominent in the media and because they correspond most closely to notions conjured by the term 'criminalisation'. Indeed, there are good reasons for the salience of the smuggling-related cases in interviews, literature and the media. SAR NGOs have been systematically targeted in this way: in Italy, between April 2017 and September 2019, there had been at least 12 criminal investigations against five NGOs (Sea-Watch, Open Arms, Jugend Rettet, Mediterranea and Mission Lifeline) for aiding and abetting illegal immigration, the majority of which were still under investigation at the time of writing (Cusumano and Villa, 2020: 11). Judicial harassment based on smuggling charges has increased 'exponentially' since 2015, despite falling numbers of migrants entering the EU irregularly (Vosyliute and Carmine, 2019: 23). One report from December 2019 found that (including SAR actors) there have been at least 60 cases across 13 Member States involving at least 171 individuals engaging in solidarity with migrants (in some cases own family members) who have been investigated or prosecuted for smuggling related crimes since 2015: including 53 in Greece, 39 in Italy, 33 in France, 12 in Belgium, ten in Denmark, and seven in Germany (ReSOMA, 2019). By the first quarter of 2019, 17 cases had led to the conviction of 30 citizens 'acting on humanitarian or family reunification purposes in six Member States', the majority of which occurred in France where 19 people had been convicted, including 7 people who had joined a protest across a border, a French citizen who was sentenced to seven years for smuggling his Syrian family out of Greece, and an academic who had driven an Eritrean family to hospital after he had found them near the French/Italian border (Vosyliute and Carmine, 2019: 27- 29).

The use of smuggling legislation to target activists, members of NGOs and individuals helping their families is undoubtedly a serious problem that should not be underestimated or dismissed. However, I argue that much of the analyses of the criminalisation of pro-migrant CSAs not only overemphasise the role of smuggling accusations, but also place disproportional importance on the role of the Facilitation Directive. A reformation of the EU Facilitation Directive is held up as a key way in which to prevent the criminalisation of pro-migrant CSAs: it was reiterated by interviewees, it is one of the key conclusions of a number of reports (Carrera *et al.*, 2018; Fekete, Webber, and Edmond-Pettitt, 2017; Vosyliute and Carmine, 2019) and it has been the subject of several NGO led campaigns and a passed European Parliament motion calling for Member States to implement the humanitarian exemption and for the European Commission to provide clearer guidelines on implementation (Schack, 2020).

I argue, however, that this emphasis is misleading. It implies that criminalisation is the result of the unbiased implementation of a faulty law, rather than a deliberate attempt to attack the activities of pro-migrant CSAs, along the lines of techniques used in more authoritarian states:

‘Often, it is not just that the laws and regulations put in place are problematic in themselves. It is also their arbitrary application that is. When civil society organisations are considered too critical or too much of a nuisance, states have been found to apply a range of measures under the guise of legality of existing rules, but which in effect descend into the grey zone between legal and extra-legal action [...] This practice is made possible by deliberately vague or broad wording of the applicable laws, offering the authorities a lot of leeway’ (Buyse, 2018: 971)

The Facilitation Directive and its national implementations thereby legitimise attacks on CSAs, and create a legal space in which this is possible, but they do not cause the targeting. Case studies from different research locations make this clear.

In France, for example, the case of Cedric Herrou made global headlines: a local farmer near the French/Italian border, who helped migrants who had made their way across the border by offering food and shelter, was arrested and charged with the facilitation of entry into French territory and was convicted and fined (Peltier and Pérez-Peña, 2018). In an appeal, however, the French Constitutional Council found that the prosecution of people helping migrants for humanitarian purposes was inconsistent with the constitutional principle of *fraternité* and that therefore people helping migrants in France for humanitarian reasons should not be prosecuted for providing help (Carrera *et al.*, 2018: 41). Despite this ruling, however, the ‘facilitation of entry’, i.e. aiding migrants to cross the border is still an offence, even without ‘material benefit’, such as payment, a vital feature of the UN definition of smuggling. Furthermore, when legislative

changes were made to respond the Constitutional Council's ruling, other changes were also made which had the effect of actually reducing protections for civil society: while the old version 'contained a list of activities to be exempted from resulting in criminal liability', including the provision of food, housing services and medical care, the new version reduced this to 'all other help given for *exclusive* humanitarian purpose' (Carrera *et al.*, 2018: 42). The inclusion of the word 'exclusive' is significant, as one of my interviewees explained to me:

'because now they can say 'OK there is a *contrepartie* [compensation, i.e. material gain], it's because you're activists'. So the fact of being activist can be seen as a *contrepartie*, it's like 'money, no - but you're an activist so you get some reward for your cause' (Interview, P4R).

In the French case, then, legislative changes based on the Constitutional Council's decision in favour of migrant solidarity were done in such away as to create further loopholes which could be used to prosecute pro-migrant CSAs: simply being an activist engaging in activism constitutes a motive not exclusively humanitarian and which may therefore be considered prosecutable gain. The interviewee, involved in advocating against the 'crime of solidarity' in France, felt that changing the Facilitation Directive would certainly be helpful, but it would not change the essence of the problems with judicial harassment:

'We think that one solution, because we can't really get the parliamentarians to move on the law, would be to have European law saying 'you can't prosecute people having no *contrepartie*', then it would be very great, at least for us, because France would be obliged to change the law and could not prosecute people for that, so it would be quite important. But the rest is politics, so as long as the authorities want to break the solidarity movements and keep a strong policy with closed borders and deportations, I think we will keep mobilising for trials' (Interview, P4R).

In Greece, the authorities certainly seem to have the will to 'break the solidarity movements' related to search and rescue and boat-spotting activities on the shores of Lesbos in particular. Three separate cases of judicial harassment have occurred. First, the 2016 case from my pilot research, regarding 5 volunteers charged with, and eventually acquitted of, smuggling. Second, in August 2018, Sarah Mardini and Sean Binder, two foreign volunteers working for the NGO Emergency Response Centre International (ERCI) who conducted search and rescue and other activities on Lesbos, were arrested and charged not only for people smuggling but also espionage, forgery, unlawfully intercepting radio frequencies, fraud, money laundering, and membership of a criminal organisation (Smith, 2018a; 2021). They were imprisoned in pre-trial detention for 100 days before being released. The case is ongoing, and if convicted, they could face up to 25 years in prison (Amnesty International, 2019a).

According to a lawyer I interviewed who is representing two other volunteers being investigated in association with the case, the case involves a total of 37 individuals: eight being investigated as leaders of a criminal organisation, 22 as members of the criminal organisation, and seven as accomplices (Interview, L10L). These included at least three people I interviewed in association with other work they were doing on the island and who had also been engaged in boat-spotting activities on the shore of Lesvos and are included in the case, like many others, on the basis of having been in the same WhatsApp group as ERCI volunteers (Interview, L10L). According to interviews I conducted with the lawyer and Binder, as well as analysis conducted by Human Rights Watch, the evidence provided by the police is tenuous. For example, of the 11 instances when Binder and Mardini allegedly facilitated smuggling, each were not present in Greece on at least 6 of the occasions in the accusations; the accusation of espionage regarded the monitoring of unencrypted and openly accessible radio channels used by Coast Guard and Frontex vessels as well as other accusations for which no evidence is provided in the police report; and the charge for money laundering focuses on Mardini's fundraising efforts on Facebook (Human Rights Watch, 2018a). The consensus among interviewees on the island as well as human rights and watchdog organisations was that the charges laid against Binder and Mardini were spurious and political.

Third, in September 2020, the Greek police accused a further 35 people, 33 of whom worked for four NGOs, for crimes related to facilitating illegal migration, organised crime, violation of state secrets, espionage and the hampering of the 'operational work' of Greek Coast Guard vessels by recording their actions (Euronews, 2020). The names of the accused and their NGOs were not released, but the Greek media widely reports that the German NGO Mare Liberum, who document human rights violations such as pushbacks from their ship in the Aegean, are among those accused, following the search of their boat by the police and the confiscation of their phones and computers several weeks prior to the announcement of the investigations (Mare Liberum, 2020). According to the police report, the investigation also included Greece's intelligence service and anti-terror police (Euronews, 2020). The involvement of such high-level actors associated with matters of national security makes it clear that in the Greek case the charges are not just a matter of overzealous prosecutors, for example, but that the judicial harassment emanates from the state. After the failed first attempt of 2016 in which the targets were merely charged for facilitating entry, the addition of the wide range of other criminal charges to the list make it clear that the charges have little to do with the provisions of the Facilitation Directive. Furthermore, in 2021 the Greek police accused a further ten people, including members of four different CSAs monitoring human rights violations, of a range of

crimes including facilitating illegal entry, espionage, and 'impeding investigations' (Monroy, 2021).

Not just prosecuted for smuggling

The first interviewee of my principal field research phase, a volunteer in Calais, told me that:

'Anything they can hold against us they will, and even things they can't hold against us, they'll still try' (Interview, C1V).

By the end of my field research, this statement appeared to be quite accurate. While much of the literature, news reports and studies analysing the criminalisation of pro-migrant CSAs tend to especially focus on smuggling-related accusations, rendering other cases and forms of targeting as either side effects or as secondary phenomena, a wide range of other laws have been used to target pro-migrant CSAs throughout research locations.

In Calais, for example, where the interviewee quoted above was a long-term volunteer, there were almost no cases of attempted prosecutions based on smuggling charges. Instead, public prosecutors, generally based on charges pushed by the police, charged volunteers working with CSAs with a range of other crimes, including defamation for the publication of a tweet about police violence in the case of Loan Torondel (Human Rights Watch, 2019), and contempt and assault of a police officer, in numerous cases including the case of Tom Ciotkowski (Amnesty International, 2019b). Activists in Calais involved in protests, including demonstrations and the forming of squats to protest the dismantling of migrant settlements, have also been charged with a variety of crimes including contempt and assault against the police, criminal damage, inciting a riot, and procedural related offences such as refusing to give fingerprints, photographs and DNA samples in police custody (Interview, C5R; Calais Migrant Solidarity, 2015; 2016; 2017; 2018). Activists, especially those related to the No Borders movement, working in other border areas such as on the Italian side of the French/Italian border at Ventimiglia have also been charged of a 'wide range of crimes, from rebellion, resisting arrest, roadblock and interruption of public service to illegal occupation and unauthorised manifestation' (Pugnale, 2019: 74). Most of these prosecutions were initiated by police and constitute a byproduct, or an escalation, of the systematic and targeted police harassment of CSAs and especially activists in border areas, as I analyse more closely in the following section on police harassment.

However, pro-migrant CSAs have also been charged using laws ordinarily reserved for prosecutions related to organised crime and terrorism. In some cases, such laws were used

alongside investigations and charges related to human smuggling, such as the Greek cases targeting SAR actors which include accusations that they are members of criminal organisations and in which, in the 2020 case, the anti-terror police had been involved in their investigation (Euronews, 2020). However, such serious charges have also been made unrelated to smuggling accusations. In the UK, a group of activists were convicted for terrorism-related crimes. After blocking a chartered deportation flight at Stansted in March 2017, the 'Stansted 15' were initially charged with aggravated trespass before the charges were increased to the terrorism-related crime of 'endangering an airport' (Hayes, Cammiss, and Doherty, 2018). Its use in the Stansted 15 case is an unprecedented and obscure application of the law: the Stansted 15 group had used similar methods to environmental activists who had occupied runways at Heathrow and London City airport in 2015 and 2016, but who had only been charged with aggravated trespass. The Stansted 15 were declared guilty by a jury and convicted in December 2018 but won in an appeal in January 2021, with the Lord Chief Justice declaring that they 'should not have been prosecuted for the extremely serious offence' (BBC, 2021b). The pressing of the extreme charges did not occur independently of the government: the Crown Prosecution Service in the UK must apply for permission to press charges related to threats to national security, meaning that the then Attorney General, Geoffrey Cox, reporting to the Prime Minister, signed off on the terrorism-related charges.

One particularly obscure-seeming case was described to me by one of my interviewees in Italy, who worked for one of the CSAs operating the SAR NGO vessel the *Aquarius*. In Italy, waste 'trafficking' has serious connotations: 'in Sicily, waste smuggling is one of the main revenues for mafia organisations, so it's a very huge deal in Italy to be accused of such a thing because it's normally connected to mafia activities' (Interview, R12). The *Aquarius* was seized in 2018 and 24 people were investigated on charges of illegal waste disposal, including members of the NGOs running the *Aquarius* (7 from MSF), as well as two shipping agents, understood by my interviewee associated with the *Aquarius* to have been part of the port authorities, who advised the NGOs to label the waste as 'special' (Barnes, 2018; Interview, R12). The *Aquarius* was seized as an asset, NGO bank accounts were frozen, and approximately €200,000, 'considered to be the profit of illicit trafficking', belonging to the shipping agent were also seized (Interview, R12; Olivelli, 2020). The prosecutor suspects that almost half a million euros were 'saved by not disposing of its waste correctly' (Barnes, 2018). These charges accusing the NGO members, as well as individuals from a private company working with them, of engaging in serious organised crime, also played on stigmatising and racist discourse focusing on the migrants themselves, with the prosecutor claiming that the clothes worn by rescued migrants could have been

‘contaminated by HIV, meningitis and tuberculosis’ (Fekete, Webber, and Edmond-Pettitt, 2019: 9). Rather, the discarded clothing waste results from ‘the gasoline from the engine of the boat and the sea water coming together’, meaning that the rescued migrants have to remove their clothes to prevent the further burning of their skin (Interview, R12).

The same groups of people charged with smuggling-related crimes, such as SAR NGOs and activists and humanitarians working near borders, are also targeted using a range of other laws – from procedural offences to accusations of waste trafficking and terrorism. In the section on administrative and bureaucratic techniques, I also demonstrate how pro-migrant CSAs throughout Europe have been systematically targeted using administrative sanctions and regulations related to health and safety and building licenses, for example. This suggests that the provisions of the Facilitation Directive, and their implementation into national laws, constitute a convenient tool which is used to target CSAs, rather than a primary cause of criminalisation. The key problem lies more in the apparent will to target and prevent pro-migrant CSA activities by any means possible. While the legal framework provided by the EU Facilitation Directive does, indeed, facilitate the prosecution of CSAs and individuals motivated out of humanitarian concern for smuggling, an overemphasis on the role played by the legislation might suggest that the problem itself lies in the legislation, and that fixing the Facilitation Directive might prevent the criminalisation and repression of pro-migrant CSAs. The use of other laws as well as extralegal methods to target civil society work with migrants makes it clear that this is not the case. As the interviewee advocating against the ‘crime of solidarity’ in Paris said:

‘it’s more difficult than just advocating to change the law, because it’s not the law that’s the problem, it’s the use of the law’ (Interview, P4R).

Judicialisation leads to acquittals, but the damage is done

While there have been dozens of criminal investigations and prosecutions against pro-migrant CSAs in Europe, there have been far fewer successful prosecutions. For example, none of the investigations against SAR NGOs in Italy have so far resulted in NGO members being found guilty of smuggling, with all cases having either been dropped or still pending trials. Similarly, the ERCI case in Greece and the Italian waste trafficking cases are still pending. Others, like the Stansted 15, were acquitted upon an appeal of their case. The reason for this low rate (so far) of successful prosecutions also lies with issues of judicialisation discussed in the above section on legislative change. In Italy, for example, SAR NGOs ‘have consistently been seen as operating under a state

of necessity dictated by the duty to protect human life and rescue those in distress at sea, two obligations enshrined by international law that prevail over the domestic prohibition of abetting illegal immigration' (Cusumano and Villa, 2020: 10). Judges in Italy have therefore tended to side with SAR actors, such as in the case of Carola Rackete, who was released from her house arrest for breaking an Italian naval blockade after a judge ruled that she 'had been carrying out her duty to protect life and had not committed any act of violence' (Tondo and Le Blond, 2019).

However, while it is, naturally, a good sign for the continued rule of law in European states that it appears to be no simple matter to prosecute CSAs for rescuing or otherwise working with migrants, judicial harassment creates serious harm to the CSAs targeted and beyond. In the case of SAR NGOs, for example, while there have not been any prosecutions so far, in almost every smuggling-related investigation, the NGO vessel was impounded, with an average confiscation length of over 6 months, leaving most NGO ships grounded in the summer, 'the busiest time of the year for SAR operations' (Cusumano and Villa, 2020: 10).

The damaging impact of judicial harassment does not only come from prosecution, but from the whole toolkit of measures which can be used in the process which may or may not lead to formal charges being brought, but which are effective against CSAs in their own right. This also reflects the role of judicial harassment in partial democracies, which 'can involve a range of coercive measures that restrict individuals and organizations' ranging from 'criminal investigation, such as the search of an office and the seizure of computers, to pre-trial detention, high bails, travel restrictions, costly lawyers and time in prison' (van der Borgh and Terwindt, 2014: 43). All these tactics have been used in my case studies, and particularly in Greece, where Binder and Mardini were held in pre-trial detention' for over three months; where Salam Aldeen, one of the volunteers arrested for smuggling in Greece in 2016, had a bail of 10,000 Euros and was required to stay in Greece for over a year and had to report to a police station every week; and where the new September 2020 accusations were preceded by the search of Mare Liberum's vessel and the seizure of their computers and phones.

Even without successful prosecutions, these cases have had severe impacts on the CSAs involved and those around them. The September 2020 accusations led to the SAR NGO Refugee Rescue to stop operating in Greece, as I elaborate in the section on co-optation, and the ERCI arrests and accusations led to the majority of the other organisations on Lesvos to end boat-spotting activities:

'And then one organisation, they pulled out from night shift, and then the other one did as well and then the ERCI closed. So now it's only, we are very few in comparison to what we were when

I started, and I think more and more individuals get afraid of doing that because they don't want to risk getting in trouble. And also some organisations don't allow their volunteers any more to do night shifts because of the risks' (Interview, L24V).

Judicial harassment, even when there are no formal charges or successful prosecutions, sends a message to other CSAs conducting similar activities or working in similar areas and, as in the case of boat-spotting activities on Lesvos, successfully ends much of the targeted activity. Judicial harassment also sends a message to the public: 'the more the criminal mechanism is triggered, the more all these extreme groups are being fed with, and the more the more moderate groups start to think, well maybe they're [NGOs] all criminals?' (Interview, L20L). This narrative created by, often well publicised, instances of judicial harassment establishes the criminality of CSAs in the eyes of large parts of the public and the media: prosecutions do not need to result in a guilty sentence for this crime to be established. One interviewee, who had worked as a crew member on an SAR NGO boat, told me about the reaction in his hometown in the UK when news came out that he was on a ship being blockaded outside of an Italian port, based on accusations of smuggling:

'My girlfriend was at work in the morning when the news came on, and she could hear people talking at work about this guy on the boat, saying, 'they don't just arrest you for nothing'. The accusation of criminality is just incredibly powerful. Because the thought of 'there's no smoke without fire' is very strong' (Interview, SAR4).

The mere acts of accusation, arrest, or investigation suffice to establish the criminal narrative. While the interviewee above described the negative impacts the narrative had on his family, other interviewees told me about the reputational and financial impacts this narrative had on their organisations. Interviewees at both small grassroots organisations and at large international NGOs told me that the criminal NGO narrative, and especially the smuggling narrative for NGOs engaged in search and rescue, had resulted in a measurable drop in donations (Interviews, R1R; R2R).

Despite the relative lack of successful prosecutions, so far, judicial harassment can still be an effective way to target pro-migrant civil society. In addition to these negative effects, the targets of judicial harassment must, of course, deal with the practicalities of being investigated for and charged with crimes, such as legal fees. I interviewed Sean Binder who spent 100 days in prison pre-trial in 2018 and, more than three years after his arrest, is still awaiting trial. He told me about the effects of his experiences on his life, beyond his new appreciation for 'beige' Greek prison food:

'I mean we still face 25 years in prison and that is frightening. I don't believe that, I really hope that we will not be found guilty and I don't think we can be based on what I told you of the evidence [...] But it has affected me personally by meaning that I cannot work... so whenever I apply for a job, I'm rejected because of the case, obviously, I cannot honour a contract. That's been very frustrating, and it has not allowed me to move on with my life' (Interview, SB).

But the charges laid against him, he told me, are particularly worrying on a larger scale:

'The more important point is that there is nothing peculiar or special about Sara or I, that we are not heroic or criminal [...] the laws being invoked in the sake of protection and securitisation are being grossly misused, and it can happen to anybody, and it is so important to point that out, because it can happen to anybody, and that is why it's an issue' (Interview, SB).

The outcome of Binder and Mardini's case will have implications for the rule of law and the independence of the Greek judicial system from the police. As I argue throughout this chapter, the environment for CSAs in Greece is particularly repressive. The Greek environment is one of systematic repression which is underscored by bursts of criminalisation through judicial harassment, such as in the ERCI case. A Greek lawyer told me in an interview that: 'we still have a long way to go [in Greece] to be able to have fair trials and fair procedures - because if a person is accused by the police, he is in the mind of the judges and the investigators and the authorities and the judicial authorities, he is kind of guilty. So this should be the other way round.' (Interview, L10L).

While pro-migrant CSAs are being criminalised, targeted and repressed by a wide range of state actors, including police, prosecutors, local authorities, politicians, and supranational agencies like Frontex, the law, due to decades of judicialisation in which human rights and international laws and norms have been incorporated into national legislations, has often stymied such attempts. Judges have ordered cases be dropped and CSAs have won their cases or have won successful appeals and, as I elaborate more on in Chapter 8 about the responses to criminalisation, have responded by taking state actors to court in return. There is an irony, then, that the two most defining tactics of 'criminalisation' – legislative change and judicial harassment – are the most difficult for European state actors to carry off easily and are also the tactics with the most risk of backfiring, as CSAs are attacked using the same legal tools they can use to defend themselves with. This status quo in which, of course, even unsuccessful prosecutions have wrought considerable harm, relies on the (continued) independence of the judiciary from politics and state actors. It is further ironic, then, that 'criminalisation' is the term most often employed in literature looking at the West, while the term 'repression' is more used to analyse 'other' more authoritarian regimes. Yet to criminalise CSAs in the purest meaning of

the term, i.e. to render a group or activity criminal through changing or applying criminal law, is something which is far more possible outside of liberal-democratic states where the rule of law and the independence of the judiciary remains relatively stable.

6.3 Police Harassment

Introduction and methods of police harassment

Police brutality and harassment refers to the targeting of civil society actors by police forces, other law enforcement agencies such as Coast Guards, and security forces subcontracted by the state. As is understood in critical criminological literature, criminalisation through police targeting involves the targeting of certain groups of people because they belong to a particular group rather than on the basis of crimes committed, i.e. treating a certain group as de facto criminal (Muncie, 2008). Police harassment or brutality can sometimes constitute 'police misconduct', in which individuals or groups within a police force might violate legal rules, police-internal rules and regulations, or codes of conduct (Ivkovich, 2014: 304). However, police brutality and harassment are not restricted to actions which violate laws and norms but include actions which are within the scope of permissible and discretionary police powers but which are carried out with the intention to intimidate and harass.

Police harassment can therefore encompass a wide range of methods. A study analysing the urban policing of young black men in the United States includes the following police actions as ways in which such criminalised groups are particularly targeted: 'disproportionate experiences with surveillance and stops'; 'disrespectful treatment and verbal abuse'; arrests; 'the use of force, including excessive and deadly force'; and 'fewer police protections and slower response times' (Brunson and Miller, 2005: 614). These methods certainly correlate with the range of ways in which CSAs are harassed within the context of my research. Already during my pilot research, interviewees described experiences of verbal abuse from police officers and volatile relationships between CSAs and police officers around the informal border camp at Idomeni in 2016 and felt that police targeted them with the intention of finding reasons to prosecute them, for example by carrying out drug searches in volunteer housing. Interviewees working for SAR NGOs in the Mediterranean further described experiences of being targeted through surveillance. These initial findings were corroborated and expanded through my principal field research phase.

Based on data from my principal field research phase and drawing from a report produced by a collective of CSAs in Calais who recorded 646 incidents of police harassment against organisations and volunteers within an eight-month period from November 2017 to July 2018 (Vigny, 2018), I identified seven key methods of police harassment through which pro-migrant CSAs are targeted in Europe. First, in some cases individuals are subjected to physical abuse or

police brutality, which includes physical violence as well as the targeted use of teargas and other chemicals. In Calais, for example, volunteers have regularly reported forceful behaviour from police officers, such as a case in which a female volunteer was pushed to the ground several times and seized by the throat by an officer (Vigny, 2018: 32). Second, CSAs and volunteers regularly receive verbal abuse from police officers, a category which includes ‘abuse of power’, in which police officers emphasise their positions of power and control over volunteers, making threats of arrest or of physical violence, and shouting insults and abuse (Vigny, 2018: 28-31). Third, throughout my research locations, volunteers have been harassed through incessant ID checks, traffic controls, and body and vehicle searches by police officers. Traffic controls and vehicle searches often led to the fourth category of harassment: fines and sanctions, such as vehicle ticketing or confiscation, and parking fines. Just one CSA in Calais received a total of 117 parking fines for a total of 7,586.2 euros within three years (Vigny, 2018: 21).

Fifth, individuals belonging to CSAs are arrested and taken into police custody. As outlined in the section on judicial harassment, this sometimes leads to judicial harassment if charges are pressed following arrest. Sixth, as interviewees at SAR NGOs during my field research indicated, CSAs are subjected to surveillance. Police in Calais surveil volunteers through physical observation and taking videos or photographs of volunteers (Vigny, 2018). Many interviewees throughout research locations also suspected that they were being surveilled and that their phones had been tapped due to regular clicking sounds, a not unfounded suspicion considering that cases in which CSAs have faced charges in France, Italy and Greece, investigation documents have included evidence from tapped phones of CSAs (Interviews, P4R; L6R; JR18). Finally, the seventh type of police harassment is the failure of police to help CSAs, a form of repression included in analyses of repressive tactics in less democratic states as a ‘failure to protect civil society’ (Buyse, 2018: 972; van der Borgh and Terwindt, 2014). Interviewees throughout research locations described the lack of police response or help they received in response to death threats to CSAs in Greece or problems with criminal gangs in Paris, for example (Interviews, L15R; P1R; P3R).

CSAs and volunteers are not all targeted equally, and police harassment is sometimes also gendered and racialised. Interviewees and people I met during my field research told me about incidents in which volunteers or activists who were not white were treated particularly harshly or faced racist abuse from police officers, often but not always because they were mistaken for migrants (Interview, G7R). Female volunteers for CSAs throughout research locations also sometimes experienced sexual harassment from police officers. In Calais, for example, pat-downs by police officers disproportionately targeted female volunteers (in 14 out of 16 recorded

cases in the study) who were regularly subjected to extended pat-down searches by male officers, even though in France pat-down searches should be conducted by officers of the same gender (Vigny, 2018: 15).

Patterns of how these methods of police harassment were implemented varied across research locations. In the following sections, I focus particularly on research findings from Calais and Lesvos. I analyse the systematic nature of police harassment in border locations, the extent to which police discriminate in regard to which CSAs and which CSA activities they target, and the correlation between the police harassment of CSAs and the systematised police violence against migrants which, I argue, are inherently linked.

Systematic versus sporadic police harassment

During my time conducting participant observation research as a volunteer in Calais, I became hyper-aware of the police in a way which did not occur during other phases of my field research. Police were a constant presence during my time there, both physically due to the high levels of police presence in the area, and mentally, as the volunteers and CSAs I worked with and interviewed emphasised the importance of always staying aware of police presence and shared daily stories of police violence against migrants during settlement evictions and the harassment of volunteers in the field. The CRS, the French riot police, were particularly omnipresent. On one particular day of participant observation research, I encountered them several times: once in the morning slowly driving past the warehouse which housed the collective of CSAs I was volunteering with, and again later in the day on a two-hour distribution in the field during which a CRS van drove past 'very slowly four times' without stopping; and then again past the warehouse in the evening (Field Research Diary, Calais). Such actions were understood by interviewees to be for the purposes of surveillance and intimidation, sometimes also including volunteers being ID checked or police officers disrupting distributions. The police harassment of CSAs and volunteers in Calais was a major subject in every single interview conducted in Calais and navigating the possibility and risks of police harassment constituted a daily activity of CSAs in Calais.

This provided a stark contrast to my other research locations, where incidents of police harassment occasionally came up in interviews but appeared to occur in a much less systematic and indiscriminate way. On Lesvos, for example, several interviewees mentioned incidents of police harassment, especially of police checking or stopping volunteer cars. As I will discuss below, some specific types of CSAs such as activists experienced more regular police

harassment. However, CSAs on Lesbos conducting activities comparable to the CSAs I interviewed in Calais, which were generally focused on the provision of humanitarian aid, were not affected by police harassment on a similar level. Rather, incidents appeared to be sporadic, the risk of experiencing police harassment did not factor into the daily activities and fears of most interviewees engaged in humanitarian work on the island, and police harassment was often interpreted as being the result of the individual prejudices of the police officers involved. The idea that state actions, including of police, in Greece came down to the individual was a common refrain, especially among Greek interviewees: 'everything goes down to the person: a person who see the need [to help migrants] doesn't really interfere; a person who doesn't understand the needs, and is against refugees, then is acting on the other side. So it's not all the Coast Guard have a certain guideline, or the customs or the police' (Interview, L6R).

Interviewees in Paris highlighted the systematic nature of the police harassment of CSAs in Calais. Several of my interviewees had worked in both locations and felt that police harassment of CSAs was a much greater concern in Calais: 'I will say that in Paris is more *entrave* [hindrance], like they put obstacles to the help of refugees. In Calais it is more frontal, like 'you should not be here, you cannot film', like, we don't have this kind of problem with the police in Paris, but there's other problems, like with the City Hall' (Interview, P1R). Unpleasant encounters with police in Paris did occur but were more isolated and the main barriers faced by CSAs were bureaucratic in nature. This difference became clear to me when I joined one CSA on a night distribution of food and blankets in Paris with their van: in a stark contrast to the CSAs in Calais, the volunteers did not worry about following traffic or parking rules and were not concerned about being targeted by the police.

So what is different about Calais? My interviewee explained a key difference: 'in Paris there's no eviction schedule like in Calais where every two days they destroy one of the camps' and while in Calais the purpose of these evictions is to eradicate the forming of these settlements as much as possible, in Paris 'sometimes it's just to evacuate the tents and sometimes it's to provide accommodation' (Interview, P1R). Further, while in Paris, the migrants living in tent settlements on the streets tend to be seeking asylum or the right to stay in France, in Calais the migrants living in informal settlements are trying to reach the UK. CSAs working in Calais are therefore working within the context of an ongoing police operation, funded through bilateral security arrangements between France and the UK: the UK spent more than £150m for 'security and policing in Calais' between 2016 and 2018 (Travis and Stewart, 2018). A key component of this police operation is the scheduled and systematic, and often forceful, eviction of migrant settlements: during my time in Calais, informal settlements in Calais and Dunkirk were being

systematically evicted: every other day in Calais, and twice a week in Grand-Synthe (Dunkirk) (Townsend, 2019). Meanwhile, a principal activity of the CSAs in the area is the provision of food and items like clothing, sleeping bags, tents and firewood to those migrants facing constant evictions, automatically placing CSAs into a contrary relationship with police actors.

The ongoing police operations in Calais constitute a state of exception in which the human rights of migrants are violated daily and a space is maintained in which police actors harass both migrants and CSAs systematically and with relative impunity (Agamben, 2005; Davitti, 2018). Within this space, a set of institutional arrangements has created conditions which enable and even encourage the systematic harassment of CSAs. Police in Calais are under the authority of the Interior Ministry, and whether or not direct orders are handed down regarding the harassment of CSAs, structures in place enable a foreseeable ongoing pattern of harassment which has been (explicitly or implicitly) encouraged over years through a notable lack of sanctions and checks on police abuses.

This is done through the deployment of officers who can be relied upon to act violently and even abusively, combined with a lack of oversight and measures of accountability. First, a wide range of police actors are present in Calais, with some interviewees reporting the presence of as many as 10 different police forces in the area. The most notable and visible of these are the CRS, the French riot police, or 'mobile security forces', who are deployed to fight 'crime, terrorism or illegal immigration' and who can be heavily equipped and armed with 'tear gas canisters' and assault weapons (Auffret and Durand, 2019). They are posted in Calais on three-week rotations, both preventing CSAs from being able to develop productive communication with them, and CRS units from gaining sympathy or empathy with migrant populations (Interview, C10R). Tensions and levels of forcefulness fluctuate between rotations: while sometimes a rotation can be somewhat less 'intimidating' than others, 'you might get a regiment from Paris who've recently been like, battering protesters and Gilet Jaunes, and they come and they're fully-blooded, and they love this sort of stuff, and they just go in really hard straight away' (Interview, C11R). CRS officers, corresponding to their role as riot police, were perceived by interviewees as being more violent and aggressive – both towards the migrants and themselves. While CSAs in Calais reported harassment from a range of different police forces, including the municipal police and the Gendarmerie, interviewees consistently reported that the majority and the worst harassment they had experienced came from CRS officers.

The rote deployment of riot police designed to employ force and aggression is combined in Calais with a lack of accountability and oversight. While police officers in France are required to

wear RIO (identification) numbers, many different interviewees and organisations reported that officers in Calais often removed or partially obscured the RIO numbers on their uniforms so that they would be unidentifiable (Vigny, 2018). This meant that in many cases, it was impossible to report incidents of police misconduct or harassment as the national police oversight authority, Inspection Generale de la Police Nationale (IGPN), refuses to follow up reports when there is no RIO number reported (Vigny, 2018). However, even when reports included RIO numbers, reporting police harassment and violence has no consequences for the police officers in question but, rather, CSAs are blamed. In the case of a volunteer who submitted several reports to the IGPN, including one after she was pushed to the ground by police officers and seized by the throat, IGPN's reply said that there was a lack of evidence, that her own actions were questionable because she consistently strove to 'hinder police operations' and that her 'offensive positions' and reports were of a 'slandorous nature' which 'constitutes a crime' (Vigny, 2018: 36-37). Officers engaging in violence and misconduct thereby not only avoid accountability by not wearing their RIO numbers, but their impunity is protected by official state channels whose task it is to keep police in check.

In this way, the permanent state of exception which has been created in Calais to facilitate the enactment of French and British security practices aimed at preventing migrants from crossing into the UK irregularly, has not only resulted in a space outside of normal society and law and order in which the fundamental rights of migrants are abused on a daily basis, but in which CSAs and their volunteers are systematically harassed with impunity. CSAs and volunteers in Calais who directly seek to hold police and the state accountable, for example by filming police interactions with migrants, often receive particularly harsh levels of harassment and abuse from the police. However, unlike in any other research location, no CSAs are excluded from the systematic harassment of volunteers in Calais: even the most apolitical and humanitarian-focused CSAs who take every precaution to avoid conflicts with the authorities are subjected to harassment and intimidation, including through surveillance, ID checks, vehicle checks, verbal abuse, and even arrest and detention.

Targeted harassment of activists and witnesses

While in Calais, all pro-migrant CSAs and volunteers are indiscriminately subjected to systematic police harassment, in other research locations police forces were more discriminate in which CSAs they targeted. Throughout research locations, certain types of CSA and CSA activities were especially targeted by police, particularly those CSAs which make the work of the police more

difficult, for example by witnessing and publishing abusive or even illegal actions by police forces.

CSAs which were more activist and political in nature, rather than solely focused on humanitarian work, such as No Border activists or individuals involved in organising protests or demonstrations, experienced greater levels of police surveillance and other forms of harassment across research locations. This was most particularly the case if their activities directly included monitoring the police and police activities, such as camp evictions in Calais and deportations and pushbacks in Greece. In Calais, while all CSAs were regularly harassed by police officers, volunteers and activists like the Human Rights Observers (HRO), who went to the daily evictions in order to film and document police officers, generally received the harshest forms of harassment from police officers and regularly experienced altercations which turned forceful. Police in Calais generally responded aggressively to being filmed, with many incidents reported of police trying to take phones away from volunteers, throwing phones on the ground, and using physical violence against volunteers trying to film them (Vigny, 2018). During my field research in Calais, I interviewed a volunteer right after she had had a 'stressful' experience with CRS on a HRO outing in Dunkirk:

'Probably they know they are not doing anything legal, they didn't have their RIO number, so I guess I understand why they are getting pissed off. But they represent the police... one of them tried to intimidate my colleague. Like he [the officer] walked towards her quite fast, screaming, 'stop filming me, I'm tired of you filming me'. And he was quite massive guy, and he just knew it, so he stood up and tried to have all his height showing, and just got really really close to her face and asked her to stop filming' (Interview, C12V)

Such reactions were very common in Calais and Dunkirk, even though the right to film and photograph police actions in France is protected by law, following a 2008 court case which determined that 'police officers cannot [...] oppose the recording of their image while carrying out a mission (Vigny, 2018: 9).

Similarly, activists on Lesbos monitoring police actions were particularly targeted. The activist group Deportation Monitoring Aegean, for example, reported that 'independent activists who monitor deportations are frequently controlled by the police, have their personal data stored, are intimidated, or even arrested and beaten' (Deportation Monitoring Aegean, 2019). In October 2018, for example, a deportation monitor standing near the Mytilene police station outside a coffee bar was forcefully arrested without provocation and, once in the station, was 'pushed', 'yelled at', 'insulted' and 'his hat was taken off him and used to slap him in the face

and his legs were kicked'; later the activist found out that the police had pressed charges against him for 'insult and resistance against the police' (Deportation Monitoring Aegean, 2019).

On Lesbos, interviewees who were, or had been, engaged in activism were much more wary of police and police harassment compared to humanitarian CSAs active in camps, for example. One of my interviewees had given up his more activist activities as a response to the surveillance he was subjected to: 'secret police were following me, waiting for me to go home, watching with who I will talk, what I will do [...] Just to send the message, keep your distance. Be careful. Don't interfere, mind your own business' (Interview, L21V). Several other interviewees on the island mentioned to me the surveillance they, or other activists, were under from secret police, such as one interviewee affiliated with the No Borders movement:

'I'm pretty sure that activists are watched. It happened once to me, that I was talking to somebody on Sapphos square, and in the evening he said, 'yeah, something strange happened when you left. A man came to me, and said, he's police, and asked me what you told me.' What police, here, manage to do, is let you feel uncomfortable [they do things] to show me 'we are aware of you' (Interview, L11A).

