
Grinding down the human rights defenders

In 2006, the ERB carried out a survey of legal and other measures which criminalise asylum seekers and those who seek to act in solidarity with the undocumented. Now, the 'crime of solidarity' is being extended and new penalties are being imposed on those who assist or support those without papers.

Every day we read alarming stories in the newspapers about state persecution of human rights defenders across the world. Beatings and intimidation of opposition activists in Zimbabwe, mysterious and unexplained killings of journalists in Russia, arrest and imprisonment of Tibet independence protestors in China, the state intimidation of women activists in the Middle East.

Our natural reaction to these exposés is one of moral revulsion. But could it be that a parallel development, albeit less brutal and less openly authoritarian, is taking place in Europe?

The last few years has seen support for failed asylum seekers and undocumented migrants grow in ways that are quite astonishing. Hunger strikes of asylum seekers, protests in detention centres, labour strikes by migrant workers, have been accompanied by the growth in solidarity initiatives, with many trades unions as well as professional bodies (like doctors and teachers) coming out in support of the human rights of the undocumented or rejected.

The abuses that these solidarity networks pinpoint domestically have also been highlighted internationally. Powerful voices within the UN have been particularly critical of the EU Return Directive that allows EU states to detain migrants and asylum seekers for up to eighteen months. The new United Nations High Commissioner for Human Rights, Navanathem Pillay, recently criticised it as 'excessive', singling out the EU amongst the rich industrialised nations for its arbitrary detention of asylum seekers and migrants in detention centres where they are treated like criminals, even though they have committed no crime.¹ The controversial Return Directive was also forcefully opposed in South America and Africa, where there is growing anger about Europe's humiliating and brutal treatment of their countries' emigrants. Venezuelan president Hugo Chavez threatened to cut off oil exports in protest at the Return Directive, and Bolivian president Evo Morales' scathing critique against the Directive and European hypocrisy was reproduced in many European newspapers, including the *Guardian*.² At the end of a summit meeting in Argentina of member and associate states, the regional trade association Mercosur (the EU's South American counterpart) issued a declaration condemning the criminalisation of irregular migration in the EU and the adoption of restrictive immigration policies. President Morales summed up Latin American sentiment best when he declared that 'The social cohesion problems that Europe is suffering now are not the fault of migrants, but the result of the model of development imposed by the north, which destroys the planet and dismembers human societies. I appeal to European leaders to drop this directive and instead form a migration policy³ that respects human rights, and allows us to maintain the movement of people that helps both continents.'

The limits of solidarity

All this is worrying the EU and its member states. But instead of considering whether the criticisms are justified, their response is to try to make it more difficult for people to support and assist failed asylum seekers and those without papers. The ten objectives of the European Pact on Immigration and Asylum adopted by the European Council on 16 October are aimed at stricter control of migration. These objectives are backed up by the forceful instruction that all 'irregular aliens on member states' territory must leave that territory'. At a member state level too, strong words manifest a determination to act against failed asylum seekers and their supporters. The threat of prosecution now hangs over those who take part in direct action in support of the sanctuary movement or hunger strikers, provide housing for the undocumented or refuse to provide information to the authorities on their residence status, expose conditions within detention centres or simply defend the rights of detainees. For example:

■ **Belgium:** Immigration minister, Annemie Turtelboom tells the Lower House that while 'we cannot prohibit by means of the law, people from going on hunger strike', the government could investigate means of making

'those who accompany and advise asylum-seekers, as well as the religious authorities who grant permission for the occupation of churches, responsible for their acts'.⁴

■ **France:** A number of lawsuits have been brought against those who supported the October 2007 National Day of Solidarity.

■ **Italy:** Introducing a new package of security and immigration reforms, interior minister Roberto Maroni suggested that in future anyone helping an 'illegal immigrant' with a job or apartment would be criminalised and that property let to illegal immigrants would be confiscated.

■ **Ireland:** The January 2008 Immigration, Residence and Protection Bill, currently going through parliament, includes a provision which allows costs to be awarded against lawyers who bring frivolous or vexatious cases. The Law Society, the Irish Human Rights Commission, the Irish Council for Civil Liberties and the Irish Immigrant Council have made strong representations against the provision, which could act as an 'intimidation' to legal representatives. They say that if enacted, the law would not only further limit the access of migrants and their family members to effective judicial remedies but it would also make immigration law the only area of law, civil or criminal, with such a provision.⁵

■ **Sweden:** Police used pepper spray to disperse members of the SAC trades union who were handing out leaflets outside a restaurant in Djurgarden, Stockholm, demanding that the management pay outstanding wages owed to a group of undocumented workers who had been working as cleaners and dishwashers at the restaurant.⁶