Other interviewees involved in activism described the presence of secret police in civilian clothing at protests and at deportations. A common theme in interviews was the fact that the 'secret police' are, perhaps, not so 'secret':

'Lesbos is a very small island, so you know their faces very very quickly [...] Because I know some of them personally by now, or at least their faces, I can recognise them. And often they wear this funny pocket at their leg that they also wear when they are wearing their uniforms. And they always - it also depends on the situation - so they often sit in the cafes during the deportations, and you can like, exactly tell who they are' (Interview, L23Re)

Consequently, some activists did not feel that the secret police were a significant threat to them: 'the thing is, there are secret police in Lesbos. But they're just fucking shit. Like, they come to demonstrations, they stand there, you're talking to people and everyone's like, 'oh, there's that copper, he's taking pictures of us.' They're just useless' (Interview, L4R).

Despite their apparent lack of subtlety, however, gaining the attention of the police in Greece can have severe consequences for CSAs. A representative of the human rights monitoring NGO Mare Liberum, who I interviewed near their boat in a small port village on Lesbos, told me at the time: 'in some ports I've had the feeling that people who are dressed just in civilian clothes are always hanging around us and sitting on benches near us, seeing what we're up to', suspecting

that they were being watched by secret police (Interview, L22R). He also told me about regular police harassment they experienced from Coast Guard officers and port authorities across the Aegean islands:

‘Everywhere we go, we are intimidated. Like when we first arrived on Chios, well, the police were waiting for us. They brought us to the port office, they asked us to sign a document saying that if we are in any situation where migrant boats might be present, we are accepting that we can be charged for human trafficking and smuggling, which we didn't sign [...] The following day they - so they searched the boat when we arrived - the following day they wanted, they searched the boat again, this time with dogs. They made crew members leave the boat and sit next to two military people, or people dressed in military clothes that were armed. [...] They told us things like, if you do any suspicious activity we will have to open formal investigations’ (Interview, L22R)

In September 2020, ‘approximately 25 police officials, Hellenic Coast guards and special forces stormed on board the *Mare Liberum*. The ship was searched for two hours, and all phones and computers were confiscated. During the raid, the crew was neither informed of the legal grounds for the search nor of their rights’ (*Mare Liberum*, 2020). Later the same month, the Greek police ‘issued a press release stating that there are ongoing criminal investigations against 4 NGOs, 33 individuals associated with them, and 2 'third-country nationals' "for an organized circuit to facilitate the illegal entry of aliens into Greek territory."' (*Mare Liberum*, 2020). While the NGOs and individuals were not named, the consensus among NGOs and the media in Greece is that *Mare Liberum* lies at the centre of these investigations, which explicitly include the criticism that NGOs impeded the work of the police by documenting the movements and actions of the Coast Guard (AYS, 2020b). Indeed, *Mare Liberum*’s purpose in the Aegean was documenting human rights abuses, such as pushbacks from Greece to Turkey, which became increasingly systematic in early 2020 (*Mare Liberum*, 2020).

In this way CSAs who act as watchdogs monitoring police and human rights abuses towards migrants constitute those most targeted by police. On Lesbos, while most humanitarian CSAs working with migrants in and around refugee camps are not particularly affected by police harassment, which seems to them to be more sporadic and influenced by the individual politics and preferences of individual police officers, activist CSAs, especially those specifically observing the police, are surveilled and harassed in a variety of ways. However, another group of CSAs on the island are also regularly targeted by the police. I interviewed several people on Lesbos who volunteered as boat-spothers, going out at night in teams to watch the sea between Turkey and Lesbos in search of migrant boats, with the aim of alerting authorities to any potential boats in

distress and in need of rescue, and in order to receive migrants on shore to provide changes of clothing and first aid. The purposes of these groups are therefore humanitarian, yet interviewees reported a pattern of systematic harassment in which police (including Coast Guard and supporting Frontex officers) would check their IDs, sometimes search them or their vehicles, and ask them leading questions as though trying to catch them out for being involved in smuggling:

‘So they come and check us, and check our papers, and take our names, and one time this police officer took my ID for like an hour and said, ‘stay there until I come back’, just to show that he has some kind of power over me, but I didn’t do anything. And they check our cars, and where everybody is from... Some officers are nicer than others, they just like do the things they need to do, and others just show lights in your face and ask us again and again - what are we doing? Do we know anything? When is the boat coming? Things like that, they try to catch us with information that we don’t have - I mean we wouldn’t be there all night if we knew when the boats are coming!’ (Interview, L24V)

While the primary purpose of boat-spotting was to prevent deaths at sea, the interviewee understood their role as witnesses, connected to the prosecutions of SAR NGOs on the island: ‘it’s like they take away all the witnesses in the sea except from the people in the boats. So we’re checking them from shore, just making sure that they [the Coast Guard] don’t...act in a wrong way’ such as through ‘pushbacks, or like sometimes we can hear them [Coast Guard] scream at the people instead of trying to calm them down, just screaming Greek, things like that’ (Interview, L24V). The interviewee felt they were being targeted for the same reasons as those actors deliberately monitoring and documenting the actions of the police: boat-spotters were watching the EU external border between Turkey and Greece and therefore would witness and could report the actions of deterrence practiced by the Coast Guard and Frontex.

While in Calais all CSAs face systematic police harassment, on Lesvos police are much more discriminate and reactionary in terms of which types of CSAs they target: activists, human rights monitors, and, most particularly, CSAs who (deliberately or not) observe and report abusive police practices towards migrants. This highlights a general pattern found in my field research, and which I analyse more closely in the next chapter which analyses why criminalisation occurs: CSAs which are able to witness and report state actions, violence and crimes in border regions are those which face the harshest and most systematic forms of criminalisation.

Police harassment of CSAs and systematic violence against migrants

While analysing the police harassment of pro-migrant volunteers and CSAs in Europe within the context of the 'refugee crisis', it is impossible not to recognise the relative power and privilege enjoyed by CSAs compared to the migrants they seek to help. However, this power and privilege, I argue, also lies at the root of *why* CSAs are targeted.

When discussing police harassment with interviewees, virtually all of them emphasised the far harsher forms of police harassment and abuse experienced by refugees and migrants:

'I hear first-hand really horrible accounts of police brutality against displaced people in Calais and Dunkirk, and so in comparison, volunteer intimidation by the police is really minimal, or not minimal, but the severity of it is less. And the fact that this [harassment of volunteers] gets picked up [by the media] and then circulated, and it's made such a deal out of, because we're white and because we're English, it feels a little two-edged' (Interview, C10R)

Another interviewee emphasised that CSAs are not the primary targets of the police: 'a lot of things that they do obviously affect us, but we are not the main targets, it's the guys who are the main targets, like all the destruction of donations, all the evictions, all that stuff, obviously we're not the ones in the focus for that sort of thing' (Interview, C1V). In Calais, interviewees particularly emphasised the systematic programme of camp evictions carried out by police which, according to a report published by the Human Rights Observers (HRO) 'has led to a deterioration of both the physical and mental health of those affected' (Townsend, 2019).

On Lesbos, an NGO worker, who had arrived in Greece by boat as an asylum-seeker herself, told me about the systematic pushbacks occurring on the land border between Greece and Turkey in the Northern Evros region of Greece, where she had worked with the NGO:

'We asked them [the migrants] how many times did you try [to cross], what happened in the border? Like 7, 8 times, they take everything from men, even their clothes, they return them back [to Turkey] naked. Sometimes they push or hit the women, the children, a woman told me her baby was crying and the people in the border, they were shouting at her and she said, 'it is a baby', and they hit the mother and the baby... yeah, it's terrible, what the people, the stories they tell us, terrible, some people refuse to tell us, because they're afraid' (Interview, L3V)

There is a key difference between these two examples: the evictions in Calais regularly have civil society witnesses; the pushbacks in Evros do not. Interviewees in Greece in both my pilot and principal research phases mentioned reports by migrants of systematic pushbacks at Evros by so-called 'commandos':

'They're not police, we don't know who are they, because they cover their face, they wear black. Some people call them commandos, but no one knows who are they, and they even don't speak, and their face covered, everything. Once they pushed people back at night, there is like, in the river, like small island. People thought that they pushed them back to the Turkish part, when they get up in the morning and there is light, they found themselves inside in the middle of the river. Until they called a smuggler again, from Turkey, to come to take them back to Turkey' (Interview, L3V)

In 2019, interviewees also said similar pushbacks appeared to be occurring occasionally in the Aegean Sea. My interviewee at Mare Liberum, for example told me:

'And so we've heard about at least two confirmed cases of this near Samos – where refugee boats are intercepted by masked men dressed in black with military uniforms on, and are armed. And the boat they're on is a very high powerful speed boat which doesn't have a flag. And they go and they break the engine of the refugee boat. And it's something no-one really knows about, and it's hard to get information on. And what happens is they break the engine and then the Turkish Coast Guard picks them up in Turkey and takes them back to Turkey' (Interview, L22R)

Such reports were based on testimonies of migrants themselves who had made or attempted the crossings, and who often reported systematic violence and physical abuse by these 'commandos' against migrants. Interviewees speculated that these 'commandos' were 'far-right militias with ties to the authorities' (Interview, L22R) or had 'suspicions that this is Special Forces of the Greek Coast Guard' (Interview, L6R). Yet while the pushbacks were common knowledge among migrants and CSAs who published reports of migrant testimonies about the pushbacks, the reports did not receive greater attention until March 2020, when more reports and even videos emerged of increasingly regular pushbacks occurring in the Greek Aegean, also perpetrated by men dressed in black and some wearing balaclavas, but aboard Greek Coast Guard ships (Amnesty International, 2021a)

In 2021 the German newspaper *Der Spiegel* reported the results of a long-term journalistic investigation which found evidence that these Greek 'commandos', and similar Croatian forces responsible for pushbacks and violence at the Croatian/Bosnian border, were 'special units [...] trained to go after hooligans and drug dealers' rather than 'a figment of journalists' imaginations' as the 'governments in Zagreb and Athens' claimed (Christides *et al.*, 2021). According to the newspaper, 'there is no longer any doubt that the pushbacks are being conducted from Greek Coast Guard ships, even if the government claim otherwise' and that the men carrying out these pushbacks, who frequently cover their faces, are 'special units and other security forces', who 'have been charged with pulling the asylum-seekers back out to sea and

abandoning them on life rafts' (Christides *et al.*, 2021). According to an informant, such 'orders are always oral' and 'the instructions come from way up top, from politicians. These are criminal acts' (Christides *et al.*, 2021). Such pushbacks in the Aegean 'used to be isolated incidents' but had become systematic during tensions between Greece and Turkey in March 2020 (Christides *et al.*, 2021). This journalism confirmed what migrants, and CSAs sharing their testimonies, have been reporting for years: that systematic and violent pushbacks were taking place at the EU's external borders by men who have now been identified as being special forces of the state.

At the time of my field research in 2019, then, Calais and Evros each constituted border regions in perpetual states of exception in which police forces systematically target migrants with routine force which is, formally or informally, sanctioned by the state. The abuses faced by migrants in the Evros region, which amount to 'torture and inhuman treatment', are far beyond those faced by migrants in Calais (Christides *et al.*, 2022). While many factors might contribute to differences between the two regions, one key element is the constant presence of CSAs active in and around Calais. CSAs, both those who deliberately monitor the police and those whose primary aim is the provision of humanitarian aid, threaten the impunity of the police through their proximity. The lack of accountability for police forces is a key component of the exercise of systematic violence and abuse: this is why many CRS officers in Calais remove or obscure their RIO numbers, and why the special units deployed at the Greek and Croatian borders do not have names or insignias on their clothing and equipment which is, nevertheless, paid for by the EU (Christides *et al.*, 2021). CSAs present both a threat to the individual police officers who fear accountability, and to the system of systematised violence itself through their ability and attempts to expose it.

In Calais, interviewees working for the Human Rights Observers team told me that their presence at evictions often meant that officers were less violent towards the migrants (even as HRO volunteers experienced harsher harassment than other volunteers). One interviewee at HRO felt that there was a 'correlation between more frequent observation [of the police] and less abusive practices during evictions' and that the police 'know that they're being observed so maybe they're more conscious of their behaviour and lots of potential abuses that could be communicated [to the press]' (Interview, C7R). Another interviewee told me that when her team had to briefly suspend observations, 'police were more violent during evictions' with 'reports and testimonies of food being tear-gassed, or people being tear-gassed and pulled out of their tents, and their water canisters being slashed' and as soon as they started observing again, 'the guys said it was the first time that the police hadn't knocked over this big shelving thing they have with all their food on it' (Interview, C13R). Through their mere presence, then, CSAs

represent a force of potential accountability which is otherwise absent within border areas which have become states of exception, in which migrants are systematically abused by the state.

The root of the police harassment of CSAs, then, lies in the power and privilege enjoyed by civil society in Europe: they are harassed because they hold sufficient social and political influence to, at least potentially, pose a threat to police impunity and greater structures which enable and encourage police violence against migrants and the performance of illegal pushbacks. This constitutes a key difference from other contexts in which police brutality and harassment are generally studied, such as the policing of young black men in the United States (Brunson and Miller, 2006): the harassment of pro-migrant CSAs is, ironically, also often a symptom of their relative (and often white) privilege. In contrast to migrants and refugees, who are subjected to more brutal and systematic police violence throughout Europe, the police harassment of CSAs therefore involves a greater degree of power balance and is reactionary, in that it is generally a response to perceived and actual power held by CSAs.

6.4 Administrative sanctions and bureaucratic techniques

A major and unexpected finding of my pilot research was the imposition of administrative and bureaucratic barriers to impede the work of CSAs, including the use of building and hygiene regulations to shut down CSA-run camps and centres in Greece, new requirements for NGOs in Greece to register with the Ministry of Migration and the apparent impossibility of doing so, and the use of bureaucratic regulations related to registrations and flag-states to ground Sea-Watch's reconnaissance aircraft the *Moonbird*. My interviewee at Sea Watch told me then that such techniques constituted 'the next step in this criminalisation' because the authorities don't find sufficient evidence to prosecute CSAs for smuggling (Interview, SW18). However, in this section, based on my principal field research phase, I argue that rather than constituting a second-best form of attack when attempts to criminalise through judicial harassment prove ineffective, administrative sanctions and bureaucratic harassment constitute a form of repression which is often not only a more effective form of attack, but which offers a greater range of possibility to criminalising state actors such as the maintenance of greater control over civil society and less public scrutiny and potential accountability.

I interviewed a co-founder of an SAR NGO in Sicily, several of whose colleagues faced trial for smuggling: 'of course we are worried [about the trial], but we are more worried about the administrative aspect, about the possibility for us to have a boat in the sea' (Interview, S1R). Administrative techniques used in Italy to prevent NGO ships from leaving ports posed a far greater barrier to the work of CSAs than the smuggling charges. This perspective challenges the tendency of both academic and non-academic analyses of the criminalisation of pro-migrant CSAs in Europe to focus on incidents of judicial harassment, particularly those related to smuggling. Bureaucratic and administrative harassment and sanctions are either not included in analyses; are subsumed into the category of judicial harassment; or are portrayed as lesser or secondary forms of criminalisation (Carrera, Allsopp and Vosyliute, 2018; Carrera *et al.*, 2019; Jalušič, 2019; López-Sala and Barbero, 2021).

Another interviewee also felt that incidents of judicial harassment were overemphasised in comparison to other ways in which CSAs are targeted by state actors:

'I always think that when we speak about criminalisation it's somehow misleading, because it rings the bell of judiciary proceedings which are actually probably a smaller percentage compared to other ways that the state is using to stop NGOs or civil society activists [...] and definitely administrative obstacles are a very used tool' (Interview, R1R).

While ‘criminalisation’ is a term which encompasses a range of ways in which CSAs are marginalised and treated as criminal, beyond legislative change and judicial harassment, it is clear that the emphasis of the term rests on, and calls forth, notions of criminality. The use of the term ‘criminalisation’, then, as a catch-all term for the targeting and blocking of pro-migrant civil society in Europe, risks ignoring or obscuring repressive state methods which in some research locations are more common and more repressive than proceedings related to criminal law. This typology attempts to embed the term ‘criminalisation’, itself contested, within a framework of repression, a term which generally is not applied to the European context. The boundaries between what constitutes ‘criminalisation’ and what constitutes ‘repression’ but not criminalisation, however, are blurred. As I demonstrate in this section, administrative and bureaucratic techniques used to target the work of pro-migrant CSAs are often closely tied to, or used simultaneously as, processes of legislative change and/or judicial harassment, as well as the other categories in this typology.

Despite these blurred boundaries, however, I understand bureaucratic and administrative techniques as repressive tactics which are largely distinct from the criminal justice system, an important distinction which, rather than constituting a less ‘severe’ form of criminalisation or attack, offers unique opportunities to state actors seeking to disrupt the work of CSAs which are not possible through more direct forms of criminalisation. Such tactics have been described and analysed in a range of literature focussing on repressive tactics in more authoritarian states, which I include in this section to further understand two principal case studies: first, the use of administrative blockades to stop the work of SAR NGOs, apparently the result of a co-ordinated effort between a range of nation-states; and second, the systematic bureaucratic grey area for CSAs maintained in Greece which leaves CSAs in precarious positions and affords state actors greater control over them.

While I focus on these two case studies, administrative sanctions against and bureaucratic harassment of CSAs occurred throughout research locations. Broadly, they fell into three principal categories. First (in a crossover with the category of legislative change), administrative legislation might be created or changed to target pro-migrant CSAs specifically. This occurred in both case studies analysed below. Second, the discretionary use of administrative laws, regulations or procedures, such as NGO registration, taxation, or licensing, to target, disadvantage or sanction pro-migrant CSAs. In Calais, for example, the association Refugee Community Kitchen was forced to conduct approximately 40,000 euros of refurbishment work in order to continue operating following a hygiene check from local authorities (Vigny, 2018; Interview, C8R). Of course, being sanctioned for not adhering to regulations does not necessarily

constitute harassment. However, the selective targeting of pro-migrant CSAs with the intention to harass or impede was clear across research locations: through the emergence of clear patterns of harassment in Greece; the apparent calculated co-ordination in the execution of such harassment as in the case of SAR NGOs; or, in the case of Calais, the clear irony of threatening a CSA providing food for migrants with closure due to insufficient hygiene standards, while police were reported to have just directly sprayed teargas on the food itself (Interview, C1V). And third, the maintenance of bureaucratic and legal grey areas for pro-migrant CSAs, in which it is made impossible, or near impossible, to gain formal legitimacy, thereby leaving CSAs vulnerable to sudden sanctioning or expulsion at the discretion of state actors, as I describe in the Greek case study.

Administrative blockades against SAR NGOs: a co-ordinated effort?

I interviewed a range of actors involved in SAR during my field research. In my pilot research I interviewed representatives of the NGO Jugend Rettet, whose crew are still facing charges for smuggling over four years after their ship was seized in 2017, and of the NGO Sea Watch. During my principal research phase in 2019, I interviewed the human rights monitoring NGO Mare Liberum which operated a ship in the Aegean islands (and did not generally conduct SAR work); conducted a follow-up interview with my contact at Sea Watch who was at an undisclosed location with the Moonbird aircraft; interviewed the co-founder of the SAR NGO Mediterranea Saving Humans in Sicily; interviewed an NGO representative in Rome whose work was associated with the SAR ship Aquarius which was jointly operated by the NGOs SOS Méditerranée and MSF; and interviewed a representative of the SAR NGO Mission Lifeline in Germany. With the exception of the French and international NGOs operating the Aquarius and the Italian NGO Mediterranea Saving Humans, all SAR NGOs interviewed were German, although many of these sailed under the Dutch flag. All, with the exception of Mare Liberum, conducted SAR operations in the Central Mediterranean, bringing rescued migrants to ports in Italy, Malta and Spain. And all interviewees, with the exception of Jugend Rettet, described significant issues they were experiencing with administrative blockades to their work which emanated from authorities in a range of countries, including Malta, Italy, Germany, the Netherlands, and even Panama. The scope of both my pool of interviewees, and of SAR NGOs in Europe in general, is therefore truly transnational.

At the time of my field research, the various administrative difficulties and blockades described to me by interviewees appeared to be generally disconnected from each other. However, while

I was analysing my research data and conducting follow-up desk research, it became increasingly clear that much of the administrative blockading of SAR NGOs in Europe was connected and transnational in nature, with evidence even suggesting high level co-ordination between EU Member States with the intention of preventing civil SAR operations in the Mediterranean. I have not found another analysis uniting these different cases, and so present the case here, filling an important gap: if there was indeed coordination between states to impose these blockades, this constitutes clear evidence of high-level national interest and collusion in stopping the work of SAR and human rights monitoring NGOs at Europe's borders.

June 2018 was a key turning point: at the beginning of June, only a week after he took office as Italy's new Interior Minister, Salvini declared that Italian ports would no longer allow NGOs to disembark rescued migrants. Following this, SAR NGOs including the Aquarius and the Lifeline each rescued hundreds of migrants and were forced to spend days waiting at sea while Member States argued about who should be responsible for taking in the migrants on board, making global headlines (Barry and Calleja, 2018; BBC, 2018b). Further, on 28-29th June, the European Council held a summit in which search and rescue was a major issue, and in which leaders made decisions to further externalise their migration policies, including stepping up their support for the Libyan Coast Guard, and emphasised the need 'to eliminate the incentive to embark on perilous journeys [...] without creating a pull factor' (European Council, 2018). As I analyse in the section on discursive criminalisation, SAR NGOs have been accused by EU agencies of constituting both pull factors and of incentivising migrants' journeys.

June 2018 also constitutes one of the first obvious uses of administrative and bureaucratic tools being used to blockade the work of SAR NGOs. These regarded the need for ships to sail under a flag state where they are registered, and the status of their registration as pleasure crafts, denoting that they are not commercial vessels. First, evidence collected by the organisation Human Rights at Sea (HRAS) shows that Italy started its campaign to 'de-flag' the Aquarius in June 2018. At the time it was sailing under the Gibraltar flag until the Italian Maritime Rescue Coordination Centre (MRCC) 'gave a notice to the GMA (Gibraltar Maritime Association) stating that the Aquarius would not be considered as a rescue vessel anymore' (HRAS, 2019: 3). This resulted in the Aquarius losing its flag several months later, and then again:

'In August 2018, Gibraltar decided to remove its flag from Aquarius. So we had to stop, and then we got another flag from Panama, and then a couple of weeks after we got the Panama flag, the Panama authorities again stated that they received pressure from the Italian authorities, and they had to remove the flag, and you know a boat without flag cannot go at sea, so you are forced to be at the port' (Interview, R1R)

According to MSF, the Panama Maritime Authority (PMA) contacted the Aquarius crew 'stating that the Italian authorities had urged the PMA to take "immediate action" against the Aquarius' and explaining 'that, "unfortunately, it is necessary that [the Aquarius] be excluded from our registry, because it implies a political problem against the Panamanian government and the Panamanian fleet that arrive to European port."' (MSF, 2018). The independent review by HRAS also concluded that the 'Aquarius' de-flagging is an emerging example of commercial and political pressure being applied by a European Union Member State, Italy, most notably to the GMA and PMA who appeared to accede to the requests from Italian authorities' (HRAS, 2019: 2). Consequently, the Aquarius was unable to find another flag state and, in December 2018, ended its operations. This decision also coincided with the initiation of the investigation of Aquarius staff for 'illegal management of waste', as analysed above in the section on judicial harassment. At the time of its double de-flagging, it had been the only vessel in the Mediterranean conducting SAR operations off the coast of Libya (Reuters, 2018a). The case highlights the effectiveness of using administrative means, in this case international maritime regulations regarding flag states, to prevent SAR NGOs from operating, and demonstrates clearly that the campaign against SAR NGOs is an effort occurring on the national level, to the extent that Italy appeared to use coercive tactics against another nation-state to pursue its anti-SAR NGO agenda and externalising its criminalisation campaign to Central/South America.

This was not the only case of targeting SAR NGOs based on flag state registration in June 2018: at the end of June and throughout July 2018, Maltese authorities used administrative measures to block Sea Watch's Moonbird aircraft (as reported in my pilot research), as well as four SAR vessels operated by the NGOs Sea Watch, Sea-Eye and Mission Lifeline (FRA, 2021). In all four cases, the ships were blocked by Maltese authorities who 'launched investigations due to potential issues with the registration of the ships under the Dutch flag' (FRA, 2021: 15). I interviewed a representative of Mission Lifeline in 2019, who was persuaded that this administrative attack had been coordinated between Malta, the Netherlands and beyond:

'We were waiting outside Malta. The EU summit was approaching. At some point all sorts of countries said, yes, we'll take the migrants from the ship, so the ship can come on shore, and then at the press conference just before we could come to land, Muscat, the Maltese Prime Minister, said the ship will be confiscated and we'd be investigated, and then three days later a court decided to impound the ship and then later came the trial and Klaus-Peter [the Lifeline captain] was fined 10,000 euros [for sailing without proper registration].

[...] Sea-Eye also had two ships with the Dutch registration, and then the Dutch just said, the registration doesn't count, and the Germans seemed to think so too [...] But the first thing we

heard about the flag not being right, actually came from the Dutch embassy at the EU. They're all on the same floor there, and they talk. The ministries and the interior ministers, they all work together, it's a concerted effort [...] we strongly assume the efforts were coordinated, because in such a short time [the Dutch] publish the statement [tweet] about the flag, we show them that, no, our registration is real, and then we get a letter from the German authority, BG Verkehr, and then immediately the confiscation in Malta. So that's – bam bam bam – a coordinated effort' (Interview, Lifeline; translated from German)

The investigations into the vessels and the case against the Lifeline appeared to hinge on whether or not the vessels were properly registered under the Dutch flag, following a tweet published while the Lifeline was still at sea from 'Netherlands at the EU', the official Twitter account of the Permanent Representation of the Netherlands to the EU (screenshot taken by me 03/2022):



2) The Seefuchs and Lifeline are not sailing under Dutch flag as per UNCLOS flag state responsibility. These ships are owned by German NGOs and not entered into the NL ships register. So NL is not able to give instructions to these ships. Italy is aware of the Dutch position.

3:27 PM · Jun 21, 2018 · Twitter for iPhone

Figure 2: Netherlands at the EU (2018)

My interviewee explained that this was 'ridiculous, because in the Netherlands, like everywhere, there are several boat registers, for pleasure crafts and for commercial ships, and there is no requirement to register a pleasure craft in a commercial ship register' and that the Lifeline's registration was in order (Interview, Lifeline). The NGO responded by tweeting a picture of their registration documents as a pleasure craft, a classification which principally means that they are not a commercial vessel. Alleged issues surrounding registration constituted the principal reason for confiscating the Lifeline and prosecuting and fining the Lifeline's captain. However, while the ship was still at sea, the NGO was accused by Muscat of ignoring Italy's direct orders to turn the rescued migrants over to the Libyan Coast Guard, and the captain was directly criticised by the French President Macron for acting 'against all rules' by not obeying these orders (Barry and

Calleja, 2018). Only after a 'diplomatic effort' led by Muscat which resulted in an agreement in which Luxembourg, Italy, France, Ireland, Portugal, Belgium and the Netherlands agreed to take in the migrants on board the Lifeline, was the ship allowed to dock in Malta, one day before the EU Summit (Ameen, 2018). Such ad-hoc relocation arrangements between individual Member States have since been criticised as being 'secretive and unaccountable' with no 'available piece of legislation laying down the precise administrative procedures and relocation distribution criteria being applied on the ground' (Carrera and Cortinovis, 2019: v). Immediately after granting permission to the Lifeline to come to port, Muscat announced that the ship would be detained and the NGO would be investigated.

For Mission Lifeline, this investigation ended their ship's career at sea, while its captain, Claus-Peter Reisch, was fined €10,000 in 2019 for sailing a boat which was not properly registered (Die Zeit, 2019). However, in January 2020, Reisch's conviction was overturned in an appeal but Mission Lifeline was forced to sell the vessel 'after no European country wanted to place it under its flag on reasonable terms' (Xuereb, 2020).

These weeks in June leading up to the Lifeline's confiscation as well as the EU Summit also turned out to be important in another case. The Sea-Watch 3 was detained in Malta immediately after, on 2nd July 2018 on the basis of its Dutch flag, but was eventually allowed to sail again in October 2018 on the basis that it would not conduct SAR operations but go to Spain for maintenance (Interview, SW). However, in February 2019 the Sea-Watch 3 was blockaded in an Italian port by the Italian Coast Guard who cited 'technical irregularities' and then by the Netherlands, so that the Dutch authorities could carry out inspections related to safety concerns and the ship's ability to 'accommodate rescued people for longer periods of time', and was only permitted to leave once Sea Watch threatened to go to court (Sea Watch, 2019a). Then in April 2019, the Sea-Watch 3 was forced to stop operating when the Netherlands imposed a new administrative policy which essentially required Sea Watch to 'rebuild its entire ship', taking at least six months and costing tens of thousands of euros (Vermeulen, 2019, translated from Dutch).

A Dutch journalist (Vermeulen, 2019) reconstructed the introduction of this new policy, drawing on a range of sources including information obtained by Sea Watch via the Dutch Freedom of Information Act constituting communications around the policy, most of the contents of which, however, is redacted (Sea Watch, 2019b). Crucially, these communications start in June 2018 in the lead up to the EU Summit as well as the confiscation of the Lifeline, Sea Watch 3, and Sea-Eye's vessels in Malta, all of which sailed under the Dutch flag. Two weeks before the EU Summit, the Dutch Minister for Infrastructure and Water Management met with the State Secretary for

Justice and Security, and the following day the former asks her officials for an 'extensive background file' about NGO ships sailing under the Dutch flag (Vermeulen, 2019). In the following days, officials from both ministries as well as the ministry of Foreign Affairs discuss 'perspectives for action' on NGO ships, and investigate the possibility of imposing technical requirements on the ships "E.g. in the field of safety", showing that 'safety' constitutes a means of control rather than a goal in itself (Vermeulen, 2019). Immediately following the EU Summit, the Dutch Prime Minister Rutte said 'you have to think about better checking ships. Some boats are totally unsuitable for receiving so many refugees' (Vermeulen, 2019). Following the summit, while the Sea Watch 3 was detained in Malta, the three ministries continued discussing new safety regulations and, eventually, inform the authority actually responsible for checking safety requirements of ships (Vermeulen, 2019).

The policy change hinges on Sea-Watch's registration as a pleasure craft in the Netherlands – just as the Lifeline was as well as NGOs such as Greenpeace – due to a 1989 policy allowing organisations 'with idealistic objectives' to register as private pleasure crafts 'without incurring the high costs of certification of a commercial ship' (Vermeulen, 2019). Ministers argued the change was necessary out of 'safety concerns', even though there had 'never been any safety incidents involving this category of ships' and the result of the policy was to remove the last active SAR NGO at the time from the Mediterranean (Vermeulen, 2019). While the new policy had been rushed through, affected NGOs were placated with the promise of a reasonable transition period during which they could adapt their ships as necessary, and when the policy was passed on 2nd April 2019, all ships were afforded this period – with the sole exception of Sea Watch who were informed that the policy would immediately apply to them, the only active SAR vessel (Vermeulen, 2019). Sea Watch took the case to court and won against the Netherlands twice in The Hague, where the court extended the transition period for Sea Watch and ruled that the minister had violated Sea Watch's 'legitimate interests' and that there had been 'negligent ministerial action' involving 'a violation of property rights' (Sea Watch, 2019c; FRA, 2021).

In this way, in the months following the June 2018 EU Summit, all active SAR NGO vessels, including the Aquarius, Lifeline, Seefuchs, Sea Watch, and Spanish vessels blockaded in Spain, were taken out of the Mediterranean one by one – all based on administrative and bureaucratic procedures, related to flag states, registration, and safety requirements.

My interviewees at Lifeline, Sea Watch and Mare Liberum, also told me about problems they were having with German authorities, who apparently 'just copy and pasted what the Dutch are

doing and saying 'this is not a pleasure craft because obviously you don't do pleasure' even though it really just means that you have non-commercial interests' (Interview, SW). Some evidence suggests, however, that this was not merely a case of the Germans copying the Dutch but rather something which was developed simultaneously, and that the German case, therefore, grew out of the same momentum and co-operation which began in the other cases in 2018. While most sources analysing the case focus on events starting in 2019, when Mare Liberum was blocked on Lesvos by the German authority BG Verkehr, who stated that they were a small cargo ship rather than a pleasure craft and therefore needed a safety certificate, my interviewee at Lifeline, when he was telling me about the Lifeline's confiscation in Malta in June 2018, mentioned that 'the Germans seemed to think so too' [that their Dutch registration was not in order] and that 'we get a letter from the German authority, BG Verkehr' around the same time (Interview, Lifeline). Further, the Sea Watch freedom of information request regarding the Dutch policy change, which constitutes almost 300 pages of mostly redacted material, includes not only evidence of extensive communication between Malta and the Netherlands during the 'unlawful detention of the Sea Watch 3 in Malta', the same period as the Lifeline's detention, but also includes several pages of completely redacted emails between the Netherlands and the German Federal Maritime and Hydrographic Agency regarding 'Registration of the ship [...] in the Dutch flag register' (Sea Watch, 2019d).

At the time of my interviews with Mare Liberum and Lifeline in the summer of 2019, both were being blocked by BG Verkehr, an employers' liability insurance association, on the basis of safety certificates. A journalist later gained access to a directive sent by the German Ministry for Transportation to BG Verkehr, one month before Mare Liberum was forbidden from sailing. The directive provided a new definition of what activities pleasure crafts might undertake for the purpose of ship safety legislation, i.e. only for relaxation or pursuing a hobby, and explicitly asks for this definition to be used 'as a basis for the classification of the vehicles used in the context of sea rescue in the Mediterranean' (Madjidian, 2019, translated from German).

Like Sea Watch in the Netherlands, Mare Liberum challenged this blockade in the courts, first in the Administrative Court of Hamburg and then in the Higher Administrative court following an appeal by BG Verkehr; both ruled in the NGO's favour, deciding that the vessel and its activities counted as a pleasure craft and that it did not need a safety certification (Madjidian, 2019). The authorities were able to find a way around the court's ruling, however, by simply changing the related legislation: in March 2020, the Ministry for Transport and Infrastructure amended several of its ship safety laws, via 'executive statutes enacted by federal ministries', introducing a new definition of pleasure crafts which excludes the work of SAR NGOs and Mare Liberum,

thereby imposing the security certificate requirement on them – certificates which ‘entail safety requirements regarding construction, equipment, and crewing of the ship’ thereby subjecting ‘humanitarian missions to requirements that are designed for the commercial shipping industry’ (Keller, Madjidian and Schöler, 2020). Non-compliance would result in a fine of up to 100,000 euros. After losing a hearing in court, therefore, the German government simply changed the relevant legislation in order to legitimise its attempts to stop the work of SAR NGOs. In this way, blocking SAR NGOs through administrative and bureaucratic harassment led to legislative change which rendered SAR NGOs subject to legal actions and fines were they to continue their activities, thereby criminalising them without resorting to criminal legal mechanisms.

However, the nature of such administrative blockades against SAR NGOs were only temporary fixes to the ‘problem’ of NGOs in the Mediterranean for state actors: NGOs were forced to stop operating and to comply with new regulations and standards imposed on them. However, once they had adapted and equipped their ships in order to comply, these blockades were no longer applicable and SAR NGOs with Spain, Norway and Germany as their flag states eventually passed inspections and were certified or considered sufficiently safe by the overseeing authorities (generally not those authorities involved in creating the new blockades in the first place). So, with more SAR NGOs being allowed to sail again by their flag states, in early 2020 Italian authorities (the Italian Coast Guard, reporting to the Ministry of Infrastructure) started using Port State Controls (PSCs), inspections for commercial vessels belonging to other states, to block their work and keep them in administrative detention. PSCs were first used in August 2019, but 5th May 2020 ‘marks a watershed’ (Merli, 2021). Prior to this date, 8 PSCs were carried out on SAR NGOs, only one of which resulted in an administrative detention. Between 5th May 2020 and April 2021, however, ‘the PSC-to-administrative detention ratio was suddenly reversed: nine inspections resulted in eight detentions’ and ‘the number of irregularities found suddenly multiplied’ (Merli, 2021). In the most dramatic example, the Spanish vessel *Aita Mari*, which had previously been ‘subjected’ to two PSCs in 2019 and 2020 which had each only found one irregularity, was checked again only three months later, when 26 irregularities were identified, leading to the ship’s detention (Merli, 2021). In 2020 and 2021, at least eight NGO ships were thus seized at port due to ‘technical irregularities related to maritime security’ (FRA, 2021). This constituted the dominant form of blocking SAR NGOs in 2020 and 2021, and successfully prevented the majority of vessels from being able to operate during some of the busiest (and deadliest) periods when attempted crossings are highest, such as in the summer. In June 2021, for example, out of a total of 19 active SAR NGO ships and planes, only six were operating, and only two of these actively performed SAR operations (rather than observation activities). The

majority of those 'not operational' (in red on the map) were blockaded via administrative seizures:



Figure 3: "Map showing NGO ships involved in SAR operations in the Mediterranean Sea between 2016 and 15 June 2021" (FRA, 2021b)

These interweaving case studies demonstrate the active efforts on national levels to block the work of SAR NGOs and indicate that there was active coordination between Member States to do so, seemingly based on decisions made, or issues discussed, at the EU Summit in June 2018. While cases of administrative and bureaucratic harassment in other research areas, such as in Calais, appear to be more sporadic and taken on the initiative of local authorities seeking to complicate the work of CSAs, in the case of SAR NGOs in the Mediterranean, and Mare Liberum, the human rights monitoring NGO in the Aegean, government ministries and individual national leaders actively worked to take the vessels out of the ocean. The calculated and transnational nature of the use of administrative blockades against SAR NGOs since 2018 makes it clear that the repression and criminalisation of pro-migrant CSAs in Europe is actively on the political agenda, not only in obvious cases like in Salvini's Italy, but also in the Netherlands and in Germany, the latter of which has publicly expressed solidarity and support with SAR NGOs and condemned the closed ports policies of Italy and Malta, all the while blocking the work of those sailing under the German flag 'in the shadows, away from media attention' (Madjidian, 2019).

This is a key benefit of the use of administrative blockades: while the prosecution of sea captains for human smuggling and long stand-offs between states and SAR NGOs seeking entry to European ports generate global headlines and much attention, the use of comparatively dull, complicated and untransparent bureaucratic procedures relating to ship registrations and safety certificates are not only effective, but also often fail to grab the attention of those not directly affected. State actors were thereby able to attack SAR NGOs and prevent their work through

administrative and bureaucratic procedures and sanctions which give state actors the appearance of legitimacy: through their attempts to manipulate and use existing administrative mechanisms in targeted ways to block SAR NGOs, and through the rushed implementation of new legislation to back up their tactics with the law. In this way, rules and regulations regarding safety on board ships, including the safety of persons rescued, are used in order to prevent SAR NGOs from conducting any rescue operations at all.

A systematic bureaucratic sword of Damocles in Greece

Almost every single CSA interviewee in Greece raised issues related to bureaucratic and administrative procedures and regulations in their interviews. Many CSAs were struggling to register with the ministry of migration, as I have already described in my pilot research and the section on legislative change; have been shut down or threatened with evictions due to health and safety or building regulations; and have been harassed through repeated visits and calls from 'the tax office who would really torture NGOs and ask for completely unnecessary paperwork' (Interview, L16R). Administrative distinctions between pleasure and commercial vehicles lying at the root of administrative harassment of SAR NGOs were also used on Lesbos where the 'customs impound yard is full of vehicles' seized from volunteers and CSAs who hadn't registered their cars as business vehicles and were 'accused of using them for business purposes, because they see charity as a business' (Interview, L15R). Bureaucratic barriers have also been erected in order to try to prevent aid supplies from reaching Lesbos: the Spanish SAR NGO ProActiva (after being prohibited from conducting SAR operations by Spain) brought a shipload of donations to Lesbos but was blocked from entering the port for approximately one week as the local authorities came up with a variety of reasons for why the ship could not dock – from shallow water, to incorrect taxes, to incorrect registration: 'every day the authorities came up with another excuse of why they couldn't come in' (Interview, L15R).

While state actors throughout Europe target SAR NGOs through the use and manipulation of existing systems of expansive and technical rules and regulations, bureaucratic and administrative harassment of CSAs in Greece rather rests on an administrative vacuum and the maintenance of bureaucratic grey areas. Compared to countries like Germany and the Netherlands, Greece's bureaucratic infrastructure, especially but not only in regards to civil society and NGOs, is far less developed: 'perhaps one of the oddest characteristics of the Greek case regarding the organized civil society is the lack of an official registry of NGOs; a result of the chaotic bureaucratic and underdeveloped regulatory framework' (Valvis, 2014: 11). In addition

to the (previous) lack of NGO registry, Greece only has a 'scattered and fragmented regulatory framework' (Valvis, 2014: 11). This regulatory vacuum, combined with a landscape of more general bureaucratic infrastructural underdevelopment in which non-compliance is essentially the norm for Greek individuals and small businesses, means that state actors wishing to target or block the work of CSAs have a lot more discretionary space in which to do so.

It is the freedoms and space afforded to state actors by this weak bureaucratic infrastructure which have enabled a space of bureaucratic uncertainty and vulnerability experienced by the majority of CSAs I interviewed, and which also enable and increase state control over the civil society space. As I will demonstrate, it is also these elements which are the foundation of the clear similarities between the situation in Greece and analyses of the way in which CSAs are targeted in more authoritarian states: first, through the new 'registration procedure itself' which 'can be used to restrict civil society', for example through 'burdensome requirements of information provision' and without which 'legally undertaking activities is often impossible' (Buyse, 2018: 970); and second, through 'government agencies that use their power to control NGOs in an ad hoc manner' (van der Borgh and Terwindt, 2014: 46) and which 'retain discretionary powers to shut down NGOs' keeping them 'in a precarious state in which they are tolerated but remain vulnerable to arbitrary termination', with the possibility of such an outcome inhibiting 'NGOs' activity and effectiveness' (Gershman and Allen, 2006: 42).

I argue that the reason for this lies within this greater ability of state actors in Greece to use bureaucratic and administrative tools in discretionary ways within an environment in which it is almost impossible for CSAs to attain protected status or to be on the 'right side' of the rules and regulations, rather than in any greater will of the Greek government to use bureaucratic and administrative means to block CSAs, as became clear in the case of the SAR NGOs outlined above.

The Ministerial Decisions introducing new registration requirements, which I analysed in the section on legislative change, therefore did not need to navigate existing frameworks; responsible state actors could create and implement the new legislation on registration as would most suit their purposes. Issues related to registration came up in almost every interview with CSAs in Greece, many of whom, as was the case during my pilot research, continued to find it impossible to register with the Ministry of Migration and were expending valuable resources, especially time, energy and money, on the process. CSAs were left suspended in a limbo in which they were never able to register and therefore never able to achieve legal status, keeping them

in a constant legal grey area in which they were more vulnerable to being shut down or kicked out of the refugee camps they often worked within.

The formal position, one which I heard from both state actors and CSAs, was that 'in order to operate and have access [to camps], you have to be registered' (Interview, G6R). However, this was clearly not the case in both phases of my field research, where I spoke to a number of CSAs working inside camps and in close cooperation with state actors who were not registered but were attempting to do so. One interviewee working for a medical NGO on the mainland told me she had received permission to work from the Ministry of Health, but was still not registered with the Ministry of Migration: 'we're working on the registration, it's very hard, we've been working on it for over a year, you have to sort out an unbelievable amount of paperwork, and they just request more and more and more' (Interview, G5R, translated from German). Even though she was able to work inside a refugee camp, and had started doing so on the request of the Ministry of Health, she felt that officially registering was important: 'I always think that through the registration we'll have more freedoms, everything will be a bit easier, we'll show the police our papers saying, 'hey we're registered here, everything we're doing is in order', we'd just be more secure' (Interview, G5R).

However, this state of continued bureaucratic and legal limbo is not unique to the system of NGO registration in Greece. Rather, the maintenance and use of bureaucratic grey areas relating to administrative issues such as registration, regulations and licenses is a systematic feature of the Greek bureaucratic landscape, defined by widespread regulatory non-compliance. According to Greek interviewees, much of the population, not just CSAs, inhabit a legal grey area regarding building and business licenses, for example. This, however, means that authorities are able to enforce existing regulations selectively, targeting only those which they might wish to intimidate or create problems for. This discretionary nature of the way in which regulations are used in Greece became particularly clear in an interview on Lesbos:

'we took this hotel under the understanding that it was an operating hotel previously [...] we were accused by the Ministry of Tourism of running a hotel without a license. Because this isn't a criminal investigation, it's a civil investigation, they went ahead and evicted us from the building, without us having any say [...]

They had an administrative hearing 90 days later, the last day they could possibly do it, legally. They informed us four days after the hearing, so we couldn't attend and neither could our lawyer, and the eviction was upheld. I've been personally fined 10,000 Euros because it was my tax number on the lease for the building. Three years later we're still waiting to get to court. My bank accounts are frozen. They've taken money from my bank accounts, they took 800 Euros of my

personal money from my bank account without any... they just did it. And we wait to go to court, to prove something that's ridiculous.

[...] And it turns out under later investigation that the owner of the building didn't have a license to ever operate a hotel. So she'd been operating a hotel for 30 years before we took it, without a license, but nobody saw that. And I have all the receipts, everything to prove that she was operating, so why would we even assume the building never had a license to operate?' (Interview, L15R).

The interviewee was not only sanctioned for not having the right license when the previous owner had not been and, according to different interviewees, many businesses on the island would also have been lacking, but was not informed of her own hearing and has been unable to appeal the case for three years. Moreover, at the time of the eviction, the interviewee had not even begun to run the centre as a place for accommodation, having only once hosted refugees at the direct request of the UNHCR on the island (Interview, L15R). Nevertheless, the lack of robust bureaucratic procedures and infrastructures not only left the interviewee vulnerable to attack on the basis of building licensing, it left her powerless to appeal the eviction.

One Greek interviewee spoke about the nuances of such bureaucratic and legal grey areas in Greece, describing them as an inherent part of the Greek bureaucratic landscape and as something which the medical NGO he worked for had to accept and even maintain: 'we've been trying to follow as much as possible the legalities, but also keep in mind that in Greece there is a lot of grey areas. Sometimes, we try to avoid all these grey areas, but sometimes we are just maintaining these grey areas because, I'll give you an example' (Interview, A2R). My interviewee described how a medical clinic run by the NGO by a refugee camp could not meet the formal requirements for a medical clinic in Greece, just as medical clinics inside camps run by the Greek Ministry of Health do not meet such requirements, because there are no regulations for mobile clinics and 'after so many years' of medical clinics being needed in the field, the state did not adapt or introduce new regulations enabling the clinics (Interview, A2R). However, they 'don't insist' on 'getting a permission', likely because forcing the hand of the authorities would likely result in refusal: 'a Greek reality, nobody will give you things in writing. That's also a grey area, that many authorities will not give you things in writing, because they are afraid of responsibility, but they will allow you to do it' (Interview, A2R). So in the end, the CSA works within this grey area, where both the NGO and the authorities know that this is the case: 'you know, and I know, and we know, and everybody continues,' and 'if they want, they can come tomorrow and say, ah guys, you are running a clinic and this is illegal, because you need to have this permission and these standards' (Interview, A2R).

This grey area is the standard in Greece, even for major international NGOs with access to vast resources and lawyers to help navigate bureaucracies. The result is that CSAs in Greece, both through the registration requirements and other bureaucratic measures, remain suspended under the proverbial Sword of Damocles, which can be dropped whenever state actors choose to do so. In the section on co-optation, I expand on the level of control and power which this lends state actors over CSAs. In many examples from my research, the sword eventually dropped. Interviewees during my pilot research phase also mentioned the CSA-run Pikpa camp on Lesbos island, which had been threatened with eviction based on health and safety violations (a broken net and a water tank leak). During my principal research phase, Pikpa camp had still not been evicted after the ministry of migration had stepped in to support them publicly, but the orders to evict had not been repealed: ‘the threat is still there, but it’s not being enforced. It could be, but it’s not being’ (Interview, L4R). The eviction eventually occurred in a ‘massive and unannounced operation’ by police in October 2020 in which ‘no official written order was presented at any point’ and despite an ongoing case against the eviction at the European Court of Human Rights (ECRE, 2020). 22 migrant support groups who had failed to register were ordered to stop their operations in 2020 (Wallis, 2020), while local authorities forced the MSF Covid-19 isolation centre in the Moria camp on Lesbos to shut down in July 2020 after imposing ‘fines with potential criminal charges, related to urban planning regulations’ risking ‘terrible implications should an outbreak occur in Moria’ (MSF, 2020).

No CSA interviewee in Greece felt like they were protected from being targeted by ad hoc applications of bureaucratic and administrative regulations and procedures. As one interviewee on Lesbos put it:

‘they kind of just make the laws up as they go along. It feels that way, it feels like we have no protection from the law, and yet the laws are constantly - or the civil authorities - are constantly oppressing us. So, and we're just waiting for it to happen here. We're waiting for the people to start turning up and trying to shut us down’ (L15R)

The way in which bureaucratic and administrative tools are used to target CSAs in Greece is essentially undifferentiable to the repressive tactics used in ‘hybrid regimes’, i.e. ‘illiberal, backsliding, or fraudulent democracies or partially open dictatorships’, in which ‘NGOs are frequently impeded and harassed by bureaucratic red tape, visits from tax inspectors, and other below-the-radar tactics used to thwart the efforts of democratic and civil society actors’ and ‘failure to comply with the state’s demands may prompt sanctions and penalties’ (Gershman and Allen, 2006: 36 and 43).

As became clear in both these case studies, the category of administrative and bureaucratic techniques is closely related to legislative change: in both the case of SAR NGOs and registering in Greece, the (mis)use of administrative rules and regulations to block CSAs has involved state actors changing or introducing administrative legislation via ministerial decree in order to enable or justify their use of administrative sanctions and bureaucratic processes to block and target SAR NGOs. There are also similarities to judicial harassment: in both categories, legal provisions (administrative or criminal) are used to target CSAs. However, cases of judicial harassment tend to make greater waves in the media and the public, due to 'juicier' and often more comprehensible narratives, and tend to have their own inbuilt accountability mechanisms: ensuing trials prior to a decision being made and sanctions being issued. In contrast, administrative sanctions (and legislative changes) can be made and issued with immediate effect, without needing the oversight and approval of judges or courts. In the case of SAR NGOs in Italy, Malta, Germany and the Netherlands, CSAs can take it upon themselves to appeal decisions made in court and also often win these cases, in a similar outcome to cases of judicial harassment, however with much less public attention. In Greece, however, due to the general lack of administrative and bureaucratic infrastructure and compliance, the maintenance of such legal grey areas, the informal nature of much of the cooperation and permission afforded to CSAs, and incredibly slow bureaucratic processes, there is little to no accountability and CSAs find themselves unable to appeal sanctions against them.

In both the case of CSAs in Greece and SAR NGOs in the Mediterranean, however, bureaucratic and administrative means have successfully prevented the work of certain CSAs for extended periods of time or ended it entirely. And, in both cases state actors have generally been able to do so with minimal attention from the press, in stark contrast to cases of judicial harassment, particularly related to smuggling charges, which have not only captured the attention of the media, but also continues to be a primary focus of academic literature analysing the criminalisation of CSAs in Europe. Administrative sanctions, when included, have often been subsumed under the category of judicial harassment and mentioned as a side note or afterthought.

I argue, however, that bureaucratic and administrative techniques, rather than representing second-best options or a weaker version of judicial harassment, offer greater freedoms and powers to state actors to target the work of CSAs in a range of ways. First, they are often more effective at stopping CSA activity than judicial harassment and can do so more swiftly. Second, they are subject to far less public scrutiny and allow state actors to avoid accountability or even recognition of their actions, such as in the case of Germany which publicly advocates for SAR

NGOs to be allowed to dock at European ports, while blocking them behind the scenes in administrative arenas. Third, in the case of Greece especially, the creation and/or maintenance of bureaucratic and legal grey areas offer greater control over CSA activity to state actors, who implicitly hold the threat of sudden termination over their heads. Unlike judicial harassment, in the form of prosecutions for smuggling, this form of repression constitutes a tool of long-term insidious control over the pro-migrant civil sector in Greece, an effect which I expand on in the section on co-optation as a form of repression.

6.5. Labels and stigmas

This category refers to negative and stigmatising rhetoric and narratives which are propagated about pro-migrant CSAs. In literature on the criminalisation of pro-migrant CSAs, this has been referred to as 'discursive criminalization' (Jalušič, 2019: 118) and is often understood as a precursor to judicial harassment, in which criminalising narratives legitimise other forms of criminalisation (Pezzani and Heller, 2017; Carrera *et al.*, 2018; 2019). Discursive methods are also emphasised in the literature on the pressuring of NGOs in partial democracies, in which stigmatisation is defined as 'the phenomenon whereby an individual is rejected as a result of a deeply discredited attribute (such as being a criminal, terrorist or non-believer)' and occurs 'in cases where groups are portrayed as untrustworthy, or (more strongly) as criminals or dangerous subjects who form a threat to security or social order of society' (van der Borgh and Terwindt, 2014: 46). Such stigmas and labels are mobilised by actors, such as governments and media, for specific purposes such as 'to deter criticism [of the authorities], discourage free expression, increase negative public opinion of civil society actors and distract attention from the issues at stake' (Buyse, 2018: 971).

The literature on repression in more authoritarian states also emphasises the reciprocal relationship between stigmatisation and criminalisation, in which 'stigmatizing opponents in speeches, documents and the media often precedes actual legislative and prosecutorial criminalization' and therefore 'stigmas can legitimize acts of criminalization' (van der Borgh and Terwindt, 2014: 44). Meanwhile, incidents of investigations or prosecutions of criminalised actors can in turn reinforce or create the stigma: 'the factor of formal laws and the factor of discourse and labelling clearly interact: giving an organisation the stamp of forbidden political activity also delegitimises it in the public eye' (Buyse, 2018: 971). As I will show, this process of reciprocal legitimisation between discursive and other forms of criminalising and repressing pro-migrant CSAs is occurring throughout Europe.

This category further refers to labelling theory of critical criminologists which understands that the discursive labelling of certain groups as deviant or criminal is a part of the criminalisation process (Cohen, 2011; Muncie, 2008). Sometimes, this discursive criminalisation occurs within a 'moral panic', when something or someone 'emerges to become defined as a threat to societal values and interests' and often 'its nature is presented in a stylised and stereotypical fashion by the mass media' (Cohen, 2011: 1). It is inarguable that migrants themselves are criminalised through discursive labelling and stigmatising narratives spread in the media, with the common term 'illegal migrant' perfectly exemplifying the way in which a label can denote criminality. This

is not a new feature of the current 'refugee crisis'. Cohen identified refugees and asylum seekers as one of the seven key objects of moral panics in the 90s and analyses some of the dominant discursive labels and narratives used to describe them in politics and the media, such as 'bogus', 'cheat', 'criminal', 'tidal wave' or 'invading army' (Cohen, 2011: xxii-xxv). Each of these narratives serves a specific purpose, such as responding to (or stoking) fears related to burdens on the social system, de-legitimising the category of 'refugee' by portraying them as economic migrants attempting to cheat the system, or merely presenting them as frightening threats who must be dealt with. These narratives are certainly still at play today.

But what of criminalising discourse against pro-migrant CSAs, associated with the objects of this moral panic? Is their stigmatisation merely an extension by association of the stigmas and labels attached to migrants and refugees? Are the principal accusations against them based on the idea that they are helping the 'criminals', the 'cheats' and the 'invading army'? In the following sections, I first outline some of the principal labels and stigmatising narratives which are levied against pro-migrant CSAs and show that CSAs are stigmatised in their own right – the labels and narratives against them generally function independently of anti-migrant stigmas and, indeed, migrants are often portrayed as the victims of CSAs. In the second section, I argue that this serves a very specific purpose: it legitimises the criminalisation of CSAs while allowing criminalising actors to portray themselves as humanitarian and not anti-migrant.

The pull factor

The pull factor narrative, the idea that the presence of CSAs in a given location attracts migrants to that area, was mentioned in almost every interview I conducted throughout both my pilot and principal field research phases. It is an accusation levelled at CSAs by locals, the media and politicians alike; it is so ubiquitous that it is held in the public consciousness as accepted fact. For example, in Calais, 'the rhetoric is mostly that by offering sustained support, we're encouraging people to come' (Interview, C8R); on Lesvos, local helpers were told 'if we were not giving [migrants] help, they would have stopped coming' (Interview, L5R); and Italian politicians 'speak about [SAR] NGOs like they were the cause of migration, they were a pull factor' (Interview, S1R).

The pull factor narrative thereby enables CSAs to be scapegoated for the presence of migrants. To this extent, the pull factor narrative is partially based on the already established stigmatisation of migrants themselves: CSAs are stigmatised because they are perceived to be causing the presence of the undesirable migrants. However, the pull factor narrative also enables the portrayal of migrants and refugees as the unintentional *victims* of CSAs and it is this

which makes it particularly insidious. I discussed this in my interview with Sean Binder who told me that he ‘had [temporarily] internalised the logic of the pull factor’ during his time in prison on smuggling charges: ‘it’s this incredibly pervasive rhetorical device’ because it is so ‘internally coherent’ and ‘just makes sense’ (Interview, SB). According to the narrative, CSAs are generally causing harm accidentally: by trying to help migrants, they are, in fact, harming them. In Calais, for example, state actors like the mayor say that by helping migrants, ‘associations just perpetuate the misery and the presence of displaced people in the region’ (Interview, C7R). When it comes to CSAs involved in search and rescue, the stakes are even higher, the narrative being that ‘every time I pull one person out of the water, two more people actually get in and I am only exacerbating the issue’ (Interview, SB). The logic of the pull factor narrative, then, positions migrants as victims of the well-intentioned, but fundamentally mistaken, do-gooding CSAs who are ‘completely naïve and don’t understand the context and the realities’ of the situation, while volunteers are cast as ‘naïve millennials’ (Interview, SB).

The pull factor narrative has been propagated by a variety of state actors, especially notably in the case of SAR NGOs. Frontex in particular had a major role in the emergence of the narrative, which gained public and media attention and momentum following the publishing of Frontex’ annual Risk Analysis Report and a statement given by the Frontex Director Leggeri in February 2017 (Cusumano and Villa, 2020; Garelli and Tazzioli, 2021; Heller and Pezzani, 2017). Frontex’s report claimed that SAR missions close to Libyan territorial waters have ‘unintended consequences’ as they ‘influence smugglers’ planning and act as a pull factor’ thereby ‘unintentionally help[ing] criminals’ and increasing ‘dangerous crossings on unseaworthy and overloaded vessels’ (Frontex, 2017: 32). While these criticisms were in part aimed at all SAR efforts, including Frontex and the EU naval mission EUNAVFOR Med, the report particularly focuses on SAR NGOs, thereby ‘isolating them from the web of interactions with other actors which together shape the dynamics of migration across the sea’ (Heller and Pezzani, 2017). An assessment of the Frontex report argues that it is based ‘on biased analysis and spurious causality links’ and, drawing on material from Frontex and EUNAVFOR Med reports, demonstrates that counter-evidence to Frontex’s accusations had been available to the agency all along, and that these accusations were therefore politically motivated rather than based in evidence (Heller and Pezzani, 2017). For example, statistical data shows that the increase in crossings along the Central Mediterranean route in 2016 (when SAR NGOs proliferated) were actually consistent with previous trends (Heller and Pezzani, 2017). There is no evidence suggesting a statistical correlation between the presence of SAR NGOs and the number of migrants attempting boat crossings; indeed, several statistical analyses found that rather than

the presence of NGOs, changes in the numbers of attempted boat crossings are affected by factors such as weather conditions and political and economic events and trends (Cusumano and Villa, 2019; Heller and Pezzani, 2017). Nevertheless, the pull factor narrative has proliferated since 2017. It has been repeated by a wide variety of state actors, including in a leaked EUNAVFOR Med report, in the European parliament and the Italian senate, and by Italian public prosecutors and politicians; it remains 'deeply anchored in policy and popular debate around responses to migration in the Mediterranean' (Gabrielsen Jumbert, 2020).

Smugglers and migrant taxis

The pull factor and smuggling narratives are closely related: accusations that CSAs, especially SAR NGOs, collude with smugglers and are involved in human smuggling are intensified extensions of the pull factor narrative. There is a small step between the implication that the presence of SAR NGOs influences and aids the actions of human smugglers, and the accusation that NGOs actively collude with smugglers. Indeed, the narrative that SAR NGOs collude with smugglers emerged around the same time that the SAR NGO pull factor narrative became mainstream and was kickstarted by a (later retracted) Financial Times article, which leaked quotes from a confidential Frontex report in 2016 which stated that NGOs communicated with smugglers by 'using light signals visible from the Libyan coast at night' and suggesting that migrants had been given 'clear indications before departure on the precise direction to be followed in order to reach the NGOs' boats' (Cusumano and Villa, 2019: 29; Robinson, 2016).

The narrative that SAR NGOs collude with smugglers, or are essentially smugglers themselves, has since become widespread and has been propagated by state actors including Frontex officials, politicians and public prosecutors. For example, Salvini directly accused the network Alarm Phone, which takes distress calls from migrants in distress at sea and alerts the relevant authorities, of being 'the hotline of Sea Watch' and of being 'involved with and contacting smugglers' (Interview, SAR2). The public prosecutor of Catania, Carmelo Zuccaro, especially played a major role in spreading the narrative and 'was extremely vocal in the media about his suspicions of the collusion between NGOs and smugglers [...] he was on the news every day' (Interview, R1R). In early 2017, Zuccaro 'publicly claimed he had proof of direct contacts between NGOs and human smugglers' (Cusumano and Villa, 2019: 29). While he later admitted he had no 'admissible court evidence', the 'accusations were immediately appropriated by Italian opposition leaders' like Luigi Di Maio, later the leader of the Five Stars Movement, who 'popularized the expression "taxis of the sea"' to refer to SAR NGOs (Cusumano and Villa, 2019:

29). In Italy, newspapers then ‘propagated metaphors coined by Italian politicians, who associated NGOs with ‘taxis’, ‘cruise ships’, and ‘pirates’ and frequently used terms like ‘collusion’, ‘accomplice’ and ‘complicity’ to describe the relationship between SAR NGOs and human smugglers (Cusumano and Bell, 2021: 10-15). This kind of discourse is often underpinned by associated accusations of rule and law breaking, referring to NGOs as ‘rule-breakers’ and ‘outlaws’ who do ‘not respect’ or ‘ignore’ Italian and international laws and borders (Cusumano and Bell, 2021: 10).

While the pull-factor and smuggling narratives are closely related, they are fundamentally different. The smuggling narrative directly accuses NGOs of being criminals and acting with criminal intent. Rather than naïve millennials who are unintentionally causing harm by seeking to help, CSAs are framed as criminals, smugglers, pirates and outlaws. However, even when direct collusion accusations are absent and the discussion is focused on the pull factor, the constant ‘strong associational links’ being created between NGOs and smugglers in public discourse ‘trigger a chain of connotations that shifts the stigma attached to smugglers onto aid workers’ (Cusumano and Bell 2021: 10). SAR NGOs operating in the Mediterranean have thus become almost synonymous with smugglers and smuggling in public discourse throughout Europe.

This stigma was also present in other research locations. On Lesbos, for example, interviewees working for SAR-related CSAs strongly felt that local law enforcement ‘genuinely think that we have connection with smugglers’, especially following the 2018 arrest of Binder and Mardini on smuggling charges in the ERCI case, while even non-SAR-related CSAs were accused of being somehow involved in smuggling by locals and online trolls (Interviews L22R and L20L). In relation to a news story about CSAs in Calais and Northern France, the UK Home Office said ‘It is dangerous to encourage these Channel crossings, which are illegal, unnecessary and facilitated by violent criminal gangs profiting from misery’, thereby implicitly drawing a connection between CSAs, boat crossings and smugglers (Taylor, 2021). The association between SAR NGOs in the Mediterranean and smuggling has been firmly established, and the stigma appears to be attaching to CSAs throughout Europe.

Money and corruption

Unlike stigmas related to the pull factor and smuggling, stigmas against CSAs around topics of money and corruption have not featured prominently in studies of the criminalisation of pro-migrant civil society in Europe. However, during my field research phases in Italy, and especially

in Greece, it became clear that narratives focusing on CSA funding, financial mismanagement, and corruption, are pervasive. In both countries, the term 'NGO' is used widely to refer to all CSAs indiscriminately, thereby becoming a negatively connoted label in itself: 'for locals, for police and local media, it's very often every foreigner who works with refugees is 'NGO', no matter if it's true or not' (Interview, L11A). Money-related stigmas are generally attached to the term 'NGO' which, however, subsumes all CSA actors – Greek and foreign – and is even attached by many to non-CSAs such as the supra-state institutions UNHCR and IOM.

When asked about what the wider public think of pro-migrant CSAs in Greece, the first answer in almost all interviews focussed on matters of money and funding, rather than smuggling and the pull factor. Narratives include that NGOs 'are corrupt' and 'steal the money' given to Greece for humanitarian support 'to use it for themselves'; that NGOs 'misuse EU money' and 'waste' money, and that 'the reason that the situation is bad in the islands is that the NGOs got the money and they don't do the job'; that NGOs 'are taking a lot of money and jobs'; and that NGOs are interested in maintaining the crisis situation in order to stay employed (Interview, L17Re; L18R; L30R; G6R; A2R). This stigma against CSAs in Greece appears to have infiltrated all levels of Greek society; it is not relegated to far-right or fringe groups. Several Greek interviewees told me that they avoid telling new acquaintances that they work for NGOs working for migrants, and that their own friends and family members ask them about NGOs stealing money.

The particular success of the money-stigma in Greece, in comparison to countries like France where this issue hardly came up in interviews, has several likely reasons. First, the recent financial crisis and resulting austerity measures have led to widespread financial anxiety in Greek society. Many interviewees described how individuals' and locals' opinions of CSAs often depended on the extent to which they felt they are profiting from, or being excluded from, the money entering their region aimed at ameliorating the situation of refugees (Interviews, L17Re; L18R; L30R). Second, since 2015, the presence of foreign CSAs in Greece proliferated to an unprecedented extent in a country with a historically underdeveloped formal civil society sector (Valvis, 2014). As one Greek interviewee put it, Greeks 'were not used to, were never exposed before to the NGO world' (Interview, A2R). This novelty constitutes a gap in which misinformation and stigmas regarding the sector have been able to flourish. Finally, these conditions were compounded by the fact that the 'corrupt NGO' narrative had already been cultivated by Greek media and politicians in the decades preceding 2015. Throughout the 2000s, the credibility of NGOs in Greece had been severely harmed in a series of corruption scandals involving NGOs which were given drawn-out and disproportionate attention by journalists (Valvis, 2014). This led to NGOs in Greece becoming 'synonymous with corruption and a fruitful

field for political conflict between government and opposition' actors: Greek media had 'constructed an immoral and corrupted image of the NGO sector as a whole' arguing that 'behind the façade of NGOs doing good for the society there were other motives' (Valvis, 2014: 17-18). The continued prevalence and intensification of this stigma was clear throughout my field research periods in Greece.

However, the money and corruption stigmas attached to pro-migrant CSAs in Greece have also been actively propagated by Greek politicians who have used the narrative to deflect blame from their own failures and use NGOs as scapegoats. Two examples from both sides of the 2019 general election illustrate this. In 2016, following widespread criticism of the Greek government's handling of the 'refugee crisis', especially regarding the mismanagement of funds representing 'the most expensive humanitarian response in history' with at least \$803m coming into Greece between 2015 and 2016 alone, the then Minister for Immigration Policy Mouzalas 'deflected responsibility from his ministry' saying 'it wasn't our choice for the money to go to NGOs [...] We are not the ones in control of this money' (Howden and Fotiadis, 2017). And in early 2020, during a period of escalating tensions on the Greek islands in which migrants, journalists and volunteers and other CSAs were harassed and assaulted by far-right extremists, the Greek Alternate Migration Minister Koumoutsakos was 'publicly encouraging a campaign of hate and blame against NGOs', calling them 'bloodsuckers' who 'set up operations in one night in order to have access to EU funding' (AYS, 2020c).

Such statements have not been isolated incidents, but a common narrative propagated by the governments and Greek media which scapegoats NGOs for taking EU money and mismanaging the crisis, creating the poor conditions in the camps. This has the further effect of drawing attention away from the government's own alleged misuse of EU funding for the Moria camp for which it was investigated by the European anti-fraud agency (Smith, 2018b). Within the logic of the money stigma, CSAs are corrupt and money-grabbing, capitalising on and worsening the crisis. Conversely, the migrants in the camps are the victims of the NGOs, suffering under their mismanagement. This dynamic, of CSAs actively posing a threat to migrants, was explicitly espoused by the Greek Ministry of Migration in a statement published in September 2020 encouraging refugees to register at the new camp on Lesbos after Moria burned down. One of the sentences in the statement, which was later deleted, said: 'Only the Ministry of migration and the Police are the reliable source of information. No NGO, no one threatening you wants your good' (AYS, 2020a). Like smuggling narratives, the money and corruption stigmas paint CSAs as criminal and malicious entities, acting with intent to harm migrants, their victims.

Interviewees in Italy related similar money-based accusations from members of the public as those in Greece, including accusations that CSAs profit, or 'eat', from migration, and a general suspicion of 'any kind of solidarity, any kind of generosity' which was compounded by politicians accusing NGOs of 'not being transparent' or part of a 'corrupt conspiracy' (Interviews, R1R; R3R; S2R; S3R). There is also suspicion around funding sources, with people asking: 'why are they doing this, why there are these private organisations saving lives in the Mediterranean, who is funding them, how much are they earning by doing this job?' (Interview, S1R). The interviewee, working for an SAR NGO, felt it was ironic that politicians from the Lega Nord party, which was 'condemned by the judge for stealing €49 million [...] is saying to us that we should be more clear in our funding' (Interview, S1R). The prosecutor Zuccaro also 'claimed that non-governmental sea rescue was too expensive to be sustained through lawful donations alone' (Cusumano and Bell, 2021: 10). In many cases, then, the money-stigma attached to NGOs in Italy is an extension of the smuggling narrative, further evidence that SAR NGOs profit through their collusion with smugglers.

However, CSAs are also framed in the Italian right-wing media 'as profiteers that benefit from the economic opportunities arising from the exploitation of irregular migrants', and often associated with the word 'business' (Cusumano and Bell, 2021: 10). In fact, SAR NGOs are often connected by the media with organisations (often newly established non-profits) managing reception centres in Italy, a system in which corruption abounds. This leads to 'cases of fraud and management in these facilities' being 'used to suggest guilt by association, implying that sea rescue NGOs enable and directly participate in this lucrative migrant reception industry' (Cusumano and Bell, 2021: 10). This is reminiscent of the scapegoating of CSAs in the mismanagement of refugee camps in Greece, however the Italian case is peculiar in its unique fixation on SAR NGOs, which also delegitimises all CSAs by association in the eyes of the public (Interview, R2R). The association manufactured by the right between NGOs and the migrant reception centres further corners 'the left': 'there was no space to say, maybe we could investigate these hostels for corruption, that space was taken by the right' (Interview, S3R). In both Greece and Italy, an associational web between CSAs, corruption, exploitation and profit has been firmly established by politicians and the media, leading to the word 'NGO' becoming used as a negative label attached to all CSAs working with migrants.

Radicals and foreigners: othering discourses

Two other narratives often used to 'other' pro-migrant CSAs, are that they are 'foreigners' or 'radicals' (Cusumano and Bell, 2021: 11). Cusumano and Bell, however, argue that this discourse 'indirectly criminalise[s]' CSAs, demonstrating a tendency I critique in the literature of attempting to subsume too broad a phenomena under the term and into frameworks of 'criminalisation' (2021: 11). Rather I understand the propagation of labels and stigmas independent of logics of criminalisation as constituting part of the broader picture of the repression of pro-migrant CSAs, alongside techniques of criminalisation.

In Italian right-wing media, SAR NGOs are 'systematically framed as extreme left-wing activists' and 'labelled' as 'rebels', 'extremists' and even 'Taliban', a 'metaphor used to stress their allegedly uncompromising approach to migration' (Cusumano and Bell, 2021: 11). The extent to which even the milder of these terms have become negatively-connoted and weaponised by state actors throughout Europe is illustrated by the UK Home Secretary Priti Patel, for example, who accused 'do-gooders', 'lefty lawyers' and 'activist lawyers' of 'frustrating the removal of migrants' from the UK (Townsend, 2020).

But even for 'No Border' activists, whose ideology is explicitly left-wing radical, the discourses aimed at them are disproportional and criminalising. One interviewee in France told me: 'when I arrived in Calais, I was sure that No Borders was dangerous, I was sure they were activists doing illegal activities' because 'the government was really actively communicating about the No Border activists who help migrants to cross the border, who help them organise against the police, and without any evidence or anything' (Interview, CV6). Yet even those CSAs which do not adhere to radical open-borders ideologies are dismissed as such by a public for whom words like 'activist' and 'radical' are synonymous with 'extremist' and even 'Taliban'. An interviewee at an SAR NGO in Italy felt this strongly: 'the problem is that our message now is considered radical. What is radical is saying that everyone should be free to go to live where he wants. But [we] are not saying this [...] our principle is that people must be saved. This is not radical, this is humanity' (Interview, S1R).

The other 'othering' labelling which often occurs is the emphasis on the foreignness of CSAs, especially of SAR NGOs in Italy who are generally always distinguished in the media by their nationality, such as 'German', 'Spanish', or 'French' (Cusumano and Bell, 2021: 11). This 'not only frames humanitarian actors as alien to the Italian population', but also regularly underpins the accusation 'that rescue ships illegally enter Italian waters and ports' while they refuse 'to take those rescued to the northern European countries where their organisations or ships are

registered' while tapping 'into Italians' frustration about the uneven burden sharing of asylum seekers across the EU' (Cusumano and Bell, 2021: 11 and 16). In combination, the 'radical' and 'foreign' labels are used to frame CSAs as 'foreign extremists or outright criminals violating Italian borders and exacerbating other EU member states' lack of solidarity towards Italy' (Cusumano and Bell, 2021: 17). This discourse is deliberately mobilised by state actors like Salvini, for example, who referred to Alarm Phone, an international network who operate a satellite phonenumber for migrants in distress at sea in order to alert state authorities, as run by 'German activists' and who in general emphasises and thematises the foreignness of SAR NGOs (Interview, SAR2).

Similar discourses were also shared by interviewees in Greece, including an interviewee on Lesbos who felt that 'a lot of humanitarianism on Lesbos took the form of a very imperialist project [...] interpreted as [part of] the interior colonisation of southern Europe by the north, then having these spades of super rich volunteers coming down here and telling them that they don't know what they're doing'. For example, a No Border organisation made up of mostly German activists 'who come and squat a place, you can see from the vantage point of a Greek local, it's like these Germans have come here to squat something that is ours, and they've already colonised us because we are all in debt to them' (Interview, L16R). Like the money discourses, and in part for similar socio-economic and political reasons, the 'foreigner' label for CSAs was particularly prominent in Greece and Italy.

The Kalergi Plan, racism and anti-migrant sentiment

On my first evening in Italy during field research I met a friend of a friend in Palermo, a young doctor, who told me that SAR NGOs are all funded by the Hungarian Jewish philanthropist George Soros. When I suggested that this was false and sounded like part of an anti-Semitic conspiracy theory, he asked me if I wasn't worried about Jewish people running the world? According to one of my interviewees, this idea that 'Soros funds everything, Soros funds the NGOs' is a popular narrative in Italy, an intensification of the feelings of 'I don't trust these NGOs, why are they doing it, everyone's eating anyway, everyone's making money off someone' (Interview, S3R). According to the interviewee, 'the alliance of Lega Nord and the Five Star Movement [the main parties of the coalition government between 2018 and 2019] has ended up being an alliance of the conspiracy theory left and the conspiracy theory right [...] The real kind of like Jewish conspiracy theory stuff... it always comes through' (Interview, S3R). Indeed, a 2016 study found that belief in conspiracy theories is common in Italy, especially in supporters

of the Five Star Movement and right-wing leaning people (Mancosu, Vassallo and Vezzoni, 2017).

The specific conspiracy theory underlying accusations of Soros funding is the 'Kalergi Plan', often referred to as the 'Great Replacement', which originated in Nazi Germany and 'found its way into the American and international radical right' in the early 2000s (Clark, 2020). It claims that there is a plan of ethnic replacement organised by (often Jewish) European elites to bring African and Asian populations to Europe to 'create a multi-ethnic flock' easier to control for the purpose of labour (Bianchi, 2016). Since the beginning of the 'refugee crisis', a new 'iteration' of the conspiracy theory has been popularised, especially by Hungary's Prime Minister Viktor Orbán: the 'Soros Plan', in which Soros is accused of 'convincing the European Union to accept refugees, and which lies behind Hungary's Stop Soros law which directly criminalises the work of pro-migrant NGOs in Hungary (Clark, 2020). The conspiracy theory is also a favourite of Salvini's, who has publicly denounced the 'attempted genocide against the populations that have been living in Italy for the past centuries, which someone would want to supplant by tens of thousands of people from other parts of the world' and has 'repeatedly accused the EU' of instigating 'ethnic cleansing' while accusing Soros of wanting 'to fill Europe and Italy of immigrants because he likes slaves' (Attanasio, 2018). The popular right-wing newspaper *Il Giornale* also 'explicitly hinted at conspiracy theories propagated by the extreme right' including that Soros 'funded NGOs to ferry cheaper migrant workforce from Africa and even carry out an ethnic replacement of European native populations' (Cusumano and Bell, 2021: 10). This particular version of the theory, espoused by populist politicians like Salvini and Orban, builds SAR NGOs into the theory as agents of the conspiring elite.

The conspiracy theory has also gained traction in Greece and France, albeit without explicitly including CSAs in its narrative. The governor of the North Aegean in Greece, Costas Moutzouris, also spoke of a 'population replacement plan' in a 2020 speech in Mytilene which mentioned Soros, 'his role in the plan', and his 'goals': 'they want to impose on us another way of life, another religion' (Anagnostopoulos, 2020). Meanwhile a popular far-right French presidential candidate, Eric Zemmour, publicly supports the 'great replacement' theory (Durie, 2021).

The conspiracy theory constitutes white nationalism at its most explicit and obvious. However, I argue that it only constitutes an escalation, even a continuation, of the other narratives aimed against CSAs – particularly the smuggling and money narratives which themselves constitute an escalation of the pull factor narrative, one which is widely accepted and propagated by state official throughout the EU. Once accusations of CSAs smuggling migrants and questions

regarding their financing and possible corruption become popular narratives in the media, public and political discourse, the idea that CSAs receive money to bring migrants to the EU in a calculated plan of ethnic replacement would not seem as alien as it might have done otherwise.

Furthermore, I argue that the racism, nationalism and anti-migrant sentiment which is blatantly behind the Kalergi Plan conspiracy theory, is also behind the other anti-CSA narratives listed above, even though their focus is on the criminality of the CSAs exploiting their migrant 'victims'. In their sanitised forms, the pull factor, smuggling and corruption stigmas and narratives can be used independently of stigmas against migrants. In practice, on the ground, however, the narratives are rarely presented entirely independently of each other, or of anti-migrant sentiment, and are often used interchangeably or in different combinations. One interviewee at a legal CSA on Lesbos, for example, told me about the online abuse her organisation received after winning a case on behalf of a migrant: 'it's all like, 'these NGOs, making profit out of refugees' but then it goes onto, '[acting with] impunity and bringing the people in', they even charge us with smuggling' (Interview, L20L). This illustrates how in the public consciousness, these narratives which have been propagated by state actors throughout Europe are essentially mixed up and interchangeable. They are additions to a toolbox of potential grievances and accusations with which to attack all CSAs.

Anti-CSA discourse is also often combined with anti-migrant discourse and labels. One crewmember of an SAR NGO told me that 'if you look in the commentaries, by any of the right-wing followers, the people that are opposed to our operations, they all say 'you're criminals, you're human taxi drivers, you're facilitating illegal migration.' And they all accuse the people of all being economic migrants' (Interview, SAR4). An interviewee at a non-SAR NGO in Italy told me: 'political men talk about the NGOs like a criminal, because the migrants are criminals, because the migrants are terrorists, so the NGOs are terrorist [...] they say, 'I think that you are a terrorist, you are taxi, you help the human trafficking'' (Interview, R2R). While migrants are often portrayed as victims within the sanitised versions of the anti-CSA narratives, they are closely tied up with racism and anti-migrant sentiment. Similarly, the study of discourse around SAR NGOs in the Italian media concluded that by including stigmatising and criminalising discourse aimed at migrants in articles focused on SAR NGOs, SAR NGOs are 'indirectly' implicated through the constantly reinforced association between them and the use of labels like '*clandestini*', 'illegal' and 'invasion', and references to 'terrorism' and 'infectious diseases' like 'scabies', 'tuberculosis' and 'Ebola' (Cusumano and Bell, 2021: 11). Such coverage, in a publication which also describes CSAs as smugglers exploiting their migrant victims, highlights

how sanitised the 'pure' forms of the anti-CSA narratives are, in which the underlying racism and anti-migrant sentiment is stripped away.

As the stigmatisation and labelling of pro-migrant CSAs is deliberately separated from anti-migrant labels and stigmas, CSAs are very much stigmatised in their own right. But what is this purpose of this discursive separation and narrative sanitisation?

Stigmatisation as legitimisation and the role of agency

The stigmatisation of CSAs, through which they are labelled as smugglers or criminals or stigmatised in association with other negative attributes, severely damages the public reputation of CSAs and legitimises other forms of criminalisation and repression such as cases of judicial harassment. In Italy, where SAR NGOs had previously been perceived as 'angels of the sea', the criminalisation of SAR NGOs escalated rapidly, from initial reports and accusations of NGOs constituting pull factors to criminal investigations and public enquiries (Cusumano and Villa, 2019; Heller and Pezzani, 2017). The 'mounting suspicions' alone sufficed for the Italian Senate Defence Committee to initiate a parliamentary inquiry based on which, 'while acknowledging that no evidence of rescuers' misbehaviour had yet been found, senators called for NGOs to be regulated in order to preserve Italy's control over its borders' (Cusumano and Villa, 2019: 29). This led to the creation of the Code of Conduct on maritime rescue which, while not legally binding, imposed rules on SAR NGOs which were 'extremely powerful from a media and communications point of view' because they supported the pull factor allegations by forbidding SAR NGOs from engaging in certain activities – of which there was no evidence they were engaging in in the first place (Interview, R1R). In this way, there is also a reciprocal legitimisation: narratives which stigmatise CSAs legitimise investigations and proceedings started against them, while such investigations and proceedings in turn legitimise and further escalate the narratives and stigmas themselves. Meanwhile, SAR NGOs have become so stigmatised in Italy that NGO vessels being blocked from ports and members facing criminal charges has essentially become a status-quo for which there is a broad public consent.

Similarly in Greece, the narratives around corruption and money legitimise the repressive new bureaucratic requirements for NGO registration, as, according to the Greek government, 'the rules are needed for "transparency and accountability"' (Wallis, 2020). And in France, discourse identifying No Borders activists as dangerous extremists legitimises heavy handed police tactics against them. In this way, negative narratives and stigmas that are propagated about pro-migrant CSAs provide legitimacy for state actions targeting them.

But why are these narratives, in their sanitised abstracted forms, separated from anti-migrant sentiment? I argue that the answer partially lies with Cohen's original description of anti-migrant stigmas and labels in which 'the framing [of the label] itself does not necessarily imply racism' as 'there are domains of British society where racism is subdued or at least contested' (Cohen, 2011: xxii). Just as some politicians might want to avoid explicit racism while expressing anti-migrant sentiments, state actors might want to be able to act against CSAs without appearing explicitly anti-migrant. Therefore, the narratives which paint CSAs as criminals and migrants as their victims allow state actions against CSAs, such as the passing of criminalising legislation or the creation of NGO registries, to be portrayed as being in the best interest of the migrants themselves. Once the narratives that CSAs collude with smugglers or that they steal money and mismanage migrant camps for profit have proliferated and become accepted as fact in much of the population, then criminalising and repressive steps taken by state actors appear not only to be proactive measures being taken to tackle the difficult situation of migration in general, but even as the exercise of compassion.

The 'pull-factor' narrative achieves this in a particularly insidious way. The pull-factor is an easier pill to swallow than other narratives painting CSAs as outright criminals: for many, it may be easier to believe that volunteers, charities, NGOs and activists are unintentionally rather than intentionally causing harm. Furthermore, for people concerned by the humanitarian situation posed by the 'refugee crisis', the pull-factor argument allows for the potentially comforting idea that inaction constitutes kindness. Most importantly, however, this narrative makes it possible for state actions which hinder or criminalise the work of CSAs, or which withdraw state support for migrants, to be presented as humanitarian: by preventing search and rescue organisations operating in the Mediterranean or the English Channel, for example, they are stopping migrants from risking their lives by getting in the boats in the first place and are thereby preventing unnecessary deaths.

The Great Replacement or Kalergi Plan conspiracy theory, of course, cannot be presented in a form abstracted from explicit racism. However, like the other anti-CSA narratives, the migrants within the theory do not have any agency. Within the Kalergi Plan, migrants are tools mobilised for the purposes of the elites; within the other narratives, migrants are exploited victims or their decision to get into a boat is determined by the presence of CSAs. This suggests that this might be a condition of secondary stigmatisation: if migrants are the original objects of discursive criminalisation and CSAs are the subsequent targets as the 'helpers' of the original objects, then perhaps the transfer of agency is a pre-condition of this stigmatisation in which there is only room for one true 'enemy' within any successful narrative. The Kalergi plan conspiracy theory

even illustrates this principle in action with a third level. While it is based on fear of migrants and loss of (ethnic) identity, the true 'enemy' within the narrative are the elites who are the agents of the plan, with the migrants and the SAR NGOs functioning as tools in its execution. While the conspiracy theory, of course, also stigmatises migrants and SAR NGOs, the true enemies are Soros and the EU. It therefore seems like specific successful narratives which label or stigmatise a certain group are based on the portrayal of that group as the principal negative actor. This means that while the stigmatisation of pro-migrant CSAs is often based on the prior stigmatisation of migrants themselves, the narratives which have been mobilised against CSAs have been necessarily abstracted from original anti-migrant rhetoric in order to successfully portray CSAs as the bad actors. This then enables the state actors to propagate and use the narratives to legitimise the criminalisation of CSAs, while simultaneously concealing the anti-migrant incentives behind this criminalisation and rather portraying themselves as the protectors of migrants.

Consequences

The stigmatisation of pro-migrant CSAs in Europe involves a variety of narratives that go beyond pull-factor and smuggling-related suspicions which have been particularly emphasised by previous literatures. The successful money and corruption related stigmas and discourses which label CSAs as foreigners and extremists are also particularly prominent and also serve to delegitimise CSAs while legitimising their repression.

However, even without being used in combination with other forms of criminalisation and repression, labelling and stigmatisation have negative consequences: 'the ways in which civil society actors are talked about among the general public and are labelled by authorities directly impacts on their freedom, safety, and potential to function' (Buyse, 2018: 971). Many CSAs throughout Europe, among them many of my interviewees, have reported 'decreasing public trust and donations' as a result of the way they have been stigmatised in public (Carrera *et al.*, 2018: 24). An interviewee at an SAR NGO described, for example, how the organisation receives hate mail, online trolling and even death threats on a daily basis, with the messages received often being almost identical to recent statements and Facebook posts published by Salvini (Interview, R4R). In Greece, during unrests occurring on the Aegean islands regarding plans to build closed migrant camps, a government minister referred to NGOs as 'bloodsuckers' and following this comment, there were a series of physical attacks on volunteers and NGO workers and arson attacks on CSA buildings, by locals and far-right groups. As noted above, in Greece

and Italy in particular, the term 'NGO' itself has become a negative label, demonstrating how stigmatisation and criminalisation have worked 'to stigmatize the entire NGO sector' as might occur in more authoritarian states (van der Borgh and Terwindt, 2014:46). In general, the result of this stigmatisation has resulted in CSAs being perceived, in public, as 'being guilty before proven innocent [...] we always have to prove our innocence rather than have them prove our guilt' (Interview, SAR4).

6.6 Co-optation

This final category in the typology was a late addition to my theoretical framework, added in response to questions which arose during my field research about the complex dynamics between CSAs and state actors which were often simultaneously defined by patterns of co-operation and of criminalisation and repression. This was particularly the case in Greece, where humanitarian CSAs often worked closely with state actors or within state infrastructures such as refugee camps, while also experiencing bureaucratic harassment and stigmatisation for example. In many cases, CSAs working closely with state actors in this way were more reluctant to speak to me or to speak out critically about the state and conditions for migrants more generally.

So can these kinds of close relationships between state and civil society actors constitute a form of, or play a role in processes of, repression or criminalisation? There is a precedent for this in literature about civil society repression in more authoritarian states, which identify the co-optation of CSAs as a tool of ‘civilized’ oppression of civil society (Daucé, 2014: 247). This entails, for example, the institutionalisation of the cooperation between CSAs and the state and the integration of some parts of civil society into state-controlled infrastructure, leading to a divided civil society in which the co-opted civil society sector is de-politicised and uncritical of the state, while CSAs outside of these structures are increasingly marginalised and criminalised (Daucé, 2014; Doyle, 2017; Gershman and Allen, 2006).

So what is the difference between co-operation and co-optation? The term, developed by the sociologist and organisational theorist Selznick (1948), is defined as ‘an elite strategy of using apparently cooperative practices to absorb those who seek change – to make them work with elites without giving them any new advantages’, and successful co-optation occurs when ‘those who seek change alter their positions’ and become ‘politically irrelevant’ while the ‘elites’ position prevails’ (Holdo, 2019: 444). Co-optation is thereby ‘a means of averting threats to [the] stability or existence’ of an organization (Selznick, 1948: 34).

How applicable is this definition to state/ civil society relations in the humanitarian field? More specific to the civil society context, Najam (2000) further offers a useful interpretation of co-optation, embedded within his global framework of relations between civil society (or in his terms the ‘third sector’ or ‘NGOs’) and the state (or in his terms, ‘government’). The framework contains four categories of relations, co-operation, complementarity, co-optation, and confrontation, based on the convergence or divergence of goals and strategies of the state and civil society respectively. In the following sections, I will utilise Najam’s (2000) framework to

analyse state/civil society relations in my case studies and identify boundaries and dynamics of co-optation. I find that within the context of humanitarian CSAs in my case study, dynamics of co-optation function somewhat differently from the definitions offered by both Selznick (1948) and Najam (2000). I identify features and dynamics of co-optation within this context and conclude that co-optation is a particularly repressive tool used systematically by state actors in Greece in combination with other forms of repression and criminalisation outlined in this typology.

Co-operation, complementarity, confrontation and co-optation

Throughout my research locations, state and civil society actors co-operated, intersected and clashed in a range of ways which are often not easily reduced to one type of relation or another. Utilising Najam's (2000) framework (see figure 4) helps makes sense of these variations and the way in which relationships change. This framework is very broad as it is intended to be global and attempts to simplify complex relationships between a non-monolithic state and a non-monolithic civil society. As different parts of different CSAs might interact with different agencies of the state, for example, a single CSA might find itself in more than one category (Najam, 2000). However, it provides a useful template for presenting and analysing the dynamics of CSA/ state relations in my case studies.

		<i>Goals (Ends)</i>	
		Similar	Dissimilar
<i>Preferred Strategies (Means)</i>	Similar	Cooperation	Co-optation
	Dissimilar	Complementarity	Confrontation

Figure 4: The Four-C's of NGO-Government Relations (Najam, 2000: 383)

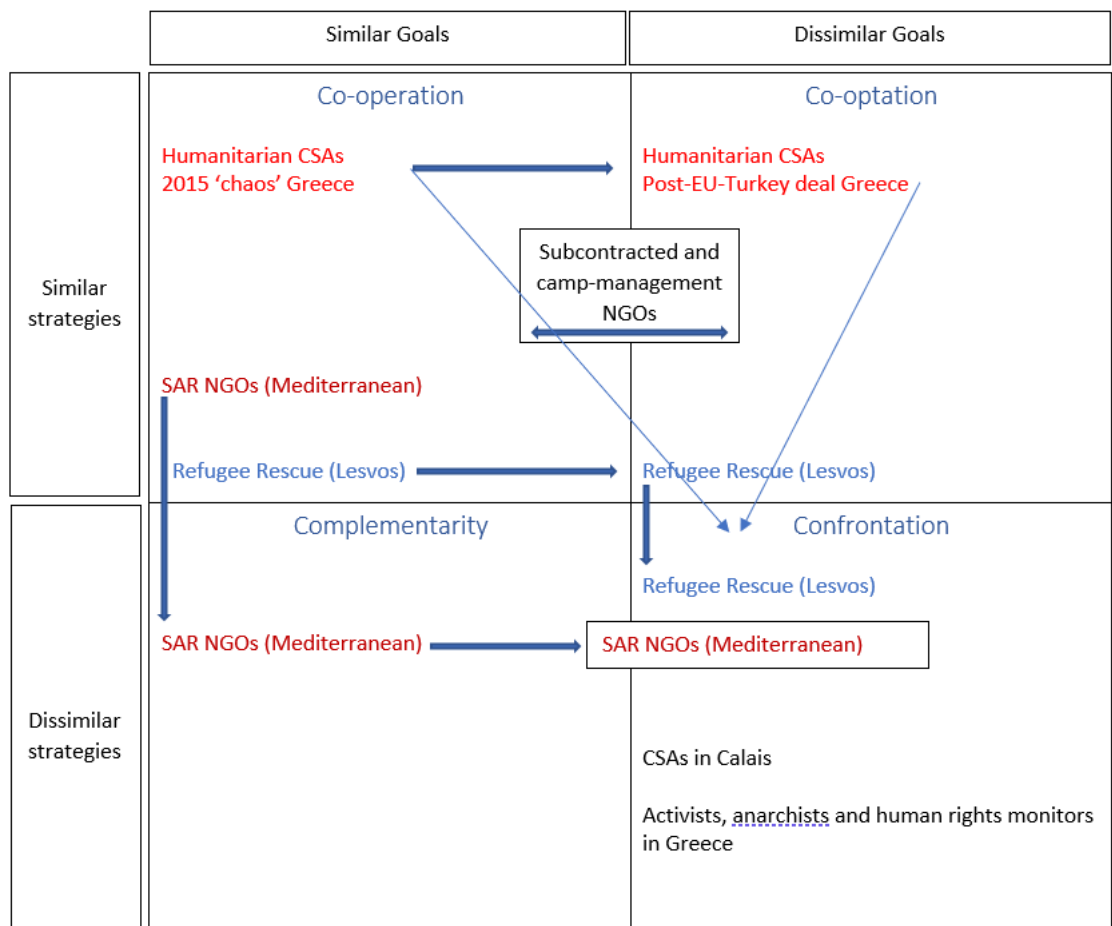


Figure 5: Dynamics of civil society / state relations in the European 'refugee crisis'

The framework posits four categories of NGO-government relations, based on whether the goals and strategies pursued by the actors in question converge or conflict. When both the preferred goals and strategies of state and civil society actors are similar, the relationship is one of co-operation. Relationships of co-operation between state and civil actors were particularly prevalent at the peak of the 'crisis' in 2015, especially in Greece, when numbers of arrivals were so high that state actors struggled to accommodate them alone and the novelty of the situation and challenges faced by state actors meant that many welcomed the help of CSAs. One interviewee on Lesbos, for example, described how local police asked volunteers to help in the registration of new arrivals when the numbers were overwhelmingly high in 2015 (Interview, L5R). Two other interviewees, both directors of small foreign NGOs, described how they were involved in managing refugee camps on the mainland between 2015 and 2017 and enjoyed productive co-operative relationship with the military commanders of the camps who welcomed their help (Interviews G2R and G4R18). These types of informal arrangements between civil and state actors were common in Greece, and while they were subject to criticisms from more critical CSAs who felt that co-operating CSAs were legitimising state practices through their involvement while letting the state get away with not fulfilling their obligations towards asylum-

seekers, these relationships were generally perceived as mutually beneficial and fulfilling the goals of both parties involved.

A relationship of 'complementarity' occurs when state and civil actors pursue similar goals but engage in different strategies. For example, an NGO might 'move in to fill a function that might otherwise be expected of government but that government is unable or unwilling to perform' (Najam, 2000: 387-388). The distinction between co-operation and complementarity isn't always clear, but becomes particularly interesting when a case moves from one to the other, as occurred in the case of SAR NGOs in Mediterranean prior to their systematic criminalisation. While the Italian Mare Nostrum operation was active between 2013 and 2014, the relationship between the Italian Coastguard, Italian army and SAR NGOs was one of co-operation as the primary goal of each within the context of the mission was preventing deaths at sea and their strategies each involved patrolling the SAR zone closest to Libya. However, when the mission was terminated, state actors changed their strategies to pull out of the SAR zone near Libya and the SAR NGOs essentially received the following message from the state: 'you continue to do this job, I will continue to coordinate your mission, to do my job as the state. I won't be in the sea with you, but I need you more so invest in this because you will be alone, you private organisations, doing this work of search and rescue' (Interview, S1R). In this way, as the state's SAR strategy changed, the relationship moved from co-operation to complementarity. Finally, from 2016, the relationship increasingly became predominantly one of confrontation as SAR NGOs were systematically criminalised by a range of state actors. However, as I depict in the table above, even this highly contentious relationship continues to overlap with complementarity as SAR NGOs continue to fulfil obligations of the state under international law (albeit against the will of some parts of the state) and to co-operate with and follow directions of the MRCC Rome, reflecting the non-monolithic nature of the state.

Confrontation occurs when both goals and strategies diverge and, while the relationship need not necessarily be hostile, can for example be expressed through the criminalisation of CSAs by state actors or by the 'policy defiance and opposition by NGOs' (Najam, 2000: 386). Many cases included in the rest of this typology belong in this category, such as CSAs helping irregular migrants in Calais, who are subjected to systematic police harassment and whose goals and strategies clearly diverge from that of the state. For example, while a primary goal of the state is to remove and reduce the presence of migrants in the area through strategies of harassment and deterrence, a primary goal of CSAs is to improve the conditions for the migrants; and CSA strategies include providing items such as tents which state strategies involve taking away again. Other examples which clearly belong in the 'confrontation' category are CSAs whose primary goals, activities or ideologies directly challenge or scrutinise the state and state practices, such

as No Borders activists and watchdogs such as human rights monitors in Calais or deportation monitors in Greece. These CSAs are often also the targets of harsher forms of criminalisation due to the inherently confrontative nature of their activities which are aimed at challenging the state (albeit to varying degrees of hostility). Their position in the 'confrontation' category are therefore hardly surprising.

What is more unexpected, however, is the trend found in my research (see table above) which sees predominantly humanitarian-focused CSAs crossing or straddling the boundary between similar goals (co-operation and complementarity) and dissimilar goals (co-optation and confrontation). Unlike activist and watchdog groups, the goals of these CSAs are not inherently targeted at the state and are therefore not inherently confrontational. In general, their primary goals constitute the provision of humanitarian help, such as search and rescue or the provision of food or shelter, and often therefore constitute fulfilling duties of the state for the benefit of the state. In the following chapter, which examines why criminalisation occurs, I analyse more closely the changing goals of the state which are behind this trend. As the table I adapted from Najam (2000) shows, while in some cases, such as with SAR NGOs, the relationship goes straight from co-operation or complementarity into confrontation, in many cases humanitarian CSAs find themselves in relations of co-optation.

This movement *into* the category of co-optation differs from Najam's (2000) conception which identifies co-optation as a starting point from which a relationship eventually moves into the other categories. Within his framework, co-optation occurs 'when governmental and non-governmental organizations share similar strategies but prefer different goals' (Najam, 2000: 388). Unlike Selznick's (1948) definition of co-optation, Najam argues that it can go both ways: state and non-governmental actors engage in co-operation, both with the ultimate aim of changing the other and as 'each side tries to change the goal preference of the other side, the discomfort is likely to be directly proportional to the power asymmetry' (Najam, 2000: 389). Following a period of instability, the balance of this power asymmetry ultimately decides which side eventually 'gives in or gives up' and the 'instability is resolved as the relationship moves to one of the other three boxes' (Najam, 2000: 389). While Selznick's definition includes the end point of 'successful' co-optation at which point the CSA in question might be impossible to differentiate from a CSA in a mutually beneficial cooperative relationship, Najam's conception understands co-optation as a state of suspended struggle *before* a relationship might move categories.

In the following section, I analyse the dynamics of co-optation in Greece. In doing so I aim to expand on the framework's analysis of movement between categories: while Najam (2000) primarily describes a one-way direction from co-optation into the other categories as one side

is successful, I find that since the beginning of the 'crisis', there has generally been more of a movement from relations of cooperation and complementarity into (currently unstable) relations of co-optation and confrontation. I further find that within the complex and supra-national context of the 'refugee crisis' a broader understanding of 'co-optation' is required than is offered by traditional definitions.

Case study: Refugee Rescue and SAR NGOs on Lesbos

The experiences of the SAR NGO Refugee Rescue, which was still operating on Lesbos at the time of my research, provide a useful expanded case study (including relevant background cases) with which to analyse the nature of co-optation and the development of civil society / state relations in Greece. The case study highlights various features of the development and dynamics of the co-optation of CSAs in Greece which represent more general dynamics of the Greek context well.

The relationship between the state and CSAs like Refugee Rescue was initially one of co-operation. During the 2015 'long summer of migration' when boat arrivals from Turkey to Lesbos peaked, there were many CSAs, particularly locals, volunteers, and new grassroots mobilisations, engaged in search and rescue efforts on the island: 'there were so many boats coming that there was no option [to control SAR efforts]. On average, we had 40 to 50 boats a day, and the rescue boats were the Coast Guard and private search and rescue boats' (Interview, L6R). This phase constituted mass informal 'co-operation' between state and civil actors informally working together using similar strategies and pursuing similar goals. The NGO Refugee Rescue bought a boat, the *Mo Chara*, at the end of 2015 and started joining the SAR efforts in early 2016, as informal co-operation was settling into a more controlled and formalised co-operative arrangement: around the time of the signing of the EU-Turkey deal in March 2016 and the decrease in boat arrivals to Greece, 'the Coast Guard got more on top and in control, because they are the [official] coordinators for the search and rescue' (Interview, L6R). By the time of my field research trip, the co-operative phase between state and civil SAR actors on Lesbos had given way to a highly controlled one which, I argue, constitutes co-optation.

First, Refugee Rescue's work was tightly controlled by the state and conducted for the benefit of the state actors in question. A representative of the Coast Guard on Lesbos told me about their relationship with Refugee Rescue in an interview: 'we have ups and downs [...] we try to establish a very good link and direct communication when we have any incident in their area, to activate them' (Interview, L8S). The *Mo Chara* was not allowed out of the port to conduct SAR activities unless 'activated' by the Coast Guard: 'if they tell them to go out, they go out'

(Interview, L6R). Breaking this agreement would lead to sanctions for the NGO: 'if the boat moves out of the port without a commission, there is a big fine' (Interview, L7R).

Second, this power imbalanced relationship between CSA and state had a silencing and depoliticising effect on the NGO in question. This became particularly clear when a representative of the organisation declined to be interviewed by me for fear of endangering their tenuous co-operation with the authorities. While I was not able to interview an official representative of the organisation, however, I interviewed people who had worked with them or knew them personally. According to another interviewee:

'they don't want to say anything on record because they are terrified that if they said anything then they would ruin their relationship with the authorities and then they wouldn't be allowed to leave port. So they're really intimidated. Like they're really... they work really hard to maintain good relations with the authorities, because otherwise they just won't be able to launch. So I think that they have changed their behaviour a lot' (Interview, L16R).

Refugee Rescue thereby practiced self-censorship, based on the fear of sabotaging their relationship with the state and losing the only advantage the co-operation provides: being able to operate (albeit in a very limited capacity) in order to rescue lives. The silencing effect of co-optation is perhaps particularly insidious because it is internalised and self-imposed.

Third, co-operation, even within relations of co-optation, also appeared to lead to the development of sympathy or greater affinity with the Coast Guard. An interviewee who had worked with both Refugee Rescue and the Coast Guard told me that he formed any criticisms to the Coast Guard 'in a way so that it will not sound very bad' because: 'our idea is that we want to have a good coordination, because the Coast Guard, at least up north [of the island], it's friendly' (Interview, L6R). This kind of expression of sympathy with the Coast Guard was particularly notable, because the interviewee in question was also one of the many people investigated and charged in association with the ERCI case, and who suspected the Coast Guard of being involved in illegal pushbacks. Despite this, however, he emphasised positive relations with the Coast Guard; claimed that many problems were not institutional but rather down to individual members and police officers based on their personal attitudes; and instead blamed individual members of CSAs for behaving in ways which may have appeared 'suspicious' to the authorities, thereby resulting in their (and his own) criminalisation (Interview, L6R). Similarly, the interviewee who described Refugee Rescue's fear of speaking with researchers and journalists and who had personally interacted with the Coast Guard on other occasions, also empathised with the position of the Coast Guard: 'they've been doing it for a very long time and it's their sea, it's their craft [...] and then the NGOs show up and you have like a bunch of northern European young people telling you that you don't know what you're doing and you're

a fascist... like, yeah, that's not great' (Interview, L16R). In general, interviewees who had worked with the Coast Guard were often willing to give them the benefit of the doubt or sympathise with their positions, while criticising other CSAs.

Fourth, two prominent cases of judicial harassment defined the backdrop to the co-optation of Refugee Rescue, which started its operations in January 2016, the same month as the first case in which five volunteers working for other organisations were arrested and charged with human smuggling, only a few hours after rescuing 51 migrants off the coast of Lesbos under the coordination of the Greek Coast Guard (Carrera *et al.*, 2018). The second case was the ERCI case which saw 37 volunteers involved in SAR on the island investigated and eventually charged with crimes associated with human smuggling. This was despite the fact that the organisation worked very closely with the authorities. According to a former ERCI volunteer, the 'ERCI always was really like, the authorities are always right, we have to keep on good terms with them, they will allow us to do everything. It was a heavy cooperation – like you didn't do anything search and rescue wise without the Coast Guard's permission' (Interview, L9V). Another interviewee told me: 'the ERCI were working very closely with the Coast Guard. They had been asked by the Coast Guard several times – I would say tens of times – to intervene, and to rescue the people' (Interview, L7R). The arrests and charges laid against the ERCI were therefore very surprising for other CSAs on the island who had perceived the relationship between ERCI and the Coast Guard to be particularly close. These prominent cases of criminalisation against CSAs acting in similar capacities to Refugee Rescue must certainly have contributed to the level of intimidation felt by the organisation and acted as a further deterrent to engaging in any activities which might have been interpreted as critical or subversive by the authorities.

Fifth, and finally, the example of ERCI demonstrates how co-optation might not only lead to CSAs sympathising more with authorities, but might end up engaging in or condoning behaviour antithetical to its own aims. A former ERCI volunteer told me about an incident in which she and another volunteer saw a security guard at one of the camps 'beating up a kid very unreasonably' and that after trying to get the guard to stop, the volunteers 'got in trouble with the ERCI for that because they were like, 'no, they [the authorities] are always right, you can't get in the way, let them do their job'' (Interview, L9R). Dynamics of co-optation in which unequal power dynamics mean that one party is afraid to resist the other in even minor ways for fear of losing privileges granted by the arrangement, such as access to camps or SAR activities, can result in CSAs become involved in, or complicit in, abuses and crimes.

As shown in the table, co-optation can result in confrontation (Najam, 2000) or in criminalisation, as it did in the case of the ERCI when years of working closely with the authorities abruptly ended with the arrest and detention of several volunteers and the initiation of criminal

investigation. In 2020, Refugee Rescue suspended their operations on the island due to the 'rising criminalization of humanitarian organizations in Lesvos and growing hostilities [which] now pose an irrefutable threat to [their] staff, assets, and work' (Refugee Rescue, 2020). The precarious balance of their co-optative relationship with the Coast Guard had ceased to be sustainable as the field of civil society / state relations became increasingly hostile and confrontative and the criminalisation of Refugee Rescue itself appeared increasingly inevitable. Interestingly, Refugee Rescue moved its operations to the Central Mediterranean Route to work alongside NGOs like Sea Watch, despite the fact that the criminalisation of SAR NGOs appears to be much more systematic in Italy than in Greece. This highlights the effectiveness of the particularly repressive environment created for CSAs in Greece, a prominent feature of which, I argue, lies in the systematic co-optation of CSAs into its system of migration management.

Greece: from co-operation to co-optation

The case study of Refugee Rescue identified five features of co-optation which are common to state/CSA relationships in Greece, but which vary in terms of permutations and degrees of intensity in individual cases. However, through my field research I identified the broad pattern of the systematic co-optation of CSAs by Greek state actors which had developed following the initial 'long summer of migration'.

Two principal categories of CSAs are generally found in these arrangements: subcontracted NGOs and smaller CSAs who raise their own funds. In both cases, the CSA in question gains something from the relationship to the state: all receive access to the migrants they seek to help (i.e. access to state controlled refugee camps) and subcontracted NGOs receive financing from the state. The sums involved are considerable: between 2016 and 2018, the Danish Refugee Council (DRC), who conduct site management support (SMS) at nine of the refugee camps, were awarded €48.4 million by the European Commission for the work, and the charity Arbeiter-Samariter-Bund, who also conduct SMS at a number of Greek camps, were awarded €18.625 million (European Commission, 2020). In many cases, subcontracted work comprises a large proportion of NGO income. For the DRC, for example, restricted public funds, involving contracts, accounted for 90.9% of the NGO's income in 2019 (DRC, 2020). Consequently, NGOs conducting subcontracted work for the state are often reliant on the income generated from such work, placing them in a relation of dependency on state support. The financial interests of these subcontracted NGOs, who are under the authority of official site managers, generally representatives of the Greek government or the Greek military, are therefore closely tied to being on good terms with the state. They also, however, have more power, in the form of

institutional power and connections to other state actors, than the smaller CSAs working more informally in refugee camps.

I interviewed representatives of both types of CSA and found that dynamics of co-optation were clearly present in both cases, though perhaps more ambiguously so in the case of subcontracted NGOs. The five features of co-optation identified through the Refugee Rescue case study all came up repeatedly in interviews and can be said to shape the overarching pattern of CSA/state relations in Greek refugee camps.

First, state actors, such as camp managers, exert control over CSA activities within the camps, while CSAs work for the benefit of the state in a clear power imbalance. This constituted a change from the early co-operative and more chaotic 2015 'crisis', when the state needed and was reliant on the help of CSAs. Now, CSAs became (formal or informal, paid or unpaid) service providers for the state, providing services such as camp management and related organisational activities, medical aid, and food and clothing provision, for example, all under the guidance and authority of individual site managers. One subcontracted NGO I spoke to told me: 'we are there to implement our programme, and anything else, we have to ask for permission to do so [...] we do not make decisions on the camp's functions' (Interview, A1R). The same was the case for CSAs who worked in camps in more informal arrangements.

In some cases, state actors appear to believe that the purpose of civil society should be to support state efforts. In an interview, an advisor to the mayor of Mytilene in Lesbos felt that CSAs on the island should be 'helpful' and 'willing to cooperate with the municipality' (Interview, L1S). The view of CSAs as an entity which should be useful or supplementary to the state was also continued as a theme by the new government elected during my field research phase. A Greek interviewee, who spoke to me days after the election in 2019, told me that the new government 'have been clear on their plans from the beginning, before the elections [...] and they are going to collaborate only with NGOs who are registered, and also only with NGOs who have an added value to something' (Interview, A2R).

Furthermore, this quote highlights the power imbalance inherent in the dynamics of state/civil society relations which developed after the initial 'crisis' was over, particularly in the case of non-subcontracted CSAs: the government feels it can pick and choose which CSAs it likes and discard the rest. Times of mutual dependency are long over. According to several interviewees, the civil society landscape, especially on Lesbos, was shaped by dynamics of competition and duplication of efforts: 'a lot of organisations really are in competition with each other, and they don't pull together very much' (Interview, G3R). CSAs working inside camps in more informal capacities are therefore often disposable, creating an extreme power imbalance. This even

appears to be the case for CSAs conducting vital work: 'a small medical NGO that provides primary health care inside [Moria camp], there was an incident where a patient died and they [the CSA] were sacrificed, scapegoated and kicked out; they threw the blame on this small group rather than take the responsibility as an authority, as a Ministry of Migration, as a Ministry of Health' (Interview, L7R). The power imbalance already inherent in a relationship in which CSAs work inside state-run refugee camps is intensified through the apparent disposability of these CSAs, created by the apparent oversaturation of, and resulting competition between, humanitarian CSAs around certain hotspots like Lesvos where many remained after the initial 'crisis' period was over. State actors here have the power to determine which CSAs receive access to camps and the extent of their involvement, while CSAs have to be careful not to endanger their positions within the camps.

This leads to the second feature of co-optation prevalent in Greece: a silencing and de-politicising effect. Refugee Rescue were not the only organisation who were reluctant to be interviewed by me for fear of endangering their relationship with the authorities (despite assurances of anonymity). One CSA working inside a camp on the mainland refused my request and helpfully explained why: 'we work at a government centre and cannot compromise our position in any way by providing information that could damage our group, if we were truthful in the interview that would be the case'.

The silencing of co-opted actors was a particularly prominent topic in interviews about working in the notorious Moria camp on Lesvos. Different accounts suggested different reasons behind the silencing, i.e. the way in which CSAs do not or are afraid to speak out. In some interviews, the silencing effect appeared to be rooted in self-censorship. One CSA explained why they felt unable to speak out or criticise the camp management: 'because there's always this feeling, that we have access at the moment, but we could very easily lose it' (Interview, L7R). While in many cases the silencing effect of co-optation appeared to be a symptom of self-censorship based on unspoken rules, another interviewee suggested this was a concrete policy: 'inside Moria there's a strict no-advocacy policy, so all the NGOs that operate in the camp only do so, only are allowed to do so, because they don't say anything, they don't speak out' (Interview, L22R). Yet another suggested CSAs in Moria had to behave sycophantically to the camp manager, which would of course involve not speaking out critically, in order to be allowed access: 'they are friends of Balbakakis, the manager of Moria; in order to get access there, because otherwise he will not allow them' (Interview, A2R). This NGO was one of the few examples I came across where they had spoken out and had actually received bad consequences: 'we exposed the situation in Moria [to the media], and we spoke about what was going on, and our access to Moria was blocked' (Interview, A2R).

Examples of actual instances where speaking out had negative consequences for the CSA in question were rare. However, the fear of the possibility appears to have led to the mass self-censorship of co-opted CSAs in Greece. Even NGOs with more power in relation to state actors, such as subcontracted NGOs, are careful about the ways in which they might speak out or criticise state actors. Several NGOs I interviewed in Greece, for example, emphasised their efforts in affecting state policies through ‘silent diplomacy’ or ‘backroom diplomacy’, seeking to influence state actors internally without potentially angering them by speaking out publicly (Interviews A1R; A2R). Meanwhile, the state is able to absorb the criticisms of the CSAs in question without facing public criticism or, according to my interviewees, making any significant changes.

One interviewee felt that these humanitarian CSAs were using these fears as an ‘excuse’ not to engage politically or to speak or think too much about the wider context of their work, suggesting that some of these CSAs might not be engaging critically even if they did feel more able to speak out (Interview, L19R). In another interview with a CSA who regularly worked closely with the authorities, it became clear that while they might present a less critical front when this is useful, they passed on information to other organisations more able to openly criticise, who would then publish the information (Interview, A2R). Despite these caveats, however, the silencing and de-politicising effect of co-optation was almost palpable during my time in Greece, as a subject which repeatedly came up in interviews and conversations. Furthermore, the intentionality of this effect by state actors became clear after my field research phase was over, when the government passed the confidentiality law to make sharing information about what goes on inside camps an offence (Lindsay, 2020).

Despite this apparent repressive atmosphere within camps, and despite the numerous criticisms all civil society interviewees expressed about the ways in which migrants are treated by state actors in Greece, CSAs in Greece were often much more sympathetic towards the state and state actors than I had expected (constituting the third feature of co-optation). Many interviewees placed primary blame for the poor conditions in Greece on the EU and European policies, such as the EU-Turkey deal and the hotspot system which leave asylum-seekers stranded on Lesbos and in Moria camp, sometimes for years: ‘we don’t approve the EU policies, we don’t approve Moria, that’s why we haven’t applied for EU funds, we haven’t asked to get to work in Moria, and we stay away from everything which is reinforcing the European policies’ (Interview, L6R). Meanwhile, Greece and Greek state actors, like the Coast Guard, are sympathised with by CSAs who see Greece as overwhelmed by numbers of arrivals and as victims of the EU Turkey deal, of the lack of solidarity from other Member States, as well as of the financial crisis which left Greece

in significant debt to the EU. One interviewee, in responding to the suggestion that NGOs in Greece often do the work the government should be doing, responded:

‘which government? This country is bankrupted and they, they, this is really unfair for someone to say it for Greece. Greece is a fucked up country. We tried to gain our dignity back and they closed our banks [...] But, in the end of the day, this country is destroyed. You cannot expect anything. It would be nice if Greece was Germany, and if we had this kind of financial power, we could support having like one or two or five million refugees - I don't care. But right now we are the only ones from the whole of Europe who accept people’ (Interview, L18R)

Even while condemning some of the actions of the Greek state, such as pushbacks at the border or terrible camp conditions, interviewees were often able to sympathise with the difficulties faced by Greece and individual authorities they collaborate with or work alongside. There appears to be several reasons behind this. The geopolitical situation in Greece is, of course, very complex and it is true that many of the dynamics of migration management in Greece are determined by EU policies. The EU, as a more distant and abstract entity, is easier to demonise than a country in which you have been living and volunteering for years and in which you have contact with a variety of state actors, many of whom, as individuals, might be as frustrated by the situation as CSAs are. Throughout my time in Greece, interviewees emphasised the importance of the individual person: the individual camp manager, the individual police or coastguard officer, the individual bureaucrat. Some, based on their personal beliefs or attitudes, behave badly towards migrants and CSAs, others are understood as allies, trapped in an impossible situation. Interviewees throughout my time in Greece expressed sympathies or allyships with some state actors while condemning the actions of some CSAs who they perceive as, for example, competitive, power-hungry, incompetent or financially motivated. This constitutes a symptom of the systematic co-optation of CSAs into the state migration management system which is specific to the Greek context, in which state and civil society actors (within a non-monolithic state and a non-monolithic civil society) have worked together in various ways since the beginning of the ‘crisis’ and in which the boundaries between state and civil society have become increasingly nebulous.

The power imbalance inherent in the relationship of co-optation is both caused by competition between CSAs and productive of more competition, as CSAs seek to gain or maintain access to state-controlled spaces. This competition, as much as close working relationships with state actors who simultaneously inspire sympathy, fear and distrust, might lead to CSAs developing feelings of greater affinity with the state actors they aspire to be on good terms with than with other CSAs they find themselves in competition with.

Co-opted CSAs are not necessarily protected by their relationships with state actors, however. Just as the co-optation of Refugee Rescue was backgrounded by cases of other SAR NGOs being prosecuted for human smuggling, the systematic co-optation of CSAs into state infrastructures is combined with other forms of criminalisation and repression which further amplify the power imbalance. Most particularly, non-subcontracted CSAs working in camps are particularly subjected to bureaucratic harassment, such as being told that they must register with the Ministry of Migration yet finding it impossible to do so due to deliberately complex, non-transparent and arbitrary bureaucratic procedures. This keeps them suspended in the precarious position felt by many of my interviewees (and those who declined interviews) during my field research. The vulnerability of this position was made clear in 2020, when 22 civil society organisations working inside camps were kicked out after failing to meet a registration deadline introduced by the new government in a move to further restrict NGOs (Wallis, 2020). Co-opted CSAs are controlled and targeted by state actors through this kind of bureaucratic harassment as well as through legislative changes (the confidentiality and registration laws). They can find themselves targeted by judicial harassment (such as in the ERCI case) and are regularly stigmatised and scapegoated by state actors shifting responsibility and blame, for example for specific deaths occurring in camps and for poor conditions and the misuse of funds more generally. While co-opted CSAs might gain or maintain access to state spaces, all other advantages appear to belong to the state.

Finally, the last feature of co-optation is CSAs engaging in or tacitly condoning harmful state practices. Several examples of this came up in my field research. For example, the new ESTIA (European Emergency Support to Integration and Accommodation) policy in Greece required the eviction of approximately 11,000 refugees who had received refugee status, including from NGO-run accommodations (Bierbach, 2020). According to one interviewee, 'there was a lot of frustration from the staff of these NGOs that they were being asked to do something which they, ethically, thought was intolerable [...] now they were being asked to become bailiffs' (Interview, L4R). Subcontracted NGOs and their employees are required to carry out their work as mandated by the state, including activities perceived as wrong or inhumane. In this example it is clear that the CSA in question felt uncomfortable in carrying out this work. Another subcontracted NGO in Greece acknowledged a general problem faced by CSAs working with the state: 'this is the problem that I think most human rights NGOs face, that these political decisions (of the state) are not based or aligned with the human rights approach' (Interview, A1R).

In other examples it is less clear whether the work required of the subcontracted NGO in question is contradictory to its own goals, such as in the case of the French Red Cross, who carry out the identification of unaccompanied minors in Paris. Two separate interviewees working for

grassroots CSAs in Paris described the difficulties they had supporting unaccompanied minors who had not been recognised as such by the Red Cross: ‘we don’t know if they have quotas [...] most of the time they just say to the child, you’re not a minor, look at your face, and they just go away’ (Interview, P1R). A report by Human Rights Watch likewise found that many minors going to the French Red Cross for age assessments are either ‘turned away at the door by security guards’, only receive very short interviews prior to rejection, or even if they receive longer assessments, are rejected for a range of arbitrary reasons (Human Rights Watch, 2018b). The French Red Cross, subcontracted by the French state, systematically refuses to identify migrant minors, thus denying them associated protections they are legally entitled to.

In terms of Najam’s (2000) framework, is the Red Cross from this example in relations of co-optation with goals still diverging from those of the state? Has it been successfully co-opted and has its goals now changed to align with those of the state, or has its goals always been state-aligned and it has always functioned within a co-operative relationship with the state, which constitutes a primary source of its funding? These questions are difficult to answer without in-depth studies of individual cases of subcontracted relationships which are beyond the scope of this study. It is likely that all possibilities might be simultaneously true: one large NGO might have various goals which alternately conflict and converge with those of the state and with each other. For this reason, subcontracted and camp-management CSAs straddle the boundary between co-operation and co-optation in my table based on Najam’s (2000) framework. In some cases they appear to be co-opted, their human rights goals in misalliance with the work they carry out for the state; in others they appear to be carrying out the work of the state with little compunction. The boundary is dynamic, and CSAs can move from one category to another as either their own goals change (due to successful co-optation as their goals become more aligned with those of the state) or as the state’s goals change (for example from the provision of shelter and fulfilment of obligations towards asylum-seekers, to the enactment of policies of deterrence).

Dynamics of co-optation in the humanitarian context

Despite variations and ambiguities on individual levels, I argue that these five features of co-optation are present on a broad and systemic level in Greece and increasingly define relations between state actors and humanitarian CSAs since the initial moments of humanitarian-focused mass co-operation. How do these dynamics compare to Selznick (1948) and Najam’s (2000) definitions of co-optation? I argue that while these patterns clearly constitute co-optation, the more traditional understanding of co-optation, which focuses on the absorption of one party by

another which the former seeks to reform or change, does not quite apply to the humanitarian context. Within the context of the humanitarian field, the emphasis of both parties is on the humanitarian situation itself: the state, for example, wishes to manage and control the situation with sovereignty and carry out its migration policies, while CSAs wish to help and improve the conditions for the migrants (which may or may not involve challenging policies and structures of the state). It is therefore not the principal aim of either to change the other, and both parties are caught between dual goals: to address the practical necessities of providing things like food, shelter and medical aid, and to address the bigger picture (i.e. to engage in activism for CSAs or to enact security policies, for example, for the state). However, in both cases, neither party (e.g. the co-opting camp manager and the co-opted CSA) have the ability to singlehandedly bring about the changes they might seek. This issue is addressed by an interviewee on Lesbos:

'I think any of the criticism that we have has been really aimed against EU policies. We don't criticise the manager of Moria camp himself for the conditions of Moria, because we know that Moria is overcrowded because of the containment policies that are a result of the EU-Turkey deal. We know that Greece has to deal with this issue because the European Union is pushing responsibility on Greece, but of course if you speak out about living conditions, protection issues, these kinds of things, turns out that it's very difficult for people not to take this personally' (Interview, L7R)

Even if the CSA enters a relationship of co-optation with the camp management with the purpose of influencing their goals and actions, then, the attempt would be futile due to the limited powers of the co-opting state actor within the transnational and supranational geopolitical context of the European response to the 'refugee crisis' at its borders. At the same time, as the interviewee points out, despite the lack of individual responsibility of camp managers for the wider context, they might still take personal offence at criticisms resulting in the sanctioning or expulsion of the CSA in question. Within the humanitarian context, traditional understandings of co-optation are complicated through the more immediate problems raised by the humanitarian context around which the primary goals of the actors in question revolve, and the larger scale of the issues at hand which are often beyond the scope of influence of the actors directly involved in the co-optation.

Despite these definitional divergences, the relationship between humanitarian CSAs and state actors in Greece on a broad level undoubtedly constitute co-optation and share important similarities with other aspects of Selznick's (1948) and Najam's (2000) definitions. After initial phases of co-operation, CSAs in Greece have been absorbed into the structures of the state and, rather than being able to conduct humanitarian work on their own terms, do so under the terms or direct instruction of state actors for the benefit of the state. Within this context, CSAs fulfil

state obligations – often financed by the CSAs themselves – while legitimising the state and its practices through their presence and involvement. The power imbalance inherent in this relationship, reinforced through the bureaucratic grey area for CSAs established in Greece as well as dynamics of competition, has a silencing and de-politicising effect on the co-opted CSAs who indeed become increasingly ‘politically irrelevant’ (Holdo, 2019: 444) as they avoid criticising state actors, or as their own sympathies and goals increasingly adjust to align with the state actors they are working with. Indeed, in the next chapter I argue that the criminalisation and repression of pro-migrant CSAs, including the mass co-optation of humanitarian CSAs in Greece, constitute ‘a means of averting threats to [the] stability or existence’ (Selznick, 1948: 34) of the state, including through the silencing and intimidation of humanitarian CSAs who are witnesses to state actions in border regions such as Lesbos.

Furthermore, my findings problematise binaries produced in the literature on the criminalisation of pro-migrant civil society in Europe. For example, Dadusc and Mudu ‘propose a differentiation between autonomous solidarity and humanitarianism’ and ‘argue that while the first is criminalised, the latter is often complicit in the harms and violence of borders’ (2020: 2). Within this binary, autonomous migrant solidarity is distinguished from humanitarianism in ‘its active refusal to the legal obligations to control and report undocumented migrants to the authorities’ and is conceptualised as a ‘form of political resistance [...]not only to the militarisation of borders and the criminalisation of migration, but also to the devices of government entailed with humanitarian borders’ (Dadusc and Mudu, 2020: 1-3). However, case studies analysed in this section demonstrate how humanitarian organisations like the ERCI, which can hardly be characterised as embodying such principles of autonomous solidarity, can face the severest criminalisation resulting in the months-long imprisonment of some of its volunteers. Moreover, the repressive dynamics around co-optation blur the lines between ‘complicit’ and ‘criminalised’ drawn by the authors. Co-optation constitutes a form of repression which, like the related bureaucratic harassment and maintenance of a bureaucratic grey area for CSAs, is particularly prevalent in Greece and is particularly insidious due to the inherent blurred boundaries between consent and coercion.

Najam’s (2000) framework helps make sense of these boundaries and the ways in which CSA/state relations have changed, and continue to change, since the initial episode of mass co-operation. While Najam (2000) argues that relations tend to move from the unstable category of co-optation into the other three categories, the status quo in Greece at the time of my field research was a broad dynamic of co-optation following an initial period of co-operation. CSAs were suspended in a state of struggle within the power imbalance underlining relations of co-optation and which in some individual cases results in confrontation, including in the form of

criminalisation through prosecutions. Najam's (2000) framework is further useful because it offers a starting point for the examination of *why* relations change: the changing goals of either CSAs or the state. In the next chapter, I analyse explanations for why criminalisation is happening and examine the ways in which the goals of CSAs and the state conflict to explain why pro-migrant CSAs are being repressed and criminalised.

Conclusion: How does criminalisation operate?

In this chapter I have analysed the six key methods through which state actors criminalise and repress the activities of pro-migrant CSAs in Europe. These methods intersect and overlap in a variety of ways: police harassment often leads to judicial harassment; legislative change and administrative sanctions have been particularly effective used in conjunction with each other, as have co-optation and bureaucratic techniques in Greece; and labels and stigmas have consistently legitimised and underpinned various forms of state repression and criminalisation of CSAs. The typological framework presented in this chapter constitutes a tool which can be used by other researchers for identifying, analysing, and comparing different methods through which state actors seek to prevent the work of pro-migrant CSAs. It therefore contributes to the normative goal of this thesis. As I have shown, a far wider range of tactics are used by state actors than are salient in the academic literature and in public knowledge. Change cannot occur, and repressive tactics cannot be challenged, where they are not identified and understood. This framework therefore also constitutes a tool towards the normative goal of enabling the identification and therefore the challenging of various repressive and criminalising state tactics.

My three key case studies were almost surprisingly distinct in the form in which repression and criminalisation took place. In Calais, state/ civil society relations were primarily defined by the systematic police harassment of volunteers which constituted a constant backdrop to the daily activities of CSAs providing aid to irregular migrants in Northern France. Meanwhile, SAR NGOs in the Mediterranean have faced a systematic transnational campaign to end their work, using essentially every method analysed in this methodology except for co-optation. In Greece, a particularly repressive and dampening atmosphere is created through mechanisms of co-optation and bureaucracy, which create relationships defined by insidious dynamics of both consent and control.

The Greek case offers a particularly interesting contrast. The case for the use of the term 'criminalisation' is more evident in the case of Calais, where CSAs are treated as de-facto criminals through continuous police targeting, and in the case of SAR NGOs, who are not only continuously targeted using criminal law mechanisms (among others) but who are at the centre of a very successful public narrative which has made them essentially synonymous with the term

'smugglers'. While in Greece cases of judicial harassment have occurred, such as the ERCI case, and while narratives of NGO's criminality, especially regarding financial issues, are prominent, the 'criminal' aspect appears to take a backseat to a form of repression which is almost difficult to grasp – and which has largely been absent from studies of the targeting of pro-migrant CSAs in Europe.

What is clear throughout these case studies and beyond, is that pro-migrant CSAs throughout Europe are subjected to repression and criminalisation by state actors seeking to end, limit or control their activities. Incidents of criminalisation, of repressive tactics which treat their subjects as criminal, have occurred across all research locations. So have repressive tactics, such as the effective and more insidious use of bureaucratic and administrative techniques, which do not directly constitute criminalisation, and which are variously used independently of and in conjunction with criminalising tactics. The analysis through this framework demonstrates that the distinction between criminalisation and repression is a useful one to make due to the different opportunities offered by more quiet and subtle tactics, as I further argue in the following chapters in which I answer my second and third research questions: why does criminalisation occur? And how do CSAs respond?

Chapter 7: Why does criminalisation occur? Politicisation and security

The previous chapter analysed how the repression and criminalisation of pro-migrant CSAs is occurring throughout Europe in a wide range of ways: from systematic to sporadic; centralised to dispersed; on local, national and supranational levels; by police, bureaucrats, politicians, and agencies. Processes of criminalisation and repression appear to be as diffuse and diverse as the state itself. It should be assumed, then, that there are also a diverse range of causal mechanisms behind different incidents and types of criminalisation. In this chapter I focus on two processes which emerged as prominent patterns in both my pilot and principal research phases in discussions with interviewees about why CSAs were being targeted. First, the rise of anti-migrant and far-right politics and the targeting or scapegoating of CSAs for political gain; and second, through the securitisation of migration, and the relationship between CSAs and security structures and practices of the state.

The first part of this chapter analyses processes of politicisation and securitisation and concepts related to security practice and humanitarianism, providing a contextual and theoretical basis for the second half of the chapter in which I present further field research findings. Building on the perspectives of interviewees and patterns I found through my research, I argue that the politicisation of migration has led to criminalisation as it has become politically and electorally advantageous to target CSAs; that the relationship of CSAs to state security structures, especially because of their ability to 'witness' security practices, particularly explains the more systematic patterns of repression and criminalisation in Europe; and that due to the noisy performative nature of the former, and the silencing intentions of the latter, these two driving forces of criminalisation and repression are actually in tension with each other.

Politicisation, securitisation, security and humanitarianism

In the following sections, I define these concepts and analyse the relationships between processes of politicisation and securitisation, notions of humanitarianism, and the infrastructures of security before and during the 'refugee crisis'.

Migration was already politicised and securitised

Migration and asylum have been subject to processes of politicisation and securitisation since the end of the Cold War. By the arrival of the European 'refugee crisis' in 2015, then, migration was already thoroughly politicised and securitised. First, politicisation refers to the phenomenon by which an issue becomes a political issue, gaining high public salience and electoral

significance (De Wilde and Zürn, 2012; Gianfreda, 2018; Krzyżanowski, Triandafyllidou and Wodak, 2018). Migration and asylum have not always been prominent issues politically and electorally: during the Cold War, refugee admission was largely a matter of foreign policy for Western states (Gibney, 2003), while an expansionary bias among liberal governments in favour of more permissive immigration policies, based on an elite consensus surrounding the benefits of migration, resulted in a general consensus among both centre-right and centre-left governments of liberal democracies to keep immigration off the political agenda as far as possible (Freeman, 1995). The end of the Cold War, however, saw asylum and migration policy emerge as a subject of public contention and increasing electoral significance. Consequently, Western governments enacted increasingly harsh asylum policies, instituting a series of legal and institutional changes restricting the right to asylum and preventing asylum-seekers from reaching national territories (Gibney, 2003). The new 'refugee crisis' in 2015 therefore emerged in a context in which migration and asylum were already highly politicised issues and in which a wide variety of policy, legal and infrastructural changes since the end of the Cold War restricting the rights of migrants and asylum seekers had already taken place.

Similarly, migration and asylum had already been effectively securitised, that is, framed as a threat to security, by the beginning of the 'refugee crisis'. As with politicisation, the securitisation of migration took off in the post-Cold War era as security scholars widened the scope of what might constitute a threat to national security beyond the traditional Realist focus on military threats posed to nation-states by other nation-states to include issues such as the environment, asylum and migration (Mathews, 1989; Buzan, 1991; Wæver *et al.*, 1993). At the same time, discourse treating refugees and refugee issues as security issues also proliferated among 'political elites who are more directly responsible for maintaining the international refugee regime' including state actors and even the UNHCR itself, supposedly the representation for refugees in the UN (Hammerstad, 2011: 238). According to the Copenhagen School, securitisation constitutes a 'speech act': 'by uttering "security," a state-representative moves a particular development into a specific area, and thereby claims a special right to use whatever means are necessary to block it' (Wæver, 2007: 73). The act of securitisation can also constitute a form of power grab by those invoking security, because the security issue will 'always be defined by the state and its elites' and, thereby 'power holders can always try to use the instrument of securitization of an issue to gain control over it' (Wæver, 2007: 73). When an issue is securitised, it is 'presented as an existential threat, requiring emergency measures and justifying actions outside the normal bounds of political procedure' (Buzan, Wæver and Wilde, 1998: 23-24). Therefore, securitisation is de-politicising: it moves an issue out of the sphere of political debate and democratic decision-making and into the realm of 'security'. And while

securitisation is performed for an audience as a 'strategic practice' to legitimise the use of immediate and extraordinary measures, those measures are then practiced outside of the realm of public scrutiny and accountability (Balzacq, 2005: 173).

While politicisation constitutes an issue gaining in political and electoral salience, securitisation can move an issue out of the political and into the realm of 'security', which presents itself as objective and necessary and which often operates in the shadows outside of public scrutiny. Securitisation and security practice, then, constitute two very different phenomena. Security, as an infrastructure of institutions and, often militarised, policies and practices, exists independently of securitisation as a speech act which moves issues into security's sphere. Indeed, Huysmans (2011) argues that securitisation scholars have tended to overemphasise the role played by the 'speech act', and that securitisation often actually occurs through mechanisms and acts which are much more insidious and banal. It can be the result of 'diffuse securitizing processes' of 'little security nothings' such as 'programming algorithms, routine collections of data and looking at CCTV footage' which are the result of minor and often technical decision-making, presented as necessary 'calculations of efficiency and effectiveness' (Huysmans, 2011: 372-380). Meanwhile on the EU level, Huysmans argues that the securitisation of migration has been the result of a fragmented, technocratic, and institutional process in which, rather than being the result of speech acts identifying migrants and refugees as existential security threats to the EU and Member States, the process of their securitisation has involved more subtle linkages between migration and other phenomena, including terrorism, crime, and human trafficking, leading to the normalisation of the institutional treatment of migration and asylum issues as security concerns (Huysmans, 2006).

Indeed, while securitisation as a speech act used by political elites to gain extra powers and spheres of control certainly occurs, Huysmans' conceptualisation does more to explain the existence of the far-reaching, naturalised, and technocratic security infrastructure of surveillance and control which has defined EU and state migration management since long before the advent of the 2015 'refugee crisis'. I argue that the two forms of securitisation appear, rather, to function hand in hand: while securitisation can occur gradually in diffuse everyday ways and the reach of security slowly sprawls further, specific events lending themselves to speech act securitisation expand the reach, power and resources available to the existing security infrastructure dramatically. For example, the highly publicised arrival of over 30,000 migrants in the Spanish Canary Islands in 2006 sparked a huge media and political response, based on which vast amounts of money were spent on technologies and patrolling operations to prevent people from leaving the African coastline. These included Eurosur, the European external border surveillance system, the 'Seahorse' network, which hardwires border

cooperation into a satellite system connecting African and European forces, and high-tech border fencing around Spain's North African enclaves of Ceuta and Melilla (Andersson, 2014; 2016). An incident framed as a security crisis, then, sufficed to greatly expand the existing EU security infrastructure, creating new structures and forms of surveillance which, in turn, become naturalised and de-politicised infrastructures of necessity to be further expanded by 'little security nothings' (Huysmans, 2011).

I join critical security scholars in understanding 'security' not as a positive, independent or objective value in itself, but rather a constructed concept which is mobilised by powerful actors, including political elites and institutions, to legitimise the implementation of certain practices and policies and to increase power and control in the name of protecting citizens (Smith, 2005; Young, 2003). Securitisation constitutes 'a political move [that] has been made to place certain spheres outside of the cut and thrust of politics as an activity', and therefore outside of mechanisms of accountability and transparency (Smith, 2005: 497). It is also a highly lucrative one: the 'border security industry', legitimised by the securitisation of irregular migration and profiting on the implementation of security practices, is 'experiencing spectacular growth' especially in Europe which has 'an anticipated annual growth rate of 15%', approximately double the global average (Akkerman, 2021; Statewatch, 2021).

Furthermore, and particularly significantly for the context of this research, security is not only used to attack the designated security threat but is also aimed inwards: members of the 'order' being defended are often subjected to greater restrictions and controls themselves in the name of protecting them from the security threat (Smith, 2005). For example, post 9/11 USA saw the emergency of a security state: a state 'whose rulers subordinate citizens to ad hoc surveillance, search, or detention and repress criticism of such arbitrary power' and which 'must root out the enemy within [...] In a security state there cannot be separation of power or critical accountability of official action to a public. Nor can a security state allow expression of dissent' (Young, 2003: 8). The realm of security is not only separated from the political; it seeks to suppress any actions from its own citizens which seek to re-politicise it through dissent, criticism or protest. The actions of pro-migrant CSAs which might lead to exposure and subsequent accountability for state actors and security practice which breach rights laws and norms are, I will argue, a key reason for their criminalisation.

By the time the 'refugee crisis' hit Europe, then, migration and asylum were already effectively politicised and securitised. I understand these processes as connected but distinct. Politicisation and securitisation can complement each other: the framing of migration as a threat and an issue of security plays into public fears and political discourses within politicisation processes, while securitisation requires legitimising public and political support, often based on a politics of fear

(Young, 2003). However, securitisation is also de-politicising: once an issue has become securitised, it is moved out of the political realm and into a naturalised security infrastructure portrayed as objective necessity and which seeks to act and operate outside of public and political scrutiny.

Refugees Welcome!?

So what happened when the recent 'refugee crisis' entered this politicised and securitised stage? I argue that initial responses to the crisis were, in fact, de-politicising and de-securitising. They saw the emergence of a widespread humanitarian response and the proliferation of compassionate public narratives, social movements like 'refugees welcome', and the mobilisation of unprecedented numbers of volunteers and CSAs seeking to help the large numbers of migrants arriving in Europe. Specific incidents and images fuelled this humanitarian response, such as the image of the three-year-old Alan Kurdi on the beach after he had drowned trying to reach Greece in September 2015, which proliferated on traditional and social media platforms and provoked a global public response. It resulted in the growth of public support for refugees and, significantly, in public statements and commitments by state leaders to adopt more generous refugee policies, with national leaders including Cameron, Obama and Trudeau referring to the photo and invoking notions of 'moral responsibilities' to accept more refugees (Adler-Nissen, Andersen and Hansen, 2019: 76). Meanwhile, Merkel's open-door policy which allowed hundreds of thousands of refugees to cross into Germany in 2015, and which had been announced just prior to Kurdi's death, 'appeared morally and politically validated' (Adler-Nissen, Andersen and Hansen, 2019: 76).

This episode illustrates a moment in which migration and asylum were, temporarily, de-politicised and de-securitised through the proliferation of humanitarian sentiments and discourses: humanitarianism is both de-politicising and de-securitising. It is de-politicising because it is naturalising; it presents the situation as a matter of morality rather than of politics and frames it as an inevitable tragedy which should be mitigated rather than critically engaging with causal mechanisms (Cuttitta, 2017). To this extent, humanitarianism is similar to security, which is also de-politicising and naturalising and presents itself as necessary, objective and indisputable. However, humanitarianism also has a de-securitising effect, at least publicly and discursively, through its humanisation of migrants and refugees, the securitised 'threats' which European security measures protect its borders and citizens from. It can also have a de-securitising effect in terms of security practice, which saw Europe temporarily opening rather than militarising some of its borders. The de-securitising effect which humanitarian tragedies can have on policy was also demonstrated in 2013, when, in response to a shipwreck killing at least 366 people near Lampedusa, Italy launched the *Mare Nostrum* (our sea) operation which

was unprecedented, both in its scale and its emphasis on the humanitarian ‘duty’ of saving lives (Heller and Pezzani, 2016). The lifespan of the predominantly humanitarian mission was brief, however, and was replaced in November 2014 by the Frontex mission Operation Triton aimed particularly at tackling smuggling, constituting a (re-)securitisation of Italy’s and the EU’s activity in the Mediterranean and demonstrating the consequences of securitisation: following the end of *Mare Nostrum*, migrant deaths in the Mediterranean increased ninefold (Denti, 2015).

Nevertheless, the beginning of the ‘refugee crisis’ in 2015 was thereby characterised by a widespread moment of humanitarianism and the temporary de-politicisation and de-securitisation of discourses and even some state approaches to migration and asylum. Importantly, it was also characterised by unprecedented levels of civil society involvement. The transnational and decentralised ‘Refugees Welcome’ movement mobilised hundreds of thousands of citizens to become involved in helping refugees in different ways, including through donating clothing and money, and helping at borders and reception centres throughout Europe. Volunteers and old and new CSAs such as grassroots organisations and NGOs flocked to areas receiving particularly high numbers of refugees, such as Calais, the Greek islands, and along the Balkan route. State actors throughout Europe who were struggling to accommodate the arrival of large numbers of people, initially welcomed the involvement of CSAs who often worked hand in hand with state actors and were, in many cases, integrated into state migration management infrastructure. This was particularly the case in Greece where, during this initial phase of the crisis, the Greek government appeared to take a step back and allow CSAs and the solidarity movement to ‘take charge’ of the response (Oikonomakis, 2018: 66; Papataxiarchis, 2016).

CSAs thereby gained positions of some power and influence, both in places like refugee camps, such as my interviewees who essentially ended up running refugee camps on the mainland based on informal agreements with camp commanders, and through the donations and supporters they gained from a sympathetic global public eager to support efforts aiding refugees. The charity Choose Love, for example, started as a small grassroots initiative in 2015 which brought supplies from the UK to Calais, and quickly gained tremendous public support to the extent that it has, by late 2021, raised over £35m and supports work with refugees in over 22 countries (Trilling, 2021). These kinds of resources give power. Indeed, the charity was mentioned by many of my interviewees working for grassroots organisations and small NGOs in France and Greece who received funding from Choose Love or who worked within state-independent infrastructure set up by Choose Love, such as a donations warehouse in Northern

Greece¹. This presents a stark difference from the role previously played by civil society in the field of migration and asylum. Freeman (1995), for example, discusses the involvement of civil society in immigration politics only in terms of the contribution of civil and human rights organisations, alongside employers, to the elite consensus toward expansionism. Through the mass humanitarian moment in 2015, however, civil society became one of the major actors in the response to the arrival of over one million refugees and migrants in Europe.

Re-politicisation and the expansion of security infrastructure

However, the end of 2015 saw the beginning of new processes of politicisation and securitisation as the initial humanitarian fervour waned throughout Europe. Migration and asylum found new heights of salience on political and electoral agendas, while a series of new security measures were introduced and those policies which had been adopted in Alan Kurdi's name 'changed from an open-door approach to an attempt to stop refugees ever arriving in Europe' (Adler-Nissen, Andersen and Hansen, 2019: 77).

I argue that the (re-)politicisation of migration and asylum that took place after, and as a backlash against, the humanitarian moment had passed took on two distinct forms. The first corresponds to the drivers of politicisation – political and media actors who promoted a politics of fear and fuelled public concerns over the newly arrived large number of migrants. The power, influence and success of far-right and anti-migrant politicians and parties increased significantly after 2015, with politicians like Salvini and Orbán both fuelling and capitalising on public fears. Indeed, 'the increased politicisation of 'irregular' arrivals into Italy after 2015 changed migration from a relatively 'quiet' policy issue to one of 'loud' politics meaning that it was highly salient to the public' (Dennison and Geddes, 2022: 441). Groups and parties such as those dismissed by Freeman as 'right-wing fringe parties' with insufficient support to significantly affect immigration politics, now became a strong social and political force to be reckoned with and ensured that migrants and the 'refugee crisis' were at the top of political and electoral agendas throughout Europe (Freeman, 1995: 884). This politicisation has led to the ideologization and polarisation of public debates surrounding migration which, combined with the 'mediatization of politics' through which politics has increasingly become dependent on and influenced by mass

¹ This power held by Choose Love has recently come under criticism. First, in February 2021 a former Choose Love employee in Greece 'published allegations that she had been raped by another employee there, and accused Choose Love of failing to adequately investigate or respond' (Corporate Watch, 2021). This provoked a response among CSAs, including people I had interviewed during my field research phases, who further claimed that Choose Love, as a funding monolith in the humanitarian field, held too much power over the CSAs it funded and lacked accountability. Later that year, following apparent pressure from Choose Love's parent organisation Prism the Gift Fund, which also has ties to the UK government, Choose Love withdrew its funding of the majority of Calais organisations following their refusal to stop handing out 'Safety at Sea' leaflets giving information to migrants in an attempt to prevent drownings in the Channel (Corporate Watch, 2021).

media and social media, has resulted in a Europe-wide increase of public preferences for exclusionary and hostile restrictive practices towards migrants, 'fuelled by the resurgence of right-wing populist and nationalistic' agendas and 'stigmatizing political and media discourses and practices' (Krzyżanowski, Triandafyllidou and Wodak, 2018: 2-6).

As a result of such politicisation, more traditional or mainstream political actors, such as centre-left and centre-right governments throughout Europe which previously might have avoided taking strong stances on migration, had no choice but to address and take stances on migration and asylum issues. A recent study analysing patterns in UK, Italian and EU parliamentary debates found that, similar to patterns identified by Freeman, stances on migration of centre-left and centre-right parties only significantly differ when 'the salience of the issue is high' or 'under pressure of the electoral success of a far-right party' (Gianfreda, 2018: 85). Under such conditions post-2015, the study found that centre-left parties largely frame the crisis as a humanitarian emergency while centre-right parties focus on security narratives. However, 'while centre-right parties exploit the nationalistic values of their electorate and frame migration mainly in terms of law and order', centre-left parties 'have to constantly bridge between middle-class voters with liberal socio-cultural preferences and the working class, threatened by economic competition of cheap labour' (Gianfreda, 2018: 88). This tension has resulted in 'an overall increasing securitization of the political debate on migration [...] with a clear convergence towards the right-wing stances on migration' (Gianfreda, 2018: 88). It is interesting that the two principal discourses propagated by more mainstream political actors are, in fact, de-politicising: as noted above, both humanitarian and securitising discourses around the 'refugee crisis' are de-politicising, representing two approaches which each present themselves as fundamental, natural and unquestionable – but not political. This securitising yet de-politicising response by centre-left and centre-right parties and governments to the intense politicisation of asylum and migration in Europe can therefore be understood as both a response dictated by necessity, and as an attempt to restore the elite consensus described by Freeman (1995), in which political actors attempt to shift migration and asylum issues back away from the political realm.

Of course, Europe is not a single entity and these processes have varied across Member States. For example, in Hungary there was no initial humanitarian state response, while in Italy, the far-right party Lega Nord already experienced electoral gains in the 1990s which 'put immigration at the center of the political agenda and defined the terms of the debate under populist slogans', often also forcing centre-left parties to accommodate anti-migrant discourses (Colombo, 2018: 163). However, in general I have identified two key types of political actors which, as I will argue, play a role in the criminalisation of pro-migrant CSAs. First, the far-right, populist and anti-migrant groups and parties which have experienced electoral gains, have fuelled public

polarisation and ideological divides surrounding migration issues, and which have kept public salience of the 'refugee crisis' high. Second, the more mainstream political actors which have been forced to keep up with such politicising forces and public fears surrounding migration and asylum, and which are thus under public and political pressure to demonstrate a willingness and ability to respond to the crisis effectively. These have largely focused on humanitarian and security approaches, which can be understood as two opposing sides of the same de-politicising coin. They can also come hand in hand, with humanitarian discourses overlying and obscuring an insidious and far-reaching securitised migration management infrastructure (Colombo, 2018; Učakar, 2020).

With the waning of the humanitarian fervour of 2015, and the subsequent (re)politicisation of migration and asylum which saw the spread of anti-migrant discourses and parties throughout Europe, also came the (re)securitisation of migration, as narratives regarding the potential threats posed by migration and migrants proliferated and increasing discursive emphasis was placed on 'securing' borders. However, rather than the rhetoric presenting migrants and refugees themselves as security threats, which furthermore was particularly propagated by politicising actors, it is rhetoric framing migrants and migration as a humanitarian emergency and crisis through which state actors gained exceptional powers, implemented extraordinary measures, and expanded security and border infrastructures. Rather than 'security' being invoked to move the response into the de-politicised space of security, equally de-politicising and naturalising notions of humanitarianism and crisis were used to grant greater powers to the pre-existing security infrastructure already at the foundation of state and EU migration management.

A key moment of the expansion of security powers and practice occurred in May 2015 with the setting of the European Agenda on Migration which 'used the increased number of deaths in the Mediterranean as an opportunity to frame recent migration flows as an emergency that, by definition can only be addressed through the adoption of exceptional measures' (Davitti, 2018: 1173). The European Agenda, couched in a 'posture of humanitarianism', further militarised the EU's borders, introduced 'violent externalization measures', and redirected refugees 'towards more dangerous routes' on land and by sea in order to reach the 'pre-established processing 'hotspots'' in Greece and Italy (Davitti, 2018: 1174-1175). These developments, and ones which followed, significantly expanded security infrastructure, practices and powers and contributed to increased migrant deaths and suffering – and all in the name of humanitarian emergency. For example, rather than expanding state SAR capacities to rescue lives, the European Agenda emphasised the importance of tackling smuggling networks and, consequently, Europol 'gained a stronger intelligence role in tackling criminal networks across the smuggling routes' while

Frontex received a 'stronger mandate, additional equipment and extra funding' and became 'the European Border and Coast Guard' rather than the 'EU border agency' (Davitti, 2018: 1179). This name change neatly demonstrates the increased blurring between security and the humanitarian: security measures and practices were not expanded in the name of security but in the name of saving lives and humanitarian necessity.

Three key security practices which emerged from the 2015 'crisis' provide key contexts for the scope of my research. First, the European Agenda also launched a new hotspot system, whereby new facilities were established in 'front-line' member states (Greece and Italy) 'to swiftly identify, register and fingerprint arriving migrants and to assist investigation and dismantling migrant smuggling networks' (Davitti, 2019: 1179). Thus, refugee camps like Moria on Lesbos were born. Where formerly Lesbos had been a point of transit, it became a place where migrants were stuck for months and sometimes years, 'abandoned in zones of indeterminacy and indistinction' (Davitti, 2019: 1184) in hotspots constituting 'chokepoints of mobility disruption for capturing and slowing down migration' (Tazzioli, 2018: 2765). These hotspots function as security infrastructures of deterrence, blurring 'the line between reception and detention' and have been notoriously 'plagued with serious human rights concerns' (Sinha, 2022: 34). In Moria, for example, 'disastrous' conditions have been maintained for years, through systematic overcrowding and the lack of adequate shelter and hygiene provision, with NGOs reporting high incidence rates of suicide attempts and self-harm among residents, as well as regular cases of fires, rapes and even deaths (AYS, 2018; Ćerimović, 2017; Papadopoulos, 2017).

Second, policies of externalisation have outsourced border control and security practices, such as in the case of the so-called Libyan Coast Guard which both the EU and Italy have contributed to training and financing. For example, the EU naval mission EUNAVFOR MED's mandate was changed in 2016 to include 'capacity building and training of the Libyan Coast Guard', and in February 2017 both the EU and Italy formed agreements with Libya, with Italy providing the Libyan authorities with patrol boats and technical support (Cuttitta, 2018). EU missions withdrew from areas near Libyan waters between 2016 and 2017 'in order to leave the Libyan Coast Guard free to push back migrants, as well as to chase and intimidate NGO vessels' (Cuttitta, 2018). Migrants intercepted by the Libyan Coast Guard are then 'notoriously returned to detention centres in Libya where they are subject to torture and other degrading and inhuman treatment' (Davitti, 2019: 1182). Indeed, in 2022 a group of NGOs accused 'members of armed groups in control of detention centers who are acting under the authority of Libyan authorities' including 'the Libyan Coast Guard' of 'committing crimes against thousands of migrants [...] who are intercepted at sea and returned to Libya' where they 'are routinely and systematically subjected to serious abuses, such as murder, torture, rape, forced labor and

forced conscription' (MacGregor, 2022). Furthermore, the Libyan Coast Guard has itself been linked to smugglers and has been accused of being linked to people trafficking. In 2018, the UN froze the assets of a 'former militia leader' and 'the head of the EU-funded regional unit of the Libyan coastguard in Zawiyah', who has been accused of 'playing a double game in which, under the guise of the coastguard, he stops rival traffickers but continues to smuggle himself' (Wintour, 2018). Other investigations proved that 'Italy has paid Libyan militias and smuggling networks to block migrants' departures temporarily in exchange for fewer controls on other smuggling channels, specifically those involving drugs and weapons' (Tazzioli, 2018b: 6). In this way, Europe funds not only a 'rogue state such as Libya, characterised by a fragmented sovereignty', but also the very 'same smugglers that Europe has supposedly declared war on' (Tazzioli, 2018b: 6).

These outsourced pushbacks constitute part of the third key security practice: pushbacks of migrants through a myriad of methods. These include the use of secret special forces which 'operate in the shadows to force asylum seekers out of the EU' and who exercise systematic violence, in some cases amounting to torture, at EU external borders, including in land borders in Croatia and Greece, as well as in the Aegean Sea (as outlined in the previous section on police harassment) (Christides *et al.*, 2021; 2022a). These were not just at the initiative of Greek and Croatian governments: in March 2022, following an investigation, the European Anti-Fraud Office (OLAF) accused the Frontex boss Fabrice Leggeri of deliberately covering up the systematic pushbacks against asylum seekers in the Aegean, and claimed that Frontex units had also been involved, by stopping migrant boats and handing them over to the Greek border guards (Christides *et al.*, 2022b). According to witnesses, it was an open secret at Frontex that Greek officials were conducting illegal pushbacks and that the agency's "senior management" deliberately did not classify the incidents as possible violations of fundamental rights and covered them up – against the will of its own employees' (Christides *et al.*, 2022b, translated from German). Such reports and findings confirmed claims made by my interviewees during my field research phases, but which were routinely dismissed by state and EU actors.

Pushbacks also occurred through the EU's introduction of 'borderline legal infrastructures aimed at avoiding international obligations' such as 'concepts of 'safe third country' or forced return measures through agreements aimed at readmission' such as the 2016 EU-Turkey deal, which also constitute 'disturbing examples of how transitional rules become normalized and transform themselves into a state of exception' (Davitti, 2019: 1176 and 1190). These legal processes were introduced as temporary emergency measures to help the EU and Member States address the 'crisis' by speeding up bureaucratic procedures and fast-tracking returns of rejected asylum-seekers. In effect, this meant asylum-seekers were denied their right to have their applications

considered individually and were routinely pushed back to countries where they might be subject to torture or inhumane treatment (Davitti, 2019).

Hotspots, externalisation and pushbacks, such as through systematised return procedures, thereby constitute key security practice implementations of ‘the draconian measures of the European Agenda’, justified through EU ‘language of emergency and humanitarianism’ and demonstrating ‘the continuing ability of sovereign power to kill whilst, at the same time, renewing its commitment to fostering life’ (Davitti, 2019: 1180). Such security practice operates in the ‘shadows’ (Christides *et al.*, 2021); humanitarian discourse ‘masks’ the ‘violence of the border’ (Pallister-Wilkins, 2017) and ‘masks the increasing militarization, privatization and externalization of migration control’ (Davitti, 2019: 1188). In short, such security practice is hidden, it functions in the shadows, it is masked and disguised. It deliberately creates deaths and suffering as measures of deterrence and border control; it systematically violates national, EU, and international norms and laws. It must therefore avoid exposure and accountability; it cannot allow dissent or criticism.

And yet, following the explosion of humanitarian action seen throughout Europe in 2015, CSAs were active and even held positions of influence and power in border regions and camps where security practices were increasingly (re)implemented in the months and years following the brief season of opened borders and uncontrolled migration flows. Late 2015 and early 2016 saw the Balkan route close, the EU-Turkey deal instituted, and the Aegean islands established into hotspots, and saw SAR duties being transferred to the so-called Libyan Coast Guard. Yet CSAs remained present and, as I analysed in the previous chapter, were targeted, harassed, repressed, and criminalised by state actors in a variety of both sporadic and systematic ways. In the following sections, based on data from my field research, I argue that both the politicisation of migration and security practices offer explanations for why pro-migrant CSAs are repressed and criminalised.

‘Good Enemies’: Criminalisation for political gain

Within the logic of politicisation, CSAs constitute a ‘good enemy’. When asked why, of all actors engaged in SAR, NGOs were being targeted so specifically, the founder of an SAR NGO in Italy explained:

‘this kind of power has to find enemies, and the NGOs are a perfect enemy for this kind of debate, because in this kind of debate there’s no one [...] a lot of public opinion does not accept [that we act out of solidarity], and so they [the government] are doing that for consensus, because we are a good enemy. They think we are a good enemy’ (Interview, S1R)

CSAs thereby function as a useful tool, as a useful ‘enemy’, against which governments and state actors can position themselves and gain public support. This is particularly useful within politicised debates around migration in which, as my interviewee states, there is often ‘no one’ – no clear target or enemy. While public and political discourses around migration may often position migrants as a form of enemy, especially within more far-right and anti-migrant arenas, this is, on a wider scale, often tempered by greater moral complexities within the public consciousness in which migrants and migration may simultaneously be perceived to constitute threats and victims, and in which humanitarian concerns are often expressed alongside calls for control. Within the complexity of politicised political and public attitudes towards migrants, therefore, CSAs function as ‘good enemies’ which, once discredited or even demonised, offer an easy binary relation against which government and state actors can prove themselves. In this sense, CSAs become cast as ‘evil Others’ alongside other enemies such as human smugglers and traffickers:

‘Complex social and geopolitical questions are obscured by an emphasis on bad persons, and the task becomes one of rooting them out. These evil Others are thus important for two reasons. First, they are used to explain why these troubling things are happening. Second, they provide the project with a moral grounding. Various “wars” on traffickers and illegals allow Western governments to position themselves as a force for good, acting in many cases to protect the human rights of illegal immigrants who are cast as victims of sinister forces, but most of all to protect their citizens who, in a secondary effect, also become objectified as potential victims’ (Walters, 2004: 248).

CSAs fulfil both these roles described by Walters. Scapegoating and labelling discourses accusing CSAs of constituting ‘pull-factors’ and blaming them for poor conditions in camps, for example, offer explanations to the crisis which are easier to promote and digest than the ‘complex social and geopolitical’ dynamics underlying the mass movement of peoples across borders (Walters, 2004: 248). Similarly, as several interviewees described, physical borders constitute easy battlegrounds, an ‘obvious front to fight on’ (Interview, S3R). Second, the identification of CSAs as, at worst, exploitative criminals and, at best, naïve humanitarians causing more harm than good, enables governments and state actors to demonstrate their willingness and ability to tackle the wider problem of migration – by criminalising CSAs, who are portrayed as causes and exacerbators of the situation.

The way in which the public framing of CSAs by government actors shifted after the initial humanitarian moment of 2015 was described to me in several interviews. While SAR NGOs in Italy were initially widely praised as ‘angels of the sea’, the way in which they were ‘perceived by the public’ and the way in which ‘institutional and political representatives’ spoke about them ‘shifted radically’ and quickly around the end of 2016 when narratives of collusion with

smugglers and the pull-factor began to be propagated and circulated (Interview, R1R). The interviewee felt that this was a calculated narrative, propagated especially by people on social media and in traditional medias, but also by political representatives, parties, and institutions:

‘I think they had to build it well in order to make sure that people would stop their human instinct to care about the fact that people were losing life, and thinking more about that they [NGOs] are smuggling people, that they are taking advantage of people smuggling so they can make profit – like a complete change in the rhetoric’ (Interview, R1R).

In this way, politicising actors were able to steer public opinion away from the humanitarian sentiments which had previously led to widespread public support of SAR NGOs and towards a narrative in which the same CSAs are constituted as enemies. An interviewee in Greece described a similar type of calculated framing when discussing the way in which government ministers accused NGOs of creating poor situations in the camps and misusing money: ‘the same government allowed these NGOs, thousands of them [volunteers], to assist, and then suddenly they wanted to frame it. So the government has a carrot on a stick to play with’ (Interview, A2R.) Accordingly, the government dangles vague accusations against NGOs in general to divert public attention away from its own failings and against the very CSAs which it had invited and extensively cooperated with during the initial humanitarian response to the crisis.

This re-framing of CSAs as the enemy provides fertile ground for political actors to target CSAs – both the drivers of politicisation, who demonise and attack CSAs for political and electoral gain, and those who are consequently under pressure to take a stance and demonstrate to their publics and voters that they are able and willing to act. This was also a common narrative among my interviewees, several of whom noted the existence of pressure for politicians to take a stance against migration. An interviewee in Calais told me that ‘it looks good to be against migrants if you want to be good in politics at the moment’ (Interview, C7R), while on Lesbos I was told that ‘the politicians know, there’s a common secret, that if you are against the refugees you win votes’ (Interview, L30R). This was perceived as an explanation for various incidents of the criminalisation of CSAs, constituting an easy way to demonstrate anti-migrant sentiment and action in order to gain support and votes, often under pressure from anti-migrant and far-right groups and voters.

Politicisation especially appears to explain much of the criminalisation taking place on local and regional levels. In Calais, for example, an attempt by local authorities to ban CSAs from distributing food to migrants was understood as a way for the authorities to ‘look like [they are] doing something without actually putting in the effort to do anything productive’ (Interview, C1V). Similarly in Paris, attempts by the City Hall to stop CSA distributions to migrants were understood by interviewees as a way to signal to the public that they were acting on public

concerns surrounding the migrants sleeping in the street and as a 'propaganda' move (Interview, P1R). The rationale of this kind of criminalisation of CSAs rests on the success of the pull-factor argument, the idea that migrants are coming to, and are sustained in, certain areas because of the presence of CSAs.

These local political dynamics were also present in Greece. The sustained attacks on the civil society run Pikpa camp on Lesbos, for example, were understood as the municipal and regional governments pandering to 'the local right-wing movement [...] because of the votes, because the citizens are asking for it' (Interview, L4R). Another interviewee on Lesbos felt that 'if they want to satisfy the locals for political reasons, there are so many potential reasons that you can be in prison tomorrow [...] what do you think the Mayor is gonna do if he sees that the only way to get re-elected is to go to the alt-right policies?' (Interview, L18R). For the interviewee, these political pressures explained much of the criminalisation occurring on the island, including the criminal case against the ERCI.

Interviewees also identified other political reasons underlying incidents of criminalisation, such as scapegoating CSAs in order to avoid bad press, or because of local authorities and politicians giving 'a lot of ground to the racist right' (Interview, L4R). In order to deflect blame for the death of a resident of the Moria camp, for example, a small medical NGO was 'scapegoated and kicked out [...] sacrificed to throw the blame on this small group rather than take the responsibility as an authority' (Interview, L7R). The legal charges against the Sapfous 122, self-organised migrants who were protesting against poor conditions in Moria and were attacked by a local far-right mob, were understood as 'the weapon of choice' by local authorities to 'appease the local community' (Interview, L20L). And the administrative blockade against the Pro-Activa CSA ship bringing donations to the port of Mytilene was interpreted as a response to 'reactions from the right-wing groups' (Interview, L21V). These examples highlight the apparent reactionary nature of many of these cases of criminalisation in which state actors, such as local politicians and authorities like the Moria camp management, appointed by the Greek Ministry of Migration, target CSAs in response to certain events. In these situations, attacking CSAs constitutes not only a tool for gaining votes and political power, but to avoid political repercussions and to placate frustrated locals and influential far-right groups.

Some of the criminalisation in Greece in particular can also be understood as a consequence of politicisation, in which the politicisation of migration has led to a stark ideological divide in which individuals generally feel strongly about the issue, on one side or the other (Khiabany, 2016). Many interviewees in Greece emphasised the individual nature of many of the incidents of criminalisation they had experienced or witnessed, in which individuals within local authorities and police forces targeted or harassed CSAs using discretionary powers based on their own

personal political, and politicised, convictions. Examples offered by interviewees include border control officers who specifically target the same known CSA vehicles repeatedly for drug checks when entering Lesvos (Interview, L6R), individual military camp commanders and site managers on mainland Greece who would either facilitate or hinder the work of CSAs depending on their personal preferences (Interviews, G2R; A1R), and incidents of police harassment against activists on the islands (Interviews, L7R; G7R). One interviewee described the situation as follows: 'because everything goes down to the person. Person who see the needs, doesn't really interfere. A person who don't understand the needs, and is against refugees, then is acting on the other side' (Interview, L6R). The idea that much of the barriers and harassment faced by CSAs in Greece depends on the personal convictions and actions of individuals representing the state was common throughout interviews. While this does not account for all cases of criminalisation observed in Greece, it can be regarded as a consequence of politicisation, in which the way refugee issues are presented in public discourse has resulted in a polarisation in which individuals are either pro-migrant and pro-CSA, or anti-migrant and anti-CSA. Consequently, individuals able to exert discretionary bureaucratic or policing powers are able to act on these personal politicised convictions by either enabling or targeting the work of CSAs, accounting for some of the criminalising incidents described to me by interviewees.

Furthermore, politicisation explains some of the criminalising moves and discourses which have occurred at national levels, particularly around elections. Prior to the Greek national elections in 2019, for example, the government 'evicted three [migrant] squats just before the election [...] to show that they are a real state, with police, and they can do whatever they want. And to win some of the far-right, some of the middle-class people' (Interview, A3R). An interviewee in Italy similarly felt that the pre-Salvini government's propagation of suspicion against NGOs in part constituted a political attempt to prevent losing voters: 'because they were afraid of their rival, of Salvini, and so they began to be half Salvini, the same [...] saying, 'let's be more rude with NGOs, maybe we will take consensus' [...] instead of trying to have another way of describing this situation, they accept this level of debate' (Interview, S1R). This demonstrates how electoral pressure, often exacerbated by the increasing popularity of far-right and anti-migrant narratives and parties, incentivises the criminalisation of CSAs.

Several interviewees outlined the perceived role of far-right groups in the criminalisation of CSAs, not only as groups which governments felt they needed to pander to, but as direct drivers of criminalisation itself. The role of narratives propagated by the far-right in the criminalisation of SAR NGOs in Italy has been analysed in a variety of studies (Heller and Pezzani, 2017; Fekete, Webber and Edmond-Pettitt, 2017). This also featured in a number of interviews. One interviewee described how the narrative about NGO smuggling was first propagated in right-

wing fringe areas of the internet, including a Facebook video published in March 2017 by a 'very young guy' with 'links to the far-right movement' which was allegedly 'tracking NGO ships and alluding to systematic collusion with smugglers', which received two million views within a month and was picked up by major news broadcasts and Italian politicians (Interview, R1R). Similarly, several interviewees mentioned an article published in November 2016 by GEFIRA, a Dutch think tank described by interviewees as 'an alt-right blog', entitled 'Caught in the act: NGOs deal in migrant smuggling' which was picked up by a number of xenophobic news outlets (Heller and Pezzani, 2017). This was understood by interviewees as one of the original sources of the smuggling narrative which then moved its way into the mainstream through a, later retracted, article in the Financial Times and with Italian prosecutors then 'following this line' which 'was extraordinary, because it really went from the fringes of the right wing and into the courts' (Interview, S3R). This demonstrates how groups constituting politicising forces, such as the far-right, have also directly contributed to the criminalisation of CSAs on a national level.

The politicisation of migration issues appears to have made the criminalisation of CSAs an attractive political move for government actors, as a way of demonstrating willingness and ability to act in the crisis and of appealing to and placating growing anti-migrant sentiment in the public. Targeting CSAs is a tool of both the driving forces of politicisation, such as far-right politicians and groups stoking anti-migrant sentiment for political gain, as well as more mainstream political actors seeking to maintain positions of power. Politicisation explains a variety of incidents and patterns of criminalisation, especially the stigmatisation and scapegoating of CSAs, used by political actors to manipulate public narratives and position CSAs as the enemy, but also incidents of bureaucratic, judicial and police harassment described by interviewees. While it is not always possible to identify specific motivations behind every incident of criminalisation, the politicisation of migration accompanied by the widespread demonisation and delegitimization of CSAs has created an environment in which there are political and electoral advantages to criminalising CSAs.

Silencing the witnesses: CSAs versus state security practices

However, while politicisation appears to explain various incidents of the criminalisation of pro-migrant CSAs, I argue that it is the relationship between CSAs and state practices of security which explain the most systematic patterns of repression and criminalisation identified in my typology, including systematic co-optation in Greece; police harassment in border areas such as Calais; and the transnational efforts to end the work of SAR NGOs.

Taking back control

First, patterns of the mass repression and criminalisation of pro-migrant CSAs coincided with state power grabs, in which state actors sought to (re-)establish sole control over securitised areas such as camps and borders where, during the mass humanitarian moment, pro-migrant CSAs had established their presence. This move occurred throughout Europe as new security infrastructures, policies and practices were implemented. France dismantled the Calais 'Jungle' camp in 2016, which had developed into a largely autonomous camp outside of state control and influence. Its destruction in 2016, illegally employing emergency security measures under the State of Emergency following the terrorist attacks to institute a 'zone of protection' to keep out CSAs and journalists, constituted the reasserting of state control over the Calais region and was followed by the systematic campaign of migrant evictions and harassment of CSAs in order to ensure that no such structure would be established again (Bulman, 2016; Interview, C5R).

In the Mediterranean, NGOs were criminalised and taken out of the Sea amid efforts to render it an 'empty sea' under the sole control of the state following years of co-operation and responsibility sharing (Mainwaring and Debono, 2018). In Greece, the development of state/CSA relations from co-operation to co-optation reflects state efforts to (re)gain control and power in the field, from where it had been lost in the 2015 period of mass arrivals and a humanitarian 'free for all', in which CSAs were incorporated into state migration management infrastructures and gained positions of relative control and influence (Interview, L16R). An interviewee during my pilot research interpreted the moves to register CSAs as well as the 2016 mass termination of NGO contracts as a 'movement of taking back control': 'they want the place back [...] the government has been trying for the past two years to take more control over the whole issue' (Interview, G6R18).

Emptying the sea for the so-called Libyan Coast Guard

In each of my key research locations, then, state actors attempted to seize control over contested border areas and migration management apparatus in the period of (re)securitisation. I argue that this constituted a power grab in the attempt to create spaces in which the state is able to implement its security practices outside of the public eye, including practices of externalisation to criminal actors such as the so-called Libyan Coast Guard; policies of deterrence and the maintenance of poor conditions in Greek refugee camps; and practices of systematic violence and pushbacks against migrants, such as at the Croatian and Greek land borders. While securitisation, as a speech act, is a process which occurs in public and which legitimises the use of extraordinary measures and the mobilisation of extraordinary resources, state actors seek to execute security policies outside of the public eye and scrutiny, and potential accountability. The presence of CSAs able to witness and report state actions at the borders and

in camps, where security practices are implemented, pose a threat to security infrastructures by risking their exposure.

The notion that CSAs constitute witnesses to the implementation of violent, and often illegal, state security practices was proffered by a range of interviewees, from a No Borders activist in Greece to the representative of a major international NGO in Italy, to explain why CSAs were being criminalised:

‘The main responsibility of these people [CSAs] is that they are a third eye watching. The politicians, the policies today, they want to do all the shit but cannot have any evidence, for people to be shown what is going on. So the main responsibility of the solidarity movement in the field, it’s not what they’re *giving* to the refugees, which they give a lot, they save a lot of people. [...] But their main mission is not what they give. It’s what they could show. And this is the most dangerous thing at the same time for them, that’s what they [the state] don’t want. They wouldn’t care if these boats were just going to the sea and saving people with shut up mouths and bringing as many [refugees] as they can bring. But their problem is that these boats go to the sea and then they give press conferences. They livestream the moment when the Libyan Coast Guard is shooting at them.’ (Interview, A3R).

Indeed, in 2021, Sea-Watch published videos of the Libyan Coast Guard firing at and trying to ram a migrant boat (Tondo, 2021b); and, in 2017 Mission Lifeline accused a Libyan Coast Guard vessel of firing shots and boarding their rescue vessel to demand they return rescued migrants (Scherer, 2017). SAR NGOs have consistently denounced the Libyan Coast Guard as criminals and publicised human rights abuses in the Mediterranean, criticising and exposing EU externalisation policies and their deadly consequences. Interviewees in Italy perceived the criminalisation of SAR NGOs and the EU deal with Libya as coming hand in hand. While Salvini’s role in criminalising and attacking SAR NGOs was a prominent narrative among the press as well from interviewees, interviewees in Italy placed importance on emphasising that, actually, the problem preceded Salvini. Rather, Salvini was perceived as merely continuing along, if in a noisier manner, a path created by the previous Centre-left government in which Marco Minniti had been Salvini’s predecessor as Interior Minister: ‘Minniti made the first agreement with Libya to stop the boats setting off [...] The real father [of the Libyan deal; of criminalisation] is Minniti’ (Interview, R2R). The Italian founder of an SAR NGO argued that: ‘it’s important to say that the former government has a very strong responsibility, because it’s the former government that began to create suspicions about the operations of the NGOs, and the former government that did the agreement with Libya which is at the root of our problems’ (Interview, S1R). A third Italian interviewee elaborated the argument:

'The stories of the criminalisation of NGOs at sea and striking deals with Libya to externalise migration control and to stop people coming are extremely interlinked and entangled: you can't understand one without looking at the other.

And if you look at the timing, it really shows that, because the deal [between Italy and Libya] was signed in February [2017], and in March they opened the enquiry investigation [into smuggling accusations against NGOs] in the senate! [...] Then in August, they [Libya] unilaterally declared their search and rescue zone, and just a month before the Italian Ministry of Interior released the Code of Conduct [for NGOs]. So it's really important to see, and for us it's quite obvious, that the reason to push the NGOs away from the central Mediterranean sea was mainly because they were completely changing the context in the central Mediterranean sea and they needed nobody to be there. They needed no independent witnesses of what would happen, and they needed nobody basically hijacking their plan for the Central Mediterranean Sea' (Interview, R1R)

And, indeed, SAR NGOs have witnessed and reported state crimes in the Mediterranean. A representative of the Alarm Phone network, which communicates with boats in distress at sea and tries to get state actors to rescue them, told me of one case:

'And the funny thing, there is evidence, actually from Libya, that these coastguards are involved in the smuggling themselves. They are smugglers. They are involved. Sometimes they are organising trips. And then they are putting people in detention centres and make them work. When we talk about slavery in Libya, it exists, under the EU's eyes. And actually some of these militias, are totally involved within that. [...] No, really, you [the EU] are funding the real criminals. You are funding killers.

They kill people, like, the case of Sea Watch from November 2017. They [the Libyan Coast Guard] reached the distress area, they didn't care about the people, or know how to do the rescue, they were sailing fast, caused waves, and the boat sank and turned upside down. People in the water. 9 people died, because of this.

And luckily, Sea Watch were photographing and filming, and when you see the scene... Sea Watch arrived just 5 or 10 minutes after the Libyan Coast Guard, so they are filming and when you see what's happening, it's like, are you crazy? You should at least stop the big vessel 50 metres away from the boat in distress' (Interview, SAR2).

Although their primary mission is to save lives, SAR NGOs in the Mediterranean witness and record state security practices, human rights abuses, and some of the deaths which occur as a result of state and EU withdrawal from their SAR responsibilities which would otherwise have gone unnoticed. Their presence and advocacy work in the Mediterranean draws public attention to the Mediterranean Sea, a securitised space which the state would wish to render an empty one in which security practices can be implemented with impunity, such as externalisation to the so-called Libyan Coast Guard and the ensuing human rights abuses this policy contributes

to. Furthermore, as several interviewees pointed out, the transition from co-operative SAR efforts between state and NGO actors and the systematic criminalisation and repression of SAR NGOs coincided with the 2017 agreements between the EU and Libya and between Italy and Libya. Just as the transnational coordination of the use of flag-state regulations and safety certificates against SAR NGOs, as analysed in Chapter 6.4, coincided with the 2018 EU summit in which leaders decided to increase their support of the Libyan Coast Guard.

Witnesses in Greece: charged for watching the sea and confidentiality laws

The argument that the role of CSAs as witnesses to state security practices is a key reason for their repression and criminalisation is not only relevant to SAR NGOs in the Mediterranean, but to a range of CSAs across research locations. The judicial harassment against SAR actors on the island, including the ERCI, was understood as taking ‘away all the witnesses in the sea, except from the people [migrants] in the boats’ (Interview, L24V). Meanwhile, the remaining CSAs whose roles included watching the space between Turkey and the Aegean islands patrolled by the Greek Coast Guard and Frontex were particularly targeted by state actors. The remaining boat spotters on the island, those who had not been scared away by the arrests of the ERCI case, understood part of their role to be ‘checking them [authorities] from the shore, just making sure that they don’t act in a wrong way, like pushbacks, or sometimes we can hear them scream at the people instead of trying to calm them down’ (Interview, L24V). Similarly, Mare Liberum’s primary role is to monitor the human rights situation in the Aegean:

‘We are against the current EU policies, current EU migration policies, in specific we're against EU-Turkey deal. And we want to document any human rights abuses that we see at sea and inform the public about it, because we think the public should know what's happening, and the sea is a very grey area in many ways, because the only actors that are usually there are the refugee boats, or the authorities, and there's no independent observer of what's really happening in these interactions. So we would like to be that independent eye, independent observer of what's happening at sea, and inform the public about it’ (Interview, L22R).

Accordingly, boat-spotters and Mare Liberum were both subjected to targeted and repeated police harassment by Coastguard and Port Police on the Aegean islands.

After the completion of my 2019 field research, the Greek authorities almost helpfully confirmed the theories of my interviewees regarding the relationship between witnessing and criminalisation. Indeed, through the judicial harassment instigated through police investigations in 2020 and 2021, the Greek authorities have been very explicit about their reasons for targeting CSAs whose primary activity involves watching them: among other crimes, human rights monitoring organisations including Mare Liberum and Aegean Boat Report are accused of ‘impeding investigations’ by documenting Coastguard actions and of espionage for informing

about ‘migration flows’ via ‘applications on the internet’, i.e. Facebook (Euronews, 2020; Monroy, 2021). Indeed, the police press release lists ‘details of the operational work of the vessels of the Hellenic Coast Guard’ among the supposed illicit information which the accused had received (North Aegean Journalists Information Office, 2021, translated from Greek). The investigations involve not just the Greek police, but ‘the migration ministry, the foreigner’s authority, and the coast guard, the civil-military domestic secret service EYP and the anti-terror department DAEEB’ (Monroy, 2021). The Greek government is in this way almost explicit in its targeting of the witnesses to its crimes at the border, by listing the sharing of information of its activities as among the accusations against those accused. These new cases explicitly targeting those that watch the sea also coincided with the Greek state carrying out pushbacks on an unprecedented and systematic level starting in March 2020 as, indeed, Mare Liberum reported in their ‘Pushback Report 2020: Violence is increasing – in 2020 Mare Liberum counted at least 9,000 people illegally pushed back’ (Mare Liberum, 2020b).

Similarly, the Greek ‘confidentiality law’ was also passed in 2020 and forbids the sharing of information about refugee camps by those who work inside, making the Greek state’s intention to criminalise the sharing and reporting of its actions and security practices explicit. While in chapter 6.1 I wrote that how this confidentiality law might be implemented remains unclear, the 2021 police accusations against illicit information shared by CSAs such as the Aegean Boat Report include ‘details of the accommodation structures of foreigners in the islands of the Northeast Aegean’, suggesting that a violation of the confidentiality law might be one of the charges used in this case (North Aegean Journalists Information Office, 2021, translated from Greek).

SAR NGOs and those watching the sea are not the only CSAs well placed for witnessing state security practices and, in turn, being targeted by state actors. The Greek ‘confidentiality law’, for example, particularly targets CSAs (and state employees) working inside refugee camps. Indeed, as I elaborated in the previous chapter, the environment for CSAs in Greece is particularly repressive. While SAR actors and Mare Liberum are targeted through police and judicial harassment, a significant proportion of pro-migrant CSAs in Greece are those which, in interviews, identified themselves as predominantly humanitarian and apolitical and who work in and around camps. The repressive combination of co-optation, registration legislation, and the maintenance of a bureaucratic grey area which ensures the power imbalance is in the favour of the state, creates an atmosphere in which CSAs feel that they cannot criticise the state or speak out about conditions in camps. One interviewee in Greece, who had worked on several Aegean islands and in a detention centre near the land border at Evros, told me: “everywhere, you are not allowed to talk. [me: with journalists? or in general?] Both.” (Interview, L3V)

Essentially, the repressive environment in Greece harnesses the benefits of pro-migrant CSAs working for the benefit of the state, while silencing these potential witnesses. While it is, of course, no secret that conditions for refugees in Moria are poor, this silencing effect is certainly successful in other areas where there is less media attention and where volunteers face even greater threats. Interviewees on Lesbos, for example, mentioned a case where several volunteers were fined 10,000 euros on Samos for not being registered:

‘Samos hot spot takes 700 people at capacity, there are 3,700 people there now. It's a complete... it's worse at this stage, it is worse than Moria. So... so if you push away these volunteers that are trying to elevate the life [in camp] a little bit, in the very very basic way that they do there... what does that mean? You want people to live in more miseries. You want people to spread the words that this is miserable, don't come over’ (Interview, L7R).

This interviewee interpreted the targeting of volunteers as a reaction against a different type of threat CSAs might pose to state security practices of deterrence through the creation and maintenance of miserable conditions for migrants: that the presence of volunteers might improve conditions in such a way as to make the deterrence effect less effective. The continued misery of conditions in Moria, however, despite the long-term involvement of a great number of CSAs somewhat undermines this theory. Rather, terrible camp conditions can be understood as a further security practice of systematic violence, in the form of deliberate and human-rights abusing neglect, to be conducted outside of the public eye. Conditions in Moria are not better than on Samos because the CSAs working in Moria are so effective at ameliorating conditions; rather, conditions in Moria are better because the CSAs are watching (even if they are afraid to speak out), and because the eyes of the press, the media, and even the EU are on it as the largest hotspot on the Aegean islands. The same interviewee described an incident involving CSAs creating press attention for Moria:

‘So it was extremely overcrowded, it got extremely dangerous as well and at that point we made a lot of noise. There was a BBC documentary in particular in which [a CSA member] spoke out very strongly, and yeah, it garnered a lot media attention. [After that] there was a move of more people being moved to the mainland, and I do think that there is a link with the fact that Lesbos was on the BBC, in the Guardian, in the New York Times’ (Interview, L7R).

While many CSAs working inside the camp itself are reluctant to speak out, at the time of my research there were so many CSAs working around Moria and in the Olive Grove – the spill over camp outside of the formal state camp structures – that there were plenty of potential witnesses outside of the direct influence of state actors. Just as the camp evictions in Calais are not as violent when human rights observers are watching, the presence of, albeit subdued, external

observers in the form of CSAs in Greek camps prevent the worst human rights abuses. As one interviewee said: 'if nobody watches, they can basically do what they want' (Interview, L11A).

No activism, protest, or dissent

CSAs, even the most humanitarian 'apolitical' CSAs, function as witnesses to state violence and abuse and constitute forces of potential accountability as a counterweight to the lawlessness of camps and borders. It is therefore not only 'activist' or 'monitoring' CSAs, or those engaging in 'autonomous solidarity' as opposed to 'complicit' humanitarianism, who are criminalised, as is suggested in some of the literature on the criminalisation of pro-migrant civil society (Dadusc and Mudu, 2020: 2; Carrera, Allsopp and Vosyliute, 2018; López-Sala and Barbero, 2021). It is not the political purposes or the activist identities of CSAs which is the main reason for their criminalisation: their mere presence at the borders and at sites where security is exercised constitutes reason enough for their criminalisation or repression. This is why I use the term 'witness'. Not only is it a term which emerged from my interviews, but it defines those targeted in relation to the abusive and criminal state practices which are behind their criminalisation, rather than in relation to their organisational identities.

However, while activism or actively monitoring the state is certainly not a precondition for being targeted, it certainly does not help and, indeed, witnessing and activism or reporting often comes hand in hand:

'Borders, because of the securitisation policies, became like a place where law is not applied. Because you see for example, at the [Italian] border with France, how many organisations spoke out about pushbacks and migrants not being protected. Now just last week we had another letter from a group of organisations speaking out about the fact that people pushed back from France to Italy are being kept in containers for days without food or water.

So borders are becoming a place where law is systematically violated, where Police use violence a lot - see for example also the case of the Balkans - and where activists that are there trying to first of all assist migrants and secondly, and also very importantly denounce and witness all the violations that are ongoing, they are also systematically harassed or criminalised' (Interview, R1R).

Witnesses are criminalised because of the *potential* threat they pose to state security practices, a threat which is realised by the actual reporting and sharing of what they have witnessed and, one step further, denunciation, dissent and protest. Throughout my research locations, it has been those in the best positions to witness state security actions, particularly in border locations such as Calais, the Mediterranean, and the Aegean, who have experienced the most systematic forms of harassment, but it has also been the activists, the watchdogs, the protesters and the more political organisations which have often received the more severe treatment and who

represent the *realisation* of the threat posed by witnesses. In Greece, apolitical humanitarian NGOs are co-opted and suppressed in order to be kept silent but, as I analysed in the section on police harassment, it is the deportation monitors and the activists who generally experience the most police brutality. In Calais, all CSAs were harassed but the more explicitly political ones and those engaged in monitoring were treated the most harshly, while a critical tweet about the police resulted in a volunteer being convicted for the crime of defamation.

State actors generally have no problem accepting the help of CSAs when their goals and methods align: an NGO simply wishing to provide humanitarian aid by volunteering its camp management services to Greek authorities poses little threat to state actors or practices. It is the aid which is political, or the activity which actively seeks to expose, evaluate or confront state practices, which is unwanted, and which is especially targeted. An activist who had worked at a political squat in Athens before it had been shut down explained:

‘They like people as much as they can be just useful. While the people were helping refugees on the whole Balkan route, there was no problem. While the people were not speaking [out], it was ok. But when people start politicising their support, their help, they criminalise them. When they start talking about what’s going on, they just forbid it.

[...] how important is the help that you give, and how problematic is the noise that you are making? And related to this, they will judge if they like you or they don’t like you. [...] And we make a lot of noise against the policies, against the practices, against the state, we have been very critical against all the situation and that makes them not like us, and that’s the reason that they threaten us, that’s the reason they want to close the squats now.’ (Interview, A3R)

The argument that it is political and state critical CSAs which are targeted the most reflects the findings of my field research, particularly in Greece where there essentially appeared to be a dual civil society: on the one hand ‘helpful’ and ‘humanitarian’ CSAs who assist state efforts and ‘fill the gap’, but who do not speak out or perceive their role as political or critical; on the other, activists, protesters and watchdogs. While the latter are treated with the harshest forms of criminalisation, including judicial and police harassment and violence, I have argued that the former are kept subdued by the silencing power relations created by tactics of co-optation and bureaucratic grey areas. This finding corresponds to that of Cantat’s study analysing the institutionalisation of the migrant solidarity movement in Belgrade through which EU-funded Serbian authorities ‘established an institutionalised, official, camp-based, and heavily regulated refugee aid field from which political subversive actors and practices have been excluded’ and finds that ‘the prescribed identity for refugee aid groups has become a purely humanitarian, non-political one’ (2020: 97).

The reason for this is clear: just as witnesses pose a threat to state security practices through exposure, so do activists and other critical CSAs (who may or may not also be witnesses) through drawing attention to, criticising and politicising state practices. Consequently, such CSAs draw harsher retaliation by the state:

‘They are the people asking the most difficult questions, like, why would you go against the volunteers that are providing yoga classes? You know, let them be. They're not threatening in any way [...] The people who are questioning who is being deported to Turkey, that's more threatening, because they're questioning the premise on which your whole migration management system here is based. So I think it's about this as well, you react more strongly against those who are a bigger threat for you’ (Interview, L7R).

I argue that in the field of pro-migrant CSAs in Europe, we are seeing the emergence of Young’s (2003) security state, in which dissent and protest are criminalised as threats to national security: as NGOs are denounced by state actors as smugglers, criminals, and bloodsuckers, and the people they aid as security threats and terrorists, activities which expose or critique state security infrastructure and practices are systematically repressed and criminalised. As one interviewee pointed out:

‘And that’s not right, because that is almost the same as what you’d have in Nazi Germany or Communist Russia, where people can’t speak against the government, and that stops us being a proper democratic free society. That goes against all of our values. If people are scared to criticise the government - and especially if charities are - if civil society is scared to criticise the government, then we have massively lost something very important, and that’s the way it is’ (Interview, C14R).

Noise versus silence: politicisation and security in tension?

So what is the relationship between criminalisation for political and for security reasons? I argue that it is twofold. First, it can be complementary: politicisation and securitisation, as a speech act, come hand in hand. Political actors designating migrants and CSAs as criminals and security threats thereby securitise them, legitimising the use of security measures against them. However, once an issue is securitised and special powers, measures and resources are designated for the implementation of security policies and practices, this implementation should occur outside of the public eye. Politicians and state actors criminalising CSAs for political reasons, then, are in conflict with this implementation of security, because the purpose of this criminalisation is performative in nature.

The clearest case of this is Salvini's globally infamous public battle against SAR NGOs. His political platform, built on anti-migrant and explicitly anti-NGO rhetoric, demonstrates the potential which criminalising CSAs offers for electoral and political gain. His war on NGOs continued throughout his time in government, as he closed Italian ports, introduced his Security Decrees, and regularly engaged in public battles with specific NGOs and individuals, such as Sea Watch and their captain Carola Rackete, on social media (Berti, 2020). His form of criminalisation is noisy and performative – as, indeed, are other cases of criminalisation based on political motivations. This is because, of course, the intention behind such acts is to gain attention in order to gain votes, to create useful scapegoats, or to demonstrate action or power.

The result has been that SAR NGOs in the Mediterranean have received significant attention in the press and have achieved fame. The names of Sea Watch and of Carola Rackete, for example, are essentially household names as a consequence of Salvini's polemic and actions, especially in countries like Italy and Germany, but also beyond. Salvini's tactics after taking office in 2018 greatly increased newspaper coverage of SAR NGOs in Italian newspapers, for example:

'NGOs' salience peaked in 2019, when their ships rescued fewer than 1000 migrants. The confiscation of humanitarian vessels and the standoffs caused by Italy's refusal to authorise disembarkation reduced NGOs' ability to rescue migrants, but also enormously increased the visibility of those operations, which had previously obtained much more limited media coverage. As a result of this sudden increase in the salience of non-governmental sea rescue, a large part of the Italian public only learnt about NGOs' activities after they had become controversial' (Cusumano and Bell, 2021: 12)

The tactics employed by Salvini, then, to block and criminalise the work of SAR NGOs conversely also significantly increased their public visibility, drawing attention to the work of NGOs, to state efforts to block them and, crucially, to the Mediterranean Sea. While the execution of security practices and the maintenance of resulting states of exception where violence and neglect can be practiced with impunity rely on 'empty' and unobserved spaces, politicising discourse and dramatics, such as Salvini's crusade against SAR NGOs, shine a direct spotlight onto those very securitised spaces which state actors would wish kept in the shadows. This is ironic, considering the lengths which state actors appear to go to in order to remove the NGO witnesses to human rights abuses in the Mediterranean.

Furthermore, through his personal battle against 'Sea Watch', in particular, Salvini has not only made the NGO into a household name, but has thereby given it a far greater public profile and platform through which it can reach the public and share news about conditions and incidents in the Mediterranean Sea. Following the infamous 2019 incident which resulted in the Sea Watch captain Carola Rackete, who broke a naval blockade to bring migrants to shore, being put

under house arrest while Salvini called her a 'criminal' who had committed an 'act of war', two comedians in Germany raised over half a million euros in donations from 20,000 people for Sea Watch in less than 24 hours, while a factory worker in Milan raised over €300,000 more via a Crowdfunder (Perrone, 2019). Meanwhile (as of March 2022), Carola Rackete has over 70,000 followers on Twitter and Sea-Watch has over 100,000 followers. As a comparison, comparable CSAs which have been targeted and criminalised in Greece in a much less noisy and performative fashion have far fewer followers: Mare Liberum has just over 6,700; Refugee Rescue have just over 4,000, and Sean Binder, one of the accused in the ERCI case, has just over 3,000. While there may be a range of reasons for this discrepancy, it is undeniable that the tactics used by Salvini, who has 1.4 million followers on Twitter, one of the social media platforms he has avidly used to denounce and accuse SAR NGOs, have served to make Sea-Watch and Carola Rackete famous. Salvini's brand of criminalisation has therefore achieved the exact opposite of what actors criminalising for purposes of security seek: it has drawn attention to the Mediterranean and to state and NGO actions there; it has created and empowered its own enemies.

The way in which state actors criminalise and repress CSAs, then, makes a significant difference. Stigmatisation and the creation and spreading of dramatic narratives, such as that NGOs collude with smugglers, draw public attention. So do public standoffs between SAR NGOs and the state outside of ports, as in the case of the Sea Watch 3 and Carola Rackete, and judicial harassment by public prosecutors publicising their every move, such as the Sicilian prosecutor Carmelo Zuccaro whose political crusade to prosecute SAR NGOs pre-dated Salvini's: 'Zuccaro was especially very vocal on media. So at the time when he launched the investigation, he was on the news every day. So he was really, you know, talking about the investigation more than probably investigating!' (Interview, R1R).

In this way incidents of judicial harassment essentially became political publicity stunts, designed to capture media and public attention. An interviewee described a particular case of judicial harassment against their organisation:

'The biggest issue of this investigation was again, how they were, how they used the media to talk about the investigation. In the very first month of the investigation, information was leaked to Italian media daily, so even before the investigation was completed. There was this Italian newspaper, La Stampa, that was receiving information on a daily basis on the investigation and publishing them. And we had respond to this accusation because, you know... in the media there is practically no difference between what you are allegedly accused of doing and what you actually did' (Interview, R1R).

This form of criminalisation, as pursued by politicising actors like Salvini and Zuccaro in Italy, takes on an almost parodic appearance when contrast to other forms of repression and criminalisation: 'because it's all just propaganda' (Interview, S1R).

Meanwhile, while Salvini and Zuccaro have become the 'faces of criminalisation' and have drawn global attention to the Mediterranean Sea, other actors, such as Germany and the Netherlands, have managed to block the actions of SAR NGOs with at least equal success but almost none of the fanfare and attention. Although Salvini is no longer in government, Italy has continued blocking the work of SAR NGOs, also through the use of administrative sanctions, without generating global headlines. Administrative and bureaucratic techniques, then, appear to be far more conducive to the implementation of security practices while avoiding scrutiny.

In further contrast to Salvini's 'noisy' criminalisation is the Greek case. Greece's more insidious repressive tactics of bureaucracy and co-optation create an almost palpable environment of intimidation in which CSAs which are not explicitly political or activist fear speaking out. While criminalisation for political reasons certainly occurs, it tends to be on a more local level, and there are no populist icons comparable to Salvini or Orbán participating in noisy and performative criminalisation. Cases of judicial harassment in Greece also do not garner the same level of international attention. This is likely due to a number of reasons. First, while in Italy, actors like Salvini and Zuccaro made no secret of their ambitions to criminalise and end the work of SAR NGOs, cases of judicial harassment in Greece have appeared more sporadic and less systematic in nature and have not garnered a corresponding narrative of NGO criminalisation as has been the case in Italy. Second, the civil society sector in Greece did not immediately respond in solidarity with the ERCI following the arrests of the volunteers, likely due in part to the nature of competition between CSAs on the island as analysed in the section on co-optation. Third, there was a comparative lack of drama: investigations are announced through dry press releases and police reports, not in a public 'Twitter storm'. While cases of judicial harassment in Italy appear to be spurred on by politicising individuals, in Greece they rather send a swift but effective message designed to further silence CSAs. A Greek lawyer who successfully defended a group of migrants who were being prosecuted for engaging in protest told me:

'It's absolutely insane, because you mobilise a whole criminal system for cases that are really not worth it, there are other ways to do it, if you want to, like administrative measures. But at the end of the day the right to protest, the right to peaceful assembly, is protected. And I think this is where my emphasis would be now. Because ok, yes, we won the case, but it's not accidental, it's not weird, that we haven't had any protests at Sapphos [the square in Mytilene where the accused migrants were protesting] since that moment, and I think, of course, that was the whole objective' (Interview, L20L).

While administrative measures might be effective tools against CSAs, the sporadic episodes of judicial harassment in Greece puncture the everyday repressive environment to great effect: migrants stop protesting on Lesbos; CSAs stop engaging in boat-spotting activities on the shores; and the SAR NGO Refugee Rescue escapes criminalisation in Greece by taking its vessel to the Central Mediterranean where, apparently, it feels safer from arbitrary interference by authorities. Conditions for civil society in Greece are therefore far more conducive to the aims of securitising actors. Greece is a principal frontline country for migrants irregularly entering the EU, has a particularly high number of CSAs active in the migration response, employs a range of repressive tactics against CSAs across the typology outlined in the previous chapter, and employs security tactics against migrants which breach human rights and international laws. Yet the attention of the media has been disproportionately focused on Italy and the Mediterranean. Indeed, while a significant body of academic literature focuses on the criminalisation of SAR NGOs in the Mediterranean, there is no comparable body of work analysing the criminalisation and repression of pro-migrant CSAs in Greece. While in Greece these processes are more insidious and nebulous, the case of SAR NGOs in the Mediterranean and in Italy, where the story is simpler, where the lines delineating civil society and the state are clearer, where a greater spectacle is made of the criminalisation of CSAs and where, consequently, CSAs publicly and with the attention of the media denounce state actors and security measures.

This apparent tension between politicisation and the necessary secrecy of security practice also, however, offers a perspective on how oppressive security infrastructures and practices might be challenged: when an issue is securitised, it is also de-politicised and becomes no longer a matter for political debate or oversight. Pro-migrant CSAs are criminalised because, through witnessing and reporting on state security practices and securitised spaces of exception, they risk re-politicising not only the issues of migration management, but also the very security practices themselves. When the funding and training of the so-called Libyan Coast Guard by Italy and the EU, or the funding and practices of Frontex, or the systematic police violence and pushbacks against migrants at the borders, or the deaths, rapes, fires and miserable conditions of EU hotspot camps in Greece become issues of public and political debate, it is state and EU security infrastructure which is scrutinised and debated. A transnational infrastructure worth hundreds of billions of euros, which connects the EU, foreign states such as Turkey and Libya, and private industry, and upon which the EU's entire migration management approach is based. An infrastructure which constitutes state and EU answers to questions of state sovereignty, the nature of the EU, associated belonging and identity, and its promise of 'security'; an infrastructure which relies on the systematic violation of human rights and international law, and therefore which flies in the face of foundational EU norms and values.

It is perhaps no wonder, then, that state actors criminalise, repress and attempt to silence pro-migrant CSAs which directly or indirectly threaten to expose state security practices, which on the one hand represent an attempt to maintain structures perceived as fundamental elements of statehood and European integrity and which on the other violate fundamental liberal-democratic values, norms and laws. The EU, and the liberal-democratic state, finds itself in crisis and at war with itself; if its commitment to democratic freedoms and rights constitutes a vital element of the state and the EU itself, then its attack on pro-migrant civil society might even be conceived as an attack on itself. Indeed, within state forces which attack pro-migrant CSAs there is a tension between those who do so for purposes of security and security practices, and those who do so for political purposes. While the rise of populist, anti-migrant, anti-democratic and far-right politics is certainly cause for serious concern, I would argue that the ever-increasing reach of a silencing and depoliticising security infrastructure, which justifies itself and is justified by equally depoliticising humanitarian rhetoric, constitutes the greater danger as, 'the responsive capacity of democracy is more threatened by a world of quiet [...] than by the cacophony of a shared conversation – even a populist one' (Culpepper, 2021: 140).

Pro-migrant CSAs, then, play an important role in challenging the silencing and de-politicising security regime which defines EU and state responses to migration and which systematically abuses human rights in the name of providing security for its members, who are excluded from decision-making processes surrounding this response. In this way, the security regime criminalises and represses people who seek to participate in its migration response, and especially those who threaten it (deliberately or not) with exposure and accountability, or who engage in activism or dissent against it. But in doing so, it reveals its own vulnerabilities: exposure, accountability, and politicisation.

In the next chapter, I further analyse CSA responses to criminalisation and resistance to the security regime which seeks to suppress it. Does repression and criminalisation create a humanitarian, apolitical and institutionalised civil society which enhances state efforts without challenging them, or does civil society, indeed, constitute the cornerstone of liberal democracy it was promised to be by acting as a counterweight to authoritarianism and a force for state accountability? Or does pro-migrant civil society have a greater radical transformative potential?

Chapter 8: Civil Society responses to criminalisation

Introduction

How do pro-migrant CSAs respond to criminalisation and repression? Do different forms of criminalisation and repression create different responses, or different forms of resistance? Does criminalisation lead to CSAs adopting more deviant or criminal identities, as proposed by critical criminological labelling theories (Lemert, 1951; Muncie, 2008)? Or does repression lead to CSAs adopting the 'prescribed identity for refugee aid groups [which] has become a purely humanitarian, non-political one' (Cantat, 2020: 97)?

What does this mean for the nature of pro-migrant civil society in Europe? Do pro-migrant CSAs conform to the 'neo-liberal interpretations of civil society', as a 'service-providing not-for-profit' third sector which fills the gap left by the market and the state; or to the 'radical' understanding which sees civil society as 'the ground from which to challenge the status quo and build new alternatives' (Edwards, 2011: 5-6)? Finally, in the face of the increasing use of authoritarian tactics against CSAs by state actors and the waning power of liberal democratic norms as European state actors systematically violate international laws, does pro-migrant civil society fulfil the post-Cold War promise of civil society as a cornerstone of democracy?

This chapter seeks to answer these questions. Of course, pro-migrant civil society is non-monolithic and diverse, including among my interviewees which included organisations, such as NGOs who are primarily funded through subcontracts with the state, which clearly fulfil the neo-liberal interpretation of civil society, and activist groups who pursue radical alternatives to state migration management and security structures, i.e. there are those pre-disposed to submit to or to resist state actors and actions. Many of these groups, with clear mandates and (a)political organisational identities, pre-dated the 'refugee crisis'. However, a significant proportion of pro-migrant CSAs in the field emerged in response to the 'crisis' to address immediate humanitarian concerns within a relatively uncontroversial context in which, as I have argued, civil and state actors were initially in more co-operative relationships. When this context changed, however, and relationships with state actors in the areas where CSA operations had been set up, such as Calais, the Mediterranean Sea, and Lesvos, became increasingly complex and hostile, how did these new CSAs respond? I argue that the malleability of this new generation of pro-migrant CSAs, based on their newness and their general lack of established political identities, makes them a useful point of analysis and comparison for understanding the effects of different forms of state repression and criminalisation on civil society.

In the first part of this chapter, I analyse the effects of different forms of repression and criminalisation on pro-migrant CSAs. I argue that while the more insidious forms of repression

employed in Greece indeed lead to a more subdued and silenced pro-migrant civil society sector in and around refugee camps, more direct forms of criminalisation seeking to end civil society engagement in areas such as Calais and the Mediterranean Sea, actually create a more resistant civil society while often simultaneously providing tools for resistance. I understand resistance in a broad way, ranging from ‘the refusal to accept or comply with something’ (Lexico, 2022) to ‘the act of fighting against something that is attacking you’ (Cambridge Dictionary, 2022). In the second half of the chapter, I analyse and critique the particularly law- and rights- based form of resistance employed by many CSAs engaged in humanitarian activities and present alternative avenues for civil society engagement which are independent of, or subvert, state migration management structures.

Humanitarian CSAs: silenced in Lesvos, resisting in Calais

In the previous two chapters I have argued that the particularly repressive atmosphere in Greece has, indeed, created a pro-migrant civil society sector engaged in humanitarian aid which is largely co-opted by the state. This sector constitutes those pro-migrant CSAs which came to Greece or emerged in Greece in response to the humanitarian ‘crisis’, and which sees itself predominantly as humanitarian as opposed to political (a binary which is contested in the literature but which was consistently made by interviewees). Techniques of co-optation, registration, bureaucratic grey areas and intimidation, through the strong crackdown on human rights monitoring CSAs, renders these humanitarian-focused CSAs as service providers for the state who feel that they must sustain positive relationships with state actors and therefore cannot engage in activities they perceive as political, critical or resistant. The result, then, is a divided civil society in Greece: on the one hand there are activist and watchdog CSAs in opposition to the state, such as the deportation monitors or anarchist collectives running squats, and on the other uncritical and silenced humanitarian CSAs fulfilling the tasks of the state.

At this point one might suggest that this merely depends on the nature of the CSAs in question and their own goals and mandates: activists will be activists, and humanitarians will be humanitarians. Indeed, several interviewees in Greece made this distinction. An interviewee on Lesvos told me:

‘it’s different groups fighting different fights, and indeed the ones providing the basic services are not the ones asking the bigger questions. Then there are a few indeed more activists, also the legal organisations are more activists on this, but it tends to be a bit too different groups of organisations who don’t necessarily interact much with each other’ (Interview, L7R)

One interviewee co-organising a political solidarity squat in Athens explained the different types of pro-migrant civil society engagement in Greece to me. First the humanitarian CSAs I have described above:

‘From the beginning, and still, there are 3 categories of people were working in the field of migration. The big majority were working from the perspective of humanitarianism and giving aid, food, clothes, housing, whatever. But the problem with this big group was that they were apolitical, they were not talking, most of the time they refused to express an opinion. They were just saying, ‘ok I don't do politics I just help refugees.’

Second, those who could be described as ‘pure’ activists and anarchists:

‘There was a second small group which is going totally the opposite. They think that anything that you do in the field is humanitarianism, it is philanthropy [negatively connoted], and this includes a big part of anarchism.’

And third, political and critical CSAs whose work also includes activities which could be classed as ‘humanitarian’, i.e. helping and providing aid to migrants:

‘And the third group, we are included in that one, is being in the field and doing politics. What we were saying from the beginning was like, politicising the help, politicising solidarity. And we start doing it from the beginning, talking about anti-racism movement, expressing our disagreement with all these divisions, talking about open borders, talking about access to the cities, talking against the camps, talking about all the things that are included in the agenda of migration’ (Interview, A3R).

I argue that criminalisation and repression have led to a situation in Greece where the first ‘type’ of CSA has become increasingly dominant in certain areas of the humanitarian field, predominantly in and around state migration management infrastructure such as refugee camps. However, while in some cases this might be due to an adherence to apparently apolitical principles of humanitarianism, I argue that this approach has particularly been shaped by repression and criminalisation: by incentivising a less critical approach through co-optation and cooperation and by sanctioning those who do speak out, such as those belonging to the second and third types identified by my interviewee, a silenced and suppressed civil society has emerged as those who are more critical either leave or conform.

This does not mean, however, that ‘humanitarian’ CSAs responding to the ‘refugee crisis’ were inevitably uncritical. CSAs in Calais provide a useful comparison: in 2015, volunteers flocked to both Lesvos and Calais in spontaneous responses to the ‘crisis’ in order to provide humanitarian aid, and in both locations new grassroots humanitarian associations were formed out of this response to continue helping migrants. Furthermore, in both cases interviewees from this

specific set of CSAs particularly emphasised the humanitarian nature of their roles: their primary purpose was to provide aid and attend to the immediate needs of refugees and migrants. These comparable pro-migrant civil society movements, however, were subjected to very different environments: repression and co-optation in Lesvos, and systematic police harassment with attacks from the local authorities with the intention of ending the presence of CSAs in Calais.

Therefore, humanitarian CSAs in Calais, simply through their continued presence in the field, engage in resistance according to the definition of refusing 'to accept or comply with something' (Lexico, 2022). Even though their work is primarily humanitarian, their engagement is also inherently political:

'We're primarily here, and we arrived here as a humanitarian organisation, but you can't detach the two. Like, this situation is inherently political, and the distribution therefore of a sleeping bag is inherently a political act. Like, you can't get away from the fact that we're supporting stateless people on a closed border' (Interview, C3R).

On Lesvos, humanitarian CSAs have the option of choosing to comply with the state and to work in a constricted capacity on the terms of state actors; in Calais, due to the different way in which CSAs are criminalised, the only options available to CSAs are to leave or to resist. In this way, then, while on Lesvos repression creates apolitical and silenced civil society spaces, in Calais criminalisation breeds resistance, which becomes the only condition under which CSAs can continue to operate. Whereas in Greek camps the civil society space is further depoliticised when critical CSAs are made to leave; in Calais the space becomes more resistant as CSAs less willing to operate in a contentious environment leave the field. And finally, while dynamics of co-optation and competition on Lesvos lead to a more divided civil society sector with a lot of infighting between CSAs, in Calais criminalisation rather has a 'fortifying' effect:

'It can sometimes bring more fortitude to us. As a large group of people who often have varying opinions and varying views on things, when something like this [judicial harassment] happens to one of us, everyone pulls together and it can sometimes have a fortifying effect. Because it's so outrageous, because it's so aggressive and so unnecessary, that our differences fade away a little bit' (Interview, C11R).

In this way, then, the way in which the state represses or criminalises CSAs can have a depoliticising and silencing effect or create a more resistant civil society sector. In the following section, I look more closely at the dynamics of this resistance in Calais and the Mediterranean Sea.

Resisting and fighting back 'in the light'

The systematic criminalisation campaign against SAR NGOs in the Mediterranean has, similarly to Calais, resulted in a more political and resistant civil society sector operating in it. Criminalisation has rendered the humanitarian activity of search and rescue an inherently political act, meaning that CSAs unwilling, or unable, to be political had to withdraw, and new more politically active CSAs joined the field (such as the Italian SAR NGO Saving Humans Mediterraneana which was founded in response to Salvini's polemics against foreign SAR NGOs). This inevitably results in a more politicised civil society space overall:

'Not everyone is willing to work under such political pressure, and in an environment that has a huge impact in terms of fundraising, especially when NGOs have different kinds of priorities, they might not be willing to lose a lot of donors to continue being in such a politicised environment. And some NGOs, like for example Save the Children in Italy, they have a certain kind of reputation, they are not a political NGO, they are not considered to be a political NGO.

If you look at the shift into the type of NGOs that are working at sea, you see how the polarisation has also shaped the kind of actors that are at sea, because of course, being at sea it's still extremely relevant, mostly because you are saving life, but now it became a really political act. This kind of context pushes you to be political, because at the end of the day, saving lives is a political act if on the other side of the shore you have someone saying that you shouldn't save' (Interview, R1R).

Moreover, SAR NGOs must actively fight against criminalisation in order to be able to continue to operate; engagement means employing lawyers, raising sufficient donations, and navigating legal and administrative blockades in order to get vessels released from confiscation; it means constant media and political campaigning in order to gain access to European ports in order to bring rescued migrants to shore. Within the criminalised field of the Mediterranean, then, engaging in humanitarian work constitutes engaging in battle against the state.

Harsher and more total forms of criminalisation which aim to end CSA engagement and which do not leave room for co-operation between civil society and the state are much more productive of resistance. The kind of sustained attacks which SAR NGOs have suffered, for example, mean that the only options remaining to CSAs are fight or flight, resist or desist. The civil society which emerges within this context is then inevitably more resistant, political and antagonistic towards the state. It also no longer has a reason to hold back public criticisms of the state. While CSAs working with, or relying on the cooperation of, state actors are incentivised to stay silent and might think twice before publicly reporting state actions such as pushbacks or aggressive behaviour towards migrants, once the state has removed the possibility of positive relations and systematically targets CSAs, any such incentives to hold back are

removed. The Mediterranean thus changed from a space of cooperation between the state and civil society to a space of contestation, in which remaining CSAs are more willing to resist, engage politically, and publicise and criticise state actions. If the purpose of criminalisation is to silence CSAs, state methods in the Mediterranean have backfired.

Legal and institutional resistance

Furthermore, especially in the cases of judicial harassment, criminalisation provides the tools for resistance. As I have shown in previous chapters, processes of judicialisation in Europe mean that the law, judges and courts regularly side with CSAs. Targeting CSAs using judicial harassment, then, automatically provides CSAs with a platform to fight back on. Accordingly, CSAs have instigated judicial proceedings against the state and state actors in turn. In Calais, for example, after Ciotkowski was cleared of the charges laid against him by a police officer who had pushed him into the road, Ciotkowski pressed charges against the police officer in return who was, indeed, given a suspending jail term for ‘assaulting’ Ciotkowski and giving false evidence (The Local, 2021). In Greece, following the judicial harassment for smuggling charges against Salam Aldeen, a case was filed in Strasbourg against the criminalisation of pro-migrant CSAs in Greece. The case ‘challenges Greece’s abuse of power to arbitrarily prosecute and expose Mr Aldeen to a minimum ten years’ imprisonment, only to suspend his life-saving activities’ and, as in the case of Ciotkowski, ‘the best evidence for the political extraneous considerations in prosecuting Salam is of course his complete acquittal’ (Global Legal Action Network, 2019).

Meanwhile, Salvini is being charged with ‘kidnapping and abuse of office’ for blocking the SAR NGO Open Arms from entering an Italian court and ‘blocking over 100 migrants in dire sanitary conditions from disembarking from a rescue ship’ which, if convicted, could result in a prison sentence of up to 15 years (Al Jazeera, 2021). Criminalisation, and especially judicial harassment can, in this way, backfire against criminalising actors. In the case of Herrou in France, judicial harassment even led to a decision by the French constitutional council which constituted the first ruling in which fraternity was found to be a constitutional principle, thereby even potentially creating material positive change which might be used to the advantage of targeted CSAs in the future (Peltier and Pérez-Peña, 2018).

In this way, the form of criminalisation often perceived as the harshest or most extreme, such as prosecution for smuggling, actually constitutes the easiest to resist in that it has its own inbuilt mechanisms for contestation and defence. Similarly, Sea-Watch and Mare Liberum were able to contest the administrative blockades placed against them in administrative courts in Germany and the Netherlands respectively. These opportunities for resistance, of course, rely on the existence of an independent and rule-of-law based judicial system. The effectiveness of their

use for purposes of resistance against authoritarian moves by the state attacking freedoms of civil society, therefore, is limited to liberal-democratic states where there have only been minimal levels of democratic backsliding. In states like Hungary and Poland, for example, where judiciary independence is being systematically attacked, resisting against criminalisation through legal channels might not be successful.

Indeed, institutions within (more or less) functioning liberal democracies offer opportunities for resistance against criminalisation through institutional channels. For example, in 2016 a study commissioned by the European Parliament policy department for Citizen's Rights and Constitutional Affairs to analyse whether the Facilitation Directive is 'fit for purpose' found that it was indeed not and in need of reform (Carrera *et al.*, 2016). Subsequently, however, the European Commission reassessed the Facilitation Directive but 'concluded that there was insufficient evidence suggesting that individuals acting out of compassion were being prosecuted to justify reform' (Schack, 2020). In a further effort, hundreds of CSAs campaigned against the criminalisation of solidarity and for an amendment to the Facilitation Directive through the 'We Are a Welcoming Europe' European Citizen's Initiative (ECI), an ECI apparently constituting 'the most visible and impactful tool for direct democracy in Europe' (MPG, 2019). The campaign led to the proposal and adoption of a European Parliament resolution in 2018 'to prevent humanitarian assistance from being criminalised' and led to the European Commission 'publicly [agreeing] to collect and provide cases for a European Observatory' (MPG, 2019).

Therefore, tools which are specifically tools of criminalisation, rather than more general repression, and in particular the use of legislation and judicial harassment, are more easily challenged by civil society. I argue that liberal democratic states criminalise, rather than simply repress, civil society because it constitutes a way of legitimising the oppression of pro-migrant civil society: by defining pro-migrant CSAs as criminals or dismissing them as activists or radicals, and then by using legal mechanisms against them (especially criminal law, but also administrative), state actors veil their attacks against pro-migrant CSAs with the façade of legitimacy lent by the use of legal instruments. However, these very instruments can be utilised by pro-migrant CSAs in return to resist against state attempts to criminalise them, and to prove the legality of their actions contrary to the claims of the state.

This constitutes a significant contrast to the situation in Greece, where repressive bureaucratic tools and relations of co-optation are nebulous and insidious. They are difficult to identify and difficult to resist, partly because they are, to some extent, based on the consent of co-opted humanitarian CSAs who are willing to comply with implicit restrictions and operate within generally (but not explicitly) repressive and intimidatory conditions, and partly because the legal and bureaucratic foundations, upon which repressive dynamics such as the NGO registry and

general bureaucratic grey areas are based, are underdeveloped and leave leeway for discretionary action by state actors which further leaves room for plausible deniability regarding repressive intentions.

Forms of repression, then, which do not directly constitute criminalisation thereby appear to be both more effective at actually silencing and oppressing pro-migrant CSAs, are more insidious because they are less easily identified, and are also harder to resist because, unlike judicial harassment, they do not come with inbuilt platforms for contestation.

'We're not activists'

Criminalisation certainly creates resistance by forcing CSAs in areas like Calais and the Mediterranean Sea to choose between fight or flight: those who stay must resist, and those who leave because they are unwilling or unable to resist leave behind an overall more polarised and resistant space. However, as I have shown above and in the previous chapter, CSAs resist in ways which are very above board: through the courts, using the law, by highlighting and exposing state crimes, by starting and signing petitions.

Discursively too, and in terms of organisational identity, I found that interviewees, including the majority of those I interviewed in Calais as well as several interviewees from SAR NGOs operating in the Mediterranean, emphasised the humanitarian nature of their work (again, as opposed to political), repeatedly rejected labels including political and activist and radical, and, most particularly, emphatically emphasised that all of their activities are strictly legal and that they follow the letter of the law. This was unexpected: prior to my field research, I had expected to find that facing criminalisation would lead to CSAs becoming more radical, for example by adopting more anti-state ideologies, and perhaps even more criminal, such as by moving more criminalised activities underground. These expectations were based on critical criminological labelling theories which found that being labelled, and subsequently treated, as deviant or criminal led to targets adopting these identities and following more criminal paths (Lemert, 1951; Muncie, 2008).

I argue that being criminalised has instead led to a defensive counterreaction in which pro-migrant CSAs in the humanitarian field have not just rejected accusations and labels of criminality, but have also rejected labels related to political engagement, such as activism, in what might constitute an over-correction. This extended to interviewees who had personally been targeted by state actors. For example one interviewee, who had been arrested several times and even been hit by a rubber bullet shot by the police during an eviction in Calais, told me: 'we're not activists, we're not here to fight or to waste our time in petty squabbles or feuds with any department of the French authorities [...] we are here to help people and to provide

aid' (Interview, C9R). To many interviewees, the concept of humanitarianism appeared to be a trump card: how could humanitarian activities, which are simply about addressing the most fundamental needs including rescue, food and shelter, be criminalised, attacked or derided? The idea that this was the extent of their activities was offered like a defence, thereby implicitly suggesting that if they *were* activists or engaging politically, there might be some legitimacy in the attacks against them.

Another interviewee who had been prosecuted by the police told me: 'I think it's quite easy to begin to lose a bit of control and to begin to be a bit too much like an activist' and that he hopes to work with human rights organisations in the future whose work is not so political but more 'based on fundamental rights, European law, French law, international law' (Interview, C6V). The law is in this way perceived as something which is not political but rather objective, highlighting another trend among pro-migrant CSAs to justify their work and their actions through the law, as though whether or not something is legal represents whether or not it is a justifiable thing to do. Many interviewees accordingly explained to me the ways in which their activities fulfil legal obligations towards asylum seekers, both national and international legal obligations. For example, another interviewee facing prosecution in Greece told me:

'We really need to drive the point home that from the legal point of view it's not a pull factor, there is no correlation, we are doing everything within the remit of the law, by the letter of the law, that the law actually, not only does it allow for the kinds of actions that we undertook, it requires them:

There are reams of international maritime laws, all of them outline the requirement of a sea captain if they are able to do so, to without haste respond to a boat that is in distress. We have reams of European Union legislation around the right to seek asylum, around the protection of human rights defenders, around the right to life, the right for children to be safe, for adults to be safe - all of them contradicted by our securitised response to this crisis, all of them generally being upheld by humanitarian aid organisations' (Interview, L12V).

The interviewee, like many others, refuted accusations made against them and emphasised that their work was all 'within the remit of the law, by the letter of the law'. Throughout research locations, interviewees particularly emphasised the legality of their actions in a way which, I argue, places them constantly on the defensive, responding to the way in which they are treated as 'guilty before proven innocent' (Interview, SAR4). Interviewees, as well as many reports and analyses of criminalisation, focus on legal arguments, for example through analysing the Facilitation Directive and comparing it to international smuggling legislation in order to argue that interpretations of the law which justify the criminalisation of humanitarian actors are not legitimate (Carrera *et al.*, 2018; Fekete, Webber and Edmond-Pettitt, 2017). These arguments

not only foreground and privilege the law in a problematic way, but this kind of discourse and debate also consistently puts pro-migrant CSAs on the defensive, requiring them to justify themselves while criminalising actors set the terms of the debate.

However, I argue that while this has problematic connotations and might certainly have some depoliticising effects, it is not necessarily a reflection of the nature of the CSAs in question and their work. As other interviewees cited previously have pointed out, engaging in humanitarianism where it is unwanted and criminalised is, indeed, inherently a political act. But this tendency reveals a struggle experienced by many of my interviewees with the perceived tension between engaging in humanitarian versus political capacities: while insisting on their purely humanitarian mandates, many interviewees often also engaged in state-critical activities such as attending protests, publishing articles on social media about poor conditions for migrants or signing petitions for change.

The emphasis placed on being ‘humanitarian’ rather than ‘political’ or ‘activist’ thereby appears to largely be a discursive act carried out by CSAs who react defensively against narratives seeking to delegitimise them. Humanitarianism constitutes a useful defence, because what can be more legitimate than saving lives and providing human beings in need with necessities and services they are entitled to under human rights law? But it is also a de-politicising discourse which separates ‘humanitarian’ CSAs from those which, according to this logic, explicitly engage politically and might therefore be more deserving of being targeted.

‘We have nothing to hide’

Pro-migrant CSAs not only emphasise their legality, but also proactively ensure it. CSAs who know that they will be targeted by the state through means including judicial and police harassment, such as police vehicle searches, take particular care to be rule- and law-abiding because they know that not only will they be searched but they will be fined or sanctioned for any minor infraction. In Calais many interviewees described how they take particular care to ensure that all their documents, taxes and vehicles are in perfect order: ‘we’re wary about being tidy and professional and legal. We want to be defensible’ (Interview, C8R). In a continuation of this logic, interviewees throughout Europe emphasised that the best defence is ensuring that everything they do is legal: ‘I think the main thing is that we do work within the law, and we know that everything that we do is legal. [...] So yeah, I think, you know, operating within the law is like a risk assessment in itself’ (Interview, C3R).

Of course, despite this, CSAs in Calais are still systematically harassed by police. CSAs therefore also changed their activities and internal structures and processes in anticipation of being targeted. A collective of CSAs in Calais, for example, conduct regular ‘know your rights’ and other

training sessions for volunteers, to advise on what to do and how to behave in encounters with the police and in case of arrest. This included practical advice, such as staying calm and non-confrontational with police officers, as well as informing volunteers about their legal rights and what they are entitled to in police custody, for example (Field Work Diary). Volunteers were also given printed copies of laws, such as the one establishing the right to film police in France, to carry with them so that they can prove the legality of their actions to the police, who regularly tell volunteers that they are not allowed to film them, for example. This constitutes a role reversal: CSAs become self-law-enforcing. They inform themselves of the rules and laws which might be used against them, they study their own rights within the law which they can use to defend themselves against the law-enforcers of the state, and they record police violations of rules and laws and report them to the competent authorities.

Not only do CSAs become self-law-enforcing, they also become self-surveilling, as became clear to me in several interviews with SAR NGO, who, knowing that they will be targeted, constantly collect their own data and record everything they do, so that they can later prove that their actions were all legal. A former crewmember of Sea Watch explained how this began:

‘We try to record everything we do. We’ve been accused of flashing lights at land so that the boats know where to meet us. That was Carmelo Zuccaro in 2017, one of the Italian prosecutors, accused us of doing that. Well, you know, I don’t know if he believes in a flat earth, the curvature of the earth at 24 miles would indicate that we can’t really flash a light at land [laughs]. He accused us of communicating with them. But we were surrounded in 2017 by military boats. Surely they would see us communicating?’

The accusations are purely political. And now we are aware of all of this and the extraordinary lengths they will go to, to accuse us of anything. So we have trackers on the speed boats, we have trackers on our ship, they don’t get turned off. We’ll ensure that our communication is recorded. So when I call up the ship from my speed boat, that conversation is recorded. So there is no doubt what the information is that we pass in between each other.

And it is a real shame that these measures have to be taken. That we have to prove our innocence rather than them prove our guilt. You know, we are looked at as being guilty before proven innocent’ (Interview, SAR4).

Whereas (or rather, because) the case against Jugend Rettet involved police bugging the bridge of their vessel and conducting surveillance in order to find evidence of collusion with smugglers, SAR NGOs conduct this surveillance themselves. In the case of at least one SAR NGO, they even take their own collected data to the court directly:

'We want our mission to be totally clear, evident, in the sun. When we do an operation, we go to the court to take all our data without waiting for them to ask. And, of course, we do know that we are in a position that likely we are watched [surveilled]' (Interview, S1R).

The role reversal between CSAs and law enforcement is clear, as is the reversal of general judicial proceedings: rather than police and prosecutors conducting the work of proving the existence of crime, SAR NGOs record themselves and collect the evidence they know they will need to prove their own innocence; the burden of proof thereby falls on the shoulders of the accused.

Criminalisation in Calais and the Mediterranean Sea, therefore, not only creates a more resistant civil society in spaces meant to be emptied and silenced while often providing legal platforms for resistance, but leads to targeted CSAs becoming more rule- and law- abiding and transparent, and to furthermore pre-emptively gather the evidence of their legal legitimacy, thereby further rendering themselves less legitimately attackable and criminalising actions of the state more clearly repressive.

Civil society: enforcers of liberal democracy or 'soft' activists?

Through their criminalisation, a large section of pro-migrant CSAs have become rule- and law-abiding, resistant, and self-policing. Furthermore, they have also become a force which also polices the state: by witnessing and reporting state crimes, such as pushbacks and violence against migrants, and even beginning judicial proceedings against state actors in turn. For example, evidence collected by Sea Watch has resulted in Sicilian prosecutors launching an investigation against the Libyan Coast Guard for 'attempted shipwreck' (Mann and Permoser, 2021), while CSAs in the Balkans attempt to shine a light on opaque state practices by mapping pushbacks (Push-Back Map Collective, 2020).

In this way, pro-migrant CSAs have become a force for transparency and accountability in Europe which, as I argued in the previous chapter, also is a reason for their criminalisation. Conversely, state actors violate liberal democratic principles – not only by breaking international laws and norms through the security-based approach to migration management and border control, but by criminalising and repressing civil society actors. The dynamics, then, can be interpreted as a role reversal in which pro-migrant CSAs are enforcing the rules and norms of the EU and the liberal democratic state: by fulfilling state obligations to migrants and asylum-seekers, and by trying to hold the state itself to its own rules and laws. This role reversal was even surprising to some of the CSAs themselves, according to an activist group helping refugees in Rome:

'Even the police didn't follow the rules. So one thing that we do is force police to follow the rules, the law, about immigration. So this is quite crazy, no? We are activists, but we win according to

the law. This is just what we have to do. So please [to the police] can you apply the law how it is supposed to be applied?' (Interview, R3R)

In general, pro-migrant CSAs in Europe, especially those which recently emerged from the 'crisis', play by the rules and enforce these rules in return; they emphasise the humanitarian, legal and human-rights based nature of their activities, while rejecting notions of political engagement and activism; and they use legal and institutional structures in order to resist their own criminalisation and to hold the state accountable. In essence they are enforcing the rules of liberal democracy within the EU and against state actors who do not respect these rules, laws and norms in return. So, can this this widespread rights-based and institutionalised form of CSA resistance be effective?

I argue that while legal and institutionalised resistance might lead to CSAs winning court cases and creating some positive material changes in individual cases, it does not address the root causes of the issues at hand but can actually serve to legitimise the system in which criminalisation is deeply embedded. First, positive change brought about by such resistance does not affect the will of state actors to criminalise, but rather just the means by which they can do so. The constitutional protection of the value of *fraternité* in France, for example, just meant that police and prosecutors used different legal provisions with which to target civil society or found a way around the wording of the law, such as by arguing that being an activist in itself constitutes a material gain within smuggling prosecutions. Alternatively, as we have seen in the case of SAR NGOs, state actors might choose to attack civil society using tools which are not so easily challenged through established institutional means, such as quiet changes to administrative legislation in flag states. Second, as I argued in chapter 6.2 on judicial harassment, even when CSAs win legal cases in court, much damage has already been done throughout the proceedings.

Third, institutionalised resistance often has a legitimising effect for the state and a pacifying one for civil society. The former appears to be accountable and reformable through civic engagement, while the latter channels its energy and will to resist through the established pathways. An analysis of the use of human-rights tools to resist the British security state, for example, finds that 'through participation in the mechanisms of judicial and policy review, the state is able to absorb criticism and present a semblance of democratic accountability without a radical transformation in people's experience of these powers' (Pantazis and Pemberton, 2013: 365). In this vein, institutional and legal challenges to both the treatment of migrants and the treatment of civil society by the state have failed to address the fundamental underlying issues, such as the securitised approach to migration management, while sustaining an appearance of accountability and the rule of law.

Pro-migrant CSAs use the tools of liberal democracy in order to defend liberal democratic principles against state actors – state actors who are the traditional arbitrators of those laws and norms and who, however, systematically violate them through the securitised response to migration, the systematic attack on pro-migrant CSAs, and the rise of authoritarian and populist rhetoric and tactics. The contemporary liberal democratic security state and the repressive authoritarian regime are not distinct categories, but rather clearly overlap. In both, civil liberties are eroded, CSAs are repressed, and they seek to legitimise themselves through their own legal systems. Predominantly using standard legal and institutional tools against actors using exceptional, repressive and opaque measures appears to have limited impact, while only seeking to address the clearest forms of criminalisation over the more murky and more effective tools of repression as seen in Greece.

‘Soft activism’

So what does this mean for the pro-migrant civil society sector, a large part of which defines and justifies itself and its actions based on legal legitimacy? One interviewee, broadly involved in SAR activities, compared the activism he has been engaged with in Europe with the activism in his home country where he had been a political activist and a human rights defender and could not return because he might face torture or prison:

‘For me, the activism here in Europe, it’s a soft activism, in the way that people really respect the law. Even when they see this as a corrupted law, they respect it. But in North African countries, for example, if you are a lawyer, a human rights defender, and see a corrupted law, you will try your hardest to fight, because you know this law is shit. But here, no, they don’t, that’s why I’m saying it’s soft activism. [...] So when I’m here, doing this soft activism, respecting all the laws and regulations, working under the international agreements and human rights conventions, and then you come and criminalise me, no, I will stand and defend myself even in the court. If I’m going to prison here, it would be much better than going to prison in my home country’ (Interview, anon).

The interviewee implicitly critiques this European ‘soft’ activism which is consistently respectful of even ‘corrupt’ law. Indeed, there is a tension evident among pro-migrant CSAs who emphasise the legality of their actions and justify their work through the law, while they are simultaneously being criminalised using those very legal instruments. In this way they become caught in a cycle between ‘migrants, pro-migrant activists and states’ in which ‘imputations of illegality are mutual’ and the interpretive nature of law means that invoking the law ‘often intensifies the conflicts it is meant to solve’ (Ben-Arieh and Heins, 2021: 211). This level of debate, resistance and engagement by CSAs holds up the law in an uncritical way as the final authority of legitimacy, rather than as a fallible human construct. While many interviewees took care to emphasise the

legality of their actions, others critiqued this approach. One interviewee involved in boat spotting on Lesbos told me:

‘in the back of their (boat spotters) heads, they always know that there’s a chance that, to get in trouble for what we’re doing, even though it’s not illegal, and even if the things that we are doing become illegal it doesn’t mean that it’s wrong. I mean, it was illegal to, to have Jews in your house in Germany, like, it was illegal to free slaves...’ (Interview, L24V).

Indeed, the emphasis placed by CSAs throughout Europe on the law and human rights frameworks was felt to be particularly misplaced not only by the non-European activist cited above, but also by several Greek interviewees. While CSAs in Calais and NGOs in the Mediterranean were able to adapt their operations in order to follow rules and laws as much as possible, the weak bureaucratic and legal infrastructures in Greece which enables the maintenance of grey areas make this impossible for CSAs who, unlike their counterparts in other countries, cannot attain legal and administrative compliance with which to legitimise themselves. On Lesbos, for example, the invocation of law and human rights feels deeply ironic:

‘Considering all these violations of human rights, yes, then the law stops existing. Because they can always use the law against you. The thing is that the law is not, it is not being used for everybody equally. When you see the conditions that these people live in [in Moria]. Human rights, all these things [laws] that we voted for the past two centuries – all of them they are violated horribly on this island. So words like "fairness" and like "laws" and "justice", they have no actual point, they sound sarcastic here on this island’ (interview, L18R).

The CSA emphasis on legality and legal legitimacy, then, becomes particularly problematic in states lacking strong legal and bureaucratic infrastructures, which are experiencing democratic backsliding, lack a strong rule of law, or in which CSAs are being criminalised through the introduction of new laws. Indeed, within my case studies laws have been introduced which legitimise, or make legal, the blocking of CSAs, including Hungary’s Stop Soros Law, Salvini’s Security Decrees, the Greek confidentiality and NGO registry laws, German and Dutch administrative law changes.

Political alternatives?

Working, acting and resisting on the basis of the law means that civil society justifies and limits itself within a structure defined by the state, while simultaneously legitimising those state structures. Furthermore, by always being on the defensive against state accusations of criminality, CSAs actually reify and legitimise laws and narratives of criminality which target both migrants and civil society. Garelli and Tazzioli (2019) argue that SAR NGOs attempting to ‘hold

states to account by drawing on the same laws that the states are not complying with' might, in the face of accusations that they collude with smugglers, instead answer 'we are all smugglers'. Rather than, in a constant defence against accusations of smuggling, reproducing the 'racialised divide between the 'good' white European citizens' helping migrants 'for free' and the "real' smugglers', civil society might instead focus on 'the mobilisation of legal, logistic and political means to support the safe movement and access to asylum for those people who have been forced by state laws to become 'illegal migrants' (Garelli and Tazzioli, 2019). By continuously engaging on the level of debate regarding smuggling, CSAs reify and reproduce the popular narrative which demonises the figure of the smuggler as the absolute enemy of the European state, and which ignores the fact that it is European policies which have rendered the smuggler one of the only means by which asylum-seekers can reach Europe to claim asylum.

The overemphasis on legal frameworks by CSAs and in the literature also has further implications: 'reaching automatically for the juridical tools that liberalism offers may leave us without the necessary conceptual or strategic means to understand and counter the techniques of power involved in these new detention [or migration] regimes [...] We lose our sense that there may be alternative ways of thinking about politics' (Orford, 2007: 223). Much of the debate surrounding the criminalisation of pro-migrant CSAs seems to be stuck in a loop by focussing on national, EU and international legislative frameworks and how they are implemented, therefore focussing on resistance through legal and infrastructural pathways, while overlooking more insidiously repressive techniques and infrastructures underlying legislative issues.

So what might this kind of resistance look like, one which does not reify and legitimise exclusionary state structures? Of course, there are also more politically engaged CSAs who do not conform to the image which I have painted in this chapter, in which I have particularly focused on the category of newly emerged CSAs who define themselves as humanitarians and which constitute a significant proportion of the pro-migrant CSAs active in the fields I researched in. Indeed, as I stated above, many of the CSAs which identify their work as predominantly humanitarian in nature and which emphasise the legality of their actions also do engage politically. However, some are particularly subversive or engaged in 'alternative ways of thinking about politics' and the way migration is managed in Europe (Orford, 2007: 223). Along the lines of Garelli and Tazzioli's (2019) critique of SAR NGOs' approach to smuggling narratives, for example, the German SAR NGO Mission Lifeline produced satirical t-shirts appropriating accusations against them, including one featuring the former captain's image with the words 'Schlepper König' (smuggler king) and another emblazoned with 'Team Umvolkung' – *Umvolkung* constituting the Nazi term for ethnic replacement, a word which has been used against SAR NGOs by far-right leaders including Salvini and Orbán (Breher, 2019).

Furthermore, civil society movements which are based on principles of solidarity show different ways in which such resistance, against both criminalisation and oppressive state structures, can take place. The civil society movement 'Seebrücke' (Sea Bridge), for example, campaigns for freedom of movement and calls for, among other things, 'ferries instead of dinghies!' (Seebrücke Berlin, 2021). Rather than basing its requests for the de-criminalisation of SAR NGOs on legal distinctions between search and rescue and smuggling, it appropriates accusations for criminalising actors that CSAs in the Mediterranean constitute ferries. While the campaign also makes human rights claims, its principal basis for action is the creation of a 'solidarity Europe' (Seebrücke, 2021). In a resistance to the power of national and EU control over borders, Seebrücke started a communal counter movement through which local civil society together with towns or cities declare themselves as 'safe ports' ready to accommodate a greater number of migrants while putting pressure on the national German government to fundamentally change the European migration politics (Seebrücke, 2021). Since the movement started in 2018, over 250 German councils had declared themselves as 'safe ports', with mayors throughout Europe, including Palermo, Naples and Barcelona, joining to declare themselves as solidarity cities (Seebrücke, 2021).

There is also a strong solidarity movement in Greece which emerged in response to the 2009 economic crisis and transformed in 2015 as, broadly, an anti-hierarchical network which aims to help migrants on politicised terms of 'radical inclusivity and equality' (Schack and Witcher, 2021: 3). Both Pikpa camp on Lesbos and the City Plaza squat in Athens, among many other squats throughout Greece, were developed out of this solidarity movement and demonstrate a form of pro-migrant civil society engagement which takes place outside of and independent of state structures of migration management. They provide accommodation and other necessities outside of the Greek reception infrastructure regardless of state exclusionary preferences based on nationality or bureaucratic status, but also engage in political contestation (Schack and Witcher, 2021). For example, my interviewee at City Plaza described the housing aspect of the squat as an 'example, an alternative against camps [...] and a space of empowerment' (Interview, A3R). Both Pikpa and City Plaza have closed down after long campaigns of criminalisation against them but continue to represent an alternative way of 'doing migration' in Europe.

Conclusion

In my research I identified a number of patterns which I analysed in this chapter. First, that the silencing and subduing effects of the more insidious techniques of repression in Greece are much more effective in the creation of the 'prescribed identity for refugee aid groups [which]

has become a purely humanitarian, non-political one' (Cantat, 2020: 97) than the more direct forms of criminalisation utilised in Calais and the Mediterranean Sea. These, by forcing a fight or flight response, result in a more politicised and resistant civil society space. Against expectations created by critical criminological labelling theories, however, these groups did not in general adopt or appropriate the deviant or criminal identities thrust upon them. Rather, they overcorrected by not only rejecting labels related to criminality, but often also labels of activism or political engagement, while taking on the role of the state by self-policing in order to ensure the utter legal legitimacy of their actions. This legal emphasis, however, legitimises, reifies, and focuses civil society energies on state structures which are created, defined and being violated by state actors. By becoming enforcers of liberal democratic norms related to accountability, transparency and rule of law, pro-migrant CSAs to some extent fulfil the post-Cold War hopes of civil society as a cornerstone of democracy, but rather, as a whole, fall short of the radical potential envisioned by some (Edwards, 2011). Several civil society-led solidarity campaigns and initiatives, however, demonstrate what civil society initiatives which 'challenge the status quo and build new alternatives' might entail (Edwards, 2011: 6).

Chapter 9: Conclusion and discussion

This thesis advances empirical knowledge of state/civil society relations in the migration management field in Europe. I conducted 90 in-depth research interviews with civil society and state actors during my pilot and principal field research phases, with a particular emphasis on my case studies of CSAs in Calais and on Lesvos, and SAR NGOs operating in the Central Mediterranean. I have collected, coded, and analysed a large amount of original data offering novel information related to contemporary, evolving and consequently under-researched phenomena. My findings chapters therefore constitute the presentation and analysis of new information through the description of processes and dynamics of criminalisation and repression, and the analysis of perspectives and interpretations of, predominantly, civil society actors. These actors are witnesses to and participants of contentious dynamics at Europe's borders which represent fundamental tensions at the heart of the contemporary liberal democratic state and of the European Union. Based on my research findings, I argue that liberal democratic values related to the protection of human rights and the freedom of civil society are systematically violated by state actors throughout Europe. This occurs both through the systematic exercise of violence, including in the form of deliberate neglect, against migrants, and through the systematic repression and criminalisation of CSAs seeking to help or advocate for them. This is especially the case for those who are best placed to witness state security infrastructures and practices and those who seek to expose them through activism, dissent, and monitoring activities. This thesis was developed from a normative standpoint which understands the rights and freedom of civil society to be a vital cornerstone of liberal democracy which should be protected while the criminalisation and repression of civil society should be challenged.

This thesis also makes several theoretical and analytical contributions. I embed my analysis of why pro-migrant CSAs are being criminalised within literatures on the politicisation of migration, the securitisation of migration, and practices and infrastructures of security. I argue that the political and electoral salience of migration has made CSAs a 'useful enemy' for political actors who seek to demonstrate a strong hand and who consequently publicly target CSAs, for example through criminalising or stigmatising discourse or through public attempts to block their work. On the other hand, I argue that the more systematic and insidious forms of criminalisation and repression can rather be best explained through an analysis of CSA interactions with state security infrastructure, drawing from Critical Security Studies theories which argue that a key feature of a security response directed at an external threat is the suppression of internal dissent which challenges and draws attention to exceptional state practices. This corresponds to a principal narrative which emerged through my interview data, in which interviewees interpreted

their own criminalisation as a function of their status as witnesses, or potential witnesses and even unintentional witnesses, to state security practices, such as violence against migrants, pushbacks and unlawful deportations, and abysmal conditions in official refugee camps. Due to their opposing purposes, dynamics of politicisation and security are in tension with each other: criminalisation for political and electoral gain is a performative act which seeks to create noise and draw attention; criminalisation for purposes of security seeks to suppress and silence. I thereby analyse the mutually constitutive relationship between processes of politicisation, securitisation and criminalisation, providing a novel theorisation of the ways in which these processes interact and are in tension with each other.

Throughout chapters six, seven, and eight, I analyse the nature of different methods of criminalisation and repression and argue that they have different effects on civil society action. I contribute to the existing literature on the criminalisation of pro-migrant civil society in the literature, by providing a deeper understanding of the nature, purposes and consequences of different tactics of repression as well as the analysis of intensive case studies. I argue that methods of criminalisation, that is methods which associate CSAs with criminality and seek prosecutions, in general constitute a 'noisier' form of targeting CSAs and are therefore particularly conducive to the intentions of politicising state actors. Meanwhile, more insidious forms of repression, such as those seen in Greece which are based especially on methods of co-optation and the maintenance of bureaucratic grey areas, are particularly conducive to purposes of security because they have a silencing effect. As I argue in chapter eight, they are also harder to resist in comparison to the systematic criminalisation experienced by CSAs in Calais and by SAR NGOs in the Mediterranean which forces a fight or flight response resulting in the creation of a more resistant civil society space and which, in the case of judicial harassment, automatically provides the (legal) tools for resistance. In contrast, more nebulous tools of repression which are disconnected from logics of criminality have a more suppressive effect. In the case of dynamics of cooperation and co-optation in Greece, this is because CSAs are offered the opportunity to comply while the space around them becomes increasingly more controlled and coercive. These dynamics are underscored by the maintenance of a bureaucratic grey area based on which state actors can sanction CSAs in discretionary and arbitrary ways. Such repressive tools, including the use of administrative and bureaucratic blockades against CSAs in different contexts throughout Europe, such as the coordinated transnational effort to use and change administrative regulations to block the work of SAR NGOs in the Mediterranean, are more difficult to resist because they are harder to identify and quantify, and are therefore subject to less scrutiny in the literature as well as in non-academic reporting and analyses.

These conclusions also demonstrate the analytical importance of differentiating between different methods of targeting CSAs. The principal theoretical contribution of this thesis was the development of a typological framework aimed at facilitating the differentiated analysis of ways in which civil society actors are criminalised and repressed. The framework fills a significant gap in the wider academic literature. In chapter three, I identified conceptual difficulties in the existing literature on the criminalisation of pro-migrant civil society. These difficulties are rooted in the range of different ways in which CSAs are being targeted by state actors, from the use of criminal law mechanisms to bureaucratic methods to the propagation of stigmatising discourses. The literature responded to this multiplicity in two principal ways. First, authors analysed the phenomenon under a range of terms and conceptual frameworks, including the 'shrinking space' for CSAs, the 'policing of humanitarianism', and 'the crackdown on NGOs'. I argued that this risks the comparability of the analyses, all of which engage with the general trend throughout Europe of pro-migrant CSAs being blocked and targeted by state actors, albeit in different ways. This lack of conceptual cohesion might result in a lack of recognition that these disparate methods across different contexts and locations are actually closely linked and should be analysed as a single interrelated and transnational phenomenon. Second, following similar conclusions to those which influenced the direction of my own research, other authors have also created their own conceptual frameworks of the criminalisation (or 'cimmigration' or 'policing') of pro-migrant CSAs through which to analyse this larger and varied phenomenon but which, I argued, did not sufficiently define or differentiate between different methods of targeting pro-migrant CSAs. A further review of critical criminological theories and studies analysing criminalisation in other contexts in chapter four also found a clear instinct to subsume more than what standard definitions of criminalisation allow under the term 'criminalisation' as well as an under-conceptualisation of the term leading to an over-inclusivity which risks rendering the term analytically useless.

The typological framework which I presented in chapter six fills this conceptual gap and functions as an analytical tool through which I analysed the mechanisms of the criminalisation and repression of pro-migrant CSAs in Europe. The categories of the framework were developed and based on my own research findings, insights provided by the existing literature on criminalisation, and literature on the repression of civil society in more authoritarian regimes. In this way, the framework brings together literature on criminalisation in the West and repression outside of the West which have so far remained distinct due to, I argue, a Western liberal bias which reproduces 'us versus them' binaries which obscure the nature in which repressive and authoritarian tactics cross borders as state actors learn from and copy each other: my research has further demonstrated that states, including those throughout the EU,

occupy fluid positions on a continuum from liberal democratic to authoritarian. Rather than focusing on the distinction between repression and criminalisation, with an overemphasis on 'criminalisation' constituting a reification and legitimisation of a system which is exploited by state actors to legitimise their attack on pro-migrant civil society, the typology is structured around different methods of targeting and blocking the work of pro-migrant CSAs. Accordingly, I analysed my research findings (which also informed the development of the typology through an iterative research process) through the lens of the typology's six categories: legislative change, judicial harassment, police harassment, administrative sanctions and techniques of bureaucracy, stigmatising and scapegoating discourse, and co-optation. The typology of repression and criminalisation thereby sought to fill the gap in the literature by providing a conceptual and analytical framework which will enable the comparable, cohesive and differentiated analysis of pro-migrant CSAs in Europe.

Throughout my research and this thesis there has also been a clear terminological tension: I argue that not all methods of targeting should be subsumed under the term 'criminalisation' and that the distinction between repression and criminalisation is not only analytically important but that its reproduction constitutes the result of a Western bias in the literature. Nevertheless, I have continued to use the term 'criminalisation' to refer to the overall phenomenon in which pro-migrant CSAs are systematically blocked, repressed and, indeed, criminalised in Europe. This is for two primary reasons. First, it is the result of a kind of path dependency created at the beginning of my research which, from its onset and influenced by the use of the term in different studies and reports, sought to analyse the 'criminalisation' of pro-migrant CSAs. I subsequently initially developed an earlier version of my typology which, while it clearly differentiated between different methods of targeting from the outset, subsumed all of these under the term 'criminalisation'. My more critical perspective of the term, and the introduction of concepts and literature on repression outside of the West, were not introduced until later in the research process. More importantly, however, there remain significant practical reasons for using the term 'criminalisation', reflecting a similar progression in the literature on the targeting of pro-migrant CSAs in Europe as a whole. 'Criminalisation' has become the most common term in both academic and non-academic literature and reports to refer to the wider phenomenon, often also subsuming other tactics of repression. For reasons of comparability and cohesion, there are significant arguments for keeping the term, so long as different methods are sufficiently differentiated.

However, throughout this thesis I have repeatedly argued that there is an overemphasis in the broader literature, and among CSAs, on the 'legal' and the 'criminal', including the disproportionate salience of smuggling-related legislation and prosecutions. This overemphasis

includes, and has resulted in, a broad tendency among CSAs working with migrants in the field to particularly engage in resistance through legal and institutional channels, employing liberal democratic tools to try to hold state actors to account who, however, have stopped playing by their own rules and who have the power to change them and, if they cannot, to ignore them. Furthermore, as state actors increasingly resort to using repressive tactics which are not directly based in criminal law instruments, both due to barriers created by judicialisation and due to the greater effectiveness and lower public salience of more repressive tactics, the term 'criminalisation' becomes increasingly misleading and inaccurate while continuing a trend which disproportionately emphasises aspects of legality and contributing to the under-analysis of phenomena which are arguably more insidious and harmful. It would therefore be more accurate to start speaking of the 'repression' of pro-migrant CSAs in Europe. In order to avoid simply adding a new term to the field, I argue that what is necessary is a form of paradigm shift in the literature on the criminalisation of pro-migrant CSAs in Europe, an intentional and, most importantly, communal break from the path dependency created by the initial focus on 'crimes of solidarity' and cases of judicial harassment related to smuggling legislation. This should be the result of joint debate involving both academics and CSAs and might occur, for example, through the organisation of a conference and the publication of a co-authored Special Issue.

Nevertheless, my typology of repressive and criminalising tactics is intended as a conceptual tool facilitating the analysis of dynamics within the context of pro-migrant CSAs in Europe. The typology thereby also contributes to the normative goal of this thesis, by facilitating the identification of different forms of repression and criminalisation. As I argue throughout this thesis, there is an overemphasis in the literature as well as in the public knowledge on specific forms of criminalisation and repression, particularly on smuggling-related judicial harassment. However, as I show, a far wider range of tactics are used by state actors, such as bureaucratic harassment and co-optation, which are often more effective tools of repression, yet which do not gain public attention. Change cannot occur, and repressive tactics cannot be challenged, where they are not identified and understood. This framework therefore also constitutes a tool towards the normative goal of enabling the identification and therefore the challenging of various repressive and criminalising state tactics.

The typological framework is therefore intended to be used and built upon by other researchers analysing regions and actors beyond the scope of my own research, like countries along the Balkan route, such as Croatia which is particularly notorious for its violence against migrants at the borders, or in Poland and Hungary where judicial independence and critical civil society is increasingly under attack. I would encourage researchers to verify and expand upon some of my own findings by, for example, further analysing the different ways in which different types of

civil society actors and activities are targeted. Following the publication of this research, I would also wish to see the typology utilised and further developed by researchers in a range of different contexts beyond that of my own research which would, furthermore, provide interesting opportunities for comparison. Are other civil society sectors, such as environmental activists, targeted in comparable ways? Furthermore, I have argued that so-called liberal democracies and more authoritarian states should be perceived as on a fluid continuum, rather than as analytically distinct. Accordingly, how useful is the typology for analyses of the repression and criminalisation of civil society groups in countries like Turkey, Egypt and Russia? I would encourage researchers to not only utilise the typology, but to contribute to and develop it through, for example, the classification of analytically distinct subcategories, or a further theorisation of relationships between categories.

Due to the broad nature of my research, while I have addressed and analysed many different phenomena and engaged with a range of theories and literature, there are at least as many salient and relevant issues which I have not addressed or included in my analysis. There are four gaps in my research which I regard to be particularly important. First, the experience, perspective, and agency of migrants themselves. It is important to emphasise that migrants are criminalised and repressed in Europe to a far greater extent than the CSAs helping them. This includes, for example, the systematic arrest and prosecution of migrants themselves for smuggling: between 2015 and 2018, Italy arrested approximately 1,300 boat 'captains', constituting migrants themselves who were likely 'forced to steer or navigate the boat' (Patanè, 2020: 123). Similarly, migrants in Greece are also systematically imprisoned for smuggling, a crime which leads to a longer prison sentence than murder, and are regularly scapegoated and prosecuted, such as in the case of four young Afghans who were sentenced to ten years in jail in 2021 for allegedly starting the fires which destroyed the Moria camp in 2020 (BBC, 2021a). Moreover, migrants engaged in activism and community engagement equally constitute civil society actors: there is no 'civil society' vs 'migrant' binary. Within my own thesis I have largely excluded self-organised migrant activism from my analyses, 'migrant' here referring to those recently arrived who also constitute the migrants which the CSAs I analysed seek to help. This is primarily because the distinction was important for analytical purposes: are they being repressed and criminalised because they are migrants or because they are engaged in activism and dissent? This distinction has certainly not been rigidly enforced in my research, however, and my interviewees included several migrants, such as a translator for a CSA on Lesbos, as well as a lawyer with whom I primarily discussed the criminalisation of migrant activism on the island. The second gap relates to the role of the media and critical journalists. Regarding the former, both news and social media play a significant role in the various processes analysed in this thesis,

including in the propagation of stigmatising narratives about pro-migrant CSAs. Meanwhile, I did not include the role of critical journalists in my research who, like critical CSAs, act as witnesses to and dissenters of state crimes. Recent journalistic investigations and reporting on pushbacks at Croatian and Greek borders, for example, have drawn significant attention to and scrutiny of border practices and especially the role played by Frontex and EU funding (Christides *et al.*, 2021; 2022a; 2022b). Correspondingly, they have also faced repression and criminalisation, particularly in Greece. According to a March 2022 report by the Media Freedom Rapid Response, an alliance led by the European Centre for Press and Media Freedom, in the face of a government 'obsessed with controlling the message' and 'minimising critical and dissenting voices' including those 'reporting on serious human rights violations', journalistic and media independence and even the personal safety of journalists are increasingly under threat in Greece, which now ranked 70th in the World Press Freedom Index (Stamouli, 2022).

Finally, while this thesis and my typology have primarily focussed on the role of state actors in the repression and criminalisation of pro-migrant CSAs, it would be useful and interesting to greater understand the role of private and other non-state actors in these dynamics. In chapter seven, I argued that the interaction between pro-migrant civil society and state security infrastructure offers an explanation for repression and criminalisation. The EU's security infrastructure, and migration governance approach in general, is one tied closely to the multi-billion-euro security and migration industries – from which CSAs also profit, such as in the case of subcontracted NGOs (Gammeltoft-Hansen and Sørensen, 2013; Lemberg-Pedersen, 2013). Through this perspective, CSAs might be understood not only as threats to this industry but also as competitors. These private security companies have the ability to influence policymakers and the actions of states, such as through lobbying (Button and Stiernstedt, 2017), at joint conferences and through research funding and collaboration between industrial actors and EU institutions including the Europe Commission (Baird, 2017), or through Frontex which opens its doors to security industry lobbyists who 'seek to shape Frontex's approach to border control in their interests' (Douo, Izuzquiza and Silva, 2021). To what extent have private companies influenced or been involved in the repression of pro-migrant CSAs?

There should also be further analysis of the role of locals and far-right organisations in the repression of CSAs. The behaviour of locals and citizens towards pro-migrant CSAs was mentioned in the majority of my research interviews, who particularly emphasised negative or violent behaviours. Accordingly, Greek volunteers on Lesbos mentioned being ostracised by their neighbours for welcoming refugees; representatives of SAR NGOs told me about online trolling and hate speech they received, as well as direct threats such as bullets in the post; and several interviewees throughout research locations reported incidents in which locals had called

the police on them while they were conducting their work. In February and March 2020, peaceful demonstrations by locals, CSAs and migrants against government plans to build closed refugee camps escalated into violence in which volunteers and employees of CSAs, as well as migrants and journalists, were harassed and physically assaulted by far-right extremists. This resulted in many CSAs temporarily ceasing their operations and volunteers leaving the island. On 7th March 2020, the school and offices of the One Happy Family community centre where I conducted my participant observation field research were burned down in an arson attack (OHF, 2020). While my research was particularly concerned with 'top-down' criminalisation and repression, and analysed the relationship and dynamics between civil society and state actors, an analysis of the 'bottom-up' targeting of CSAs and how it interacts with the categories of my framework would contribute to a deeper understanding of the repression and criminalisation of pro-migrant CSAs in Europe.

Appendix

Appendix 1: Anonymised list of interviews

LOCATION AND DATE	KEY	POSITION	PRIMARY ACTIVITY	COUNTRY OF ORIGIN
CALAIS, MAY 2019				
	C1V	Volunteer	Humanitarian	UK
	C2R	Co-ordinator	Humanitarian	France
	C3R	Co-ordinator	Humanitarian	UK
	C4S	Director of the mayor's office	State	France
	C5R	Co-ordinator	Legal and Information	France
	C6V	Volunteer	Humanitarian	France
	C7R	Co-ordinator	Monitoring	UK
	C8R	Director/founder	Humanitarian	UK
	C9R	Director/founder	Humanitarian	UK
	C10R	Co-ordinator	Legal and Information	UK
	C11R	Co-ordinator	Humanitarian	UK
	C12V	Volunteer	Monitoring	France
	C13R	Co-ordinator	Monitoring	UK
	C14R	Director/founder	Humanitarian	UK
	C15R	Co-ordinator	Humanitarian	UK
PARIS, MAY/JUNE 2019				
	P1R	Co-ordinator	Legal and Information	France
	P2Re	2 Researchers	Advocacy	France
	P3R	3 Co-ordinators	Humanitarian; Activist	France
	P4R	Director/founder	Advocacy	France
	P5R	Director/founder	Humanitarian	UK

LOCATION AND DATE	KEY	POSITION	PRIMARY ACTIVITY	COUNTRY OF ORIGIN
LESVOS, JUNE/JULY 2019				
	L1S	Senior Advisor to the Mayor	Mayor's office	Greece
	L2V	Volunteer	Humanitarian	Other
	L3V	Translator	Medical	Other
	L4R	Co-ordinator	Alternative shelter	Other
	L5R	Director/founder	Humanitarian	Greece
	L6R	Director/founder	SAR	Greece
	L7R	2 Co-ordinators	Medical	Other
	L8S	Coastguard representative	Coastguard	Greece
	L9V	Volunteer	SAR	Other
	L10L	Lawyer	Legal and Information	Greece
	L11A	Activist	Activist	Other
	L12V/SB	Volunteer	SAR	Other
	L13S	2 Frontex Officers	Frontex	Other
	L14R	Director/founder	Humanitarian	Other
	L15R	Director/founder	Community centre	Other
	L16R	Co-ordinator	Community centre	Other
	L17Re	Researcher	Research	Greece
	L18R	Co-ordinator	Community centre	Greece
	L19R	Co-ordinator	Legal and Information	Other
	L20L	Lawyer	Legal and Information	Greece
	L21V	Activist	SAR	Greece
	L22R	Co-ordinator	Monitoring	Other
	L23Re	Researcher	Monitoring	Other
	L24V	Volunteer	SAR	Other
	L25R	Co-ordinator	Community centre	Other
	L26S/ Frontex	Frontex spokesperson	Frontex	Other
	L27V	Co-ordinator	Humanitarian	Greece
	L28S	UNHCR representative	UNHCR	Greece

LOCATION AND DATE	KEY	POSITION	PRIMARY ACTIVITY	COUNTRY OF ORIGIN
	L29R	Co-ordinator	Advocacy	Other
	L30R	Director/founder	School	Greece
GREEK MAINLAND (INCLUDING THESSALONIKI AND ATHENS) JULY 2019				
	G1S	IOM Greece representative	IOM	Greece
	G2R	Director/founder	Humanitarian	Other
	G3R	Co-ordinator	Community Centre	Other
	G4R	Volunteer	Humanitarian	Other
	G5R	Co-ordinator	Medical	Other
	G6R	Co-ordinator	Integration	Greece
	G7R	Director/founder	Humanitarian	Other
	A1R	Co-ordinator	Humanitarian	Greece
	A2R	Director/founder	Medical	Greece
	A3R	Activist	Activist	Other
	A4S	Government employee	Civil servant	Greece
	A5R	Director/founder	Humanitarian	Other
SICILY AND ROME, AUGUST 2019				
	S1R	Director/founder	SAR	Italian
	S2R	Co-ordinator	Community centre	Italian
	S3R	Co-ordinator	Legal and Information	Other
	S4R	Co-ordinator	Advocacy	Italian
	S5L	Lawyer	Legal and Information	Italian
	R1R	Co-ordinator	Humanitarian	Italian
	R2R	Co-ordinator	Humanitarian	Italian
	R3R	2 Activists	Activist	Italian
	R4R	Co-ordinator	Advocacy	Italian
	R5S	UNHCR representative	UNHCR	Italian

LOCATION AND DATE	KEY	POSITION	PRIMARY ACTIVITY	COUNTRY OF ORIGIN
BERLIN AND VIRTUAL INTERVIEWS, MAY - AUGUST 2019				
	SAR1/ Lifeline	Co-ordinator	SAR	German
	SAR2	Activist	SAR	Other
	SAR3/ SW	Co-ordinator	SAR	German
	SAR4	Crewmember	SAR	UK
	SAR5	Researcher	SAR	Other
PILOT RESEARCH				
GREECE (ATHENS AND THESSALONIKI) JULY 2018				
	G1R18	Director/founder	Humanitarian	Greece
	G2R18	Co-ordinator	Community centre	Other
	G3R18	Co-ordinator	Legal and Information	Other
	G4R18	Director/founder	Humanitarian	Other
	G5R18	Co-ordinator	Accommodation, advocacy	Greece
	G6R18	Co-ordinator	Advocacy, human rights	Greece
	G7R18	Director/founder	Legal and Information, Advocacy	Greece
SAR INTERVIEWS (BERLIN AND OVER THE PHONE) JULY - AUGUST 2018				
	B1R18	Co-ordinator	Advocacy	Germany
	BdR18/ JR18	Co-ordinator	SAR	Germany
	B3R18/ SW18	Co-ordinator	SAR	Germany

LOCATION AND DATE	KEY	POSITION	PRIMARY ACTIVITY	COUNTRY OF ORIGIN
DENMARK, AUGUST 2018				
	D1R18	Director/founder	Legal and Information	Denmark
	D2R18	2 Volunteers	Integration	Denmark
	D3R18	Director/founder	Integration	Denmark

Appendix 2: List of codes (Nvivo Codebook)

Name	Files	References
Attitudes and perceptions		
Authorities' perception of civil society and criminalisation	7	20
Local	39	62
Media	15	21
Of civil society of situation	10	18
Case Studies and general context		
Civil society - role, criticisms, tensions	11	21
Challenges	5	7
Criticisms of CSAs	35	87
Funding	6	8
Relationship between civil society and state	52	125
Cooperation	19	27
Subcontracts	7	15
Tension between humanitarianism and activism	34	56
Threat perception	6	8
General Context	54	170
Inter-state tension	5	12
Location comparisons	11	36
SAR	7	20
Causes	1	1
Contentious areas or times	11	15
Control	14	20

Name	Files	References
Corruption	5	9
Counter state policies/practices	8	11
Criminalisation of migration	9	14
Deterrence	4	6
Individuals; personal relationships	23	37
Legal action, enforce law	3	7
Migrant protest	9	25
Other causes	11	18
Political activism	18	27
Politicisation	7	9
Election	7	8
Far-right politics	12	22
Political manoeuvring, negotiation	2	3
Politics	22	47
Scapegoating	2	5
Strong hand	3	3
Securitisation	9	16
Power grab	3	6
Security	7	12
Speaking out	7	11
Stop humanitarian action	8	11
Witnesses	39	88
Illegal actions by state	11	12
Libyan Coast Guard	5	8
Consequences and responses	6	7

Name	Files	References
Anonymity	1	4
Change activities	21	34
Be careful	4	5
Formalisation and emphasis on transparency	10	12
Legal action	17	34
Monitor police	9	12
Raising awareness, campaigning, advocacy	3	5
Cost, financial impact	7	10
Documenting; pre-emptive defence	5	7
For individuals	9	13
Other Consequences	7	8
Politicise or radicalise	11	15
Reputation damage	8	12
Stops or reduces engagement	20	31
Dampening protest	5	8
Not speaking out	6	10
Transparency, legality, nothing to hide	8	12
Methods of repression and criminalisation	1	1
Bottom-up criminalisation	9	16
Bureaucratic harassment	35	82
Access	16	24
Legal grey area, tightrope	5	7
Registering	31	67
Co-optation	11	26

Name	Files	References
Judicial harassment	38	82
ERCI	16	23
Laws and application of laws	5	9
Legislative change	8	13
Police harassment	49	157
Failure to help	7	9
Surveillance	32	47
Scapegoating/ labelling/ stigmatising discourse	15	24
Conspiracy theories	1	2
Money/ funding	12	19
Pull factor	16	20
Smugglers	15	21
Migrant experience	16	22

Appendix 3: Consent Form (next page)

Consent Form

To take part in research study

Barriers faced by pro-migrant civil society

This form is to be read and signed before the interview, once you are happy to proceed.

Tick here	Statement
	The nature of the research has been explained to me.
	I understand that the discussion will only be taped with my consent.
	I understand that what I say will be treated as confidential by the researcher.
	I understand that my name (or chosen name) will not be used in any written reports or presentations unless I give my explicit permission
	I understand that I have the right to withdraw my involvement with the research whenever and for whatever reason I wish.

Name: _____

Participant Signature: _____

Researcher Signature: _____

Date: _____

All interviews will be treated as confidential and any outputs will anonymise the contributions, unless the participant gives permission to be identified. All efforts will be made to ensure that outputs fairly reflect the contributions of the research participants.



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