■ **Cyprus:** In February 2008, police violently broke up a demonstration of mostly Iranian women and children, protesting outside the Cypriot Interior Ministry at the indefinite detention of their husbands in the Block Ten detention centre in Nicosia. Police also arrested Doros Polykarpou, the head of KISA, an organisation set up in 1998 following racist incidents, which supported the demonstration. The Cypriot authorities have repeatedly criticised Polykarpou for reporting human rights abuses in Cyprus to international bodies.⁷

■ **UK:** In Winter 2006, two members of the Unity Centre were charged with a breach of the peace after they joined a community protest against a dawn raid on a Turkish family in the Cardonald area of Glasgow. The charges were brought one month after the protest took place. A judge eventually threw the case out of court as the prosecution had, on three occasions, failed to hand over to the defence copies of the dawn raid video by the Home Office Immigration Enforcement Team.⁸

Harsh words and actions against dissenters have been accompanied by measures allowing governments to gather and store information about supporters of asylum seekers and the undocumented in databases usually used to store information about asylum seekers. Where data protection laws prohibit such measures, there is the constant threat that such protection will be removed.

■ **France:** An official decree published in December 2007 allowed for the creation of the ELOI file, a database aimed at facilitating the expulsion of illegal migrants, which also allowed data to be stored on anyone providing accommodation to foreigners who had no authorisation to stay, and on anyone visiting foreigners held in detention centres awaiting expulsion. Four leading NGOs opposed the decree and a legal case was taken against the interior ministry. This opposition won some amendments; in a new version of the decree, data on those who visit 'foreigners' held in detention centres will not be stored, and data on those who provide accommodation to 'illegal immigrants' can only be stored for three months, rather than the original three years. But information can be stored on 'illegal migrants' for up to three years.¹⁰

■ **UK:** Detainee support groups point out that the level of ID required by family members and others visiting detainees now acts as a deterrent to visits. In newly-built detention centres, all visitors have to go through electronic fingerprint readers, entering the detention centre and leaving, to ensure that the same person leaves as arrived. Fingerprints, thus gleaned are not meant to be stored by the private companies which run such detention centres.

■ **Austria:** The premier of Lower Austria, Erwin Pröll (ÖVP) proposed that the immigration and asylum authorities should, in future, be allowed to waive data protection laws and make publicly available information on any offence committed by asylum seekers who go public on the facts of their claim. The background to his remarks was the Arigona Zogaj case (see below), where in repeated press briefings, immigration officials alleged that the fifteen-year-old girl's family had paid human traffickers to smuggle them into the country and that Arigona's brother had a criminal record.¹¹

The use of threat

The 2002 EU Directive and Framework Decision on 'Strengthening the Penal Framework to Prevent the Facilitation of Unauthorised Entry, Transit and Residence' required member states to create offences of directly or indirectly aiding the unauthorised entry, movement or residence of nationals of third countries. In ERA's 2006 report, we identified numerous cases where those who provided assistance to the undocumented, in the form of housing or humanitarian aid, were prosecuted.¹² What seems to be happening now is that the authorities are widening the net of those suspected of breaking the limits of acceptable solidarity. The intention seems to be not so much to prosecute more people, but to warn those in civil society and public office that the threat of prosecution is real and imminent. For instance, Belgian interior minister Turtelboom's comments, cited above, were a direct response to the decision by Marie Arena, Socialist premier of the government of the French-speaking community, to allow a government building in Brussels-Centre to be used from February 2008 by a group of 162 irregular migrants. The local authority had made heating and water available and donated 1,000 litres of fuel oil. Such tacit support is now no longer acceptable, according to the federal government.¹³ And in France, Michele Delaunay, a Socialist deputy in Bordeaux was given an official reprimand, and warned that citizens who help illegal aliens stay in France risk a five year prison term, after she spoke in support of a young Kurd of Turkish nationality who had been ordered to leave the country.¹⁴

Similarly, in Austria, extreme-Right and centre-Right politicians have been clamouring for tough action against Green politicians who speak out in support of human rights. Peter Westenthaler, the (then) chair of the Alliance for Austria's Future (BZÖ), adamantly demanded the prosecution of Madeleine Petrovic, a Green party delegate in the Lower Austrian parliament who spoke at a demonstration in support of Arigona Zogaj. The 15-year-old Kosovan girl had been provided a place of sanctuary by a Catholic priest and her pleas against deportation had become a national cause célèbre in the autumn of 2007, after she released a video threatening to commit suicide if her family were not reunited in Austria. So widespread was the support for the Arigona Zogaj that the police and politicians were forced into a hasty retreat, after threatening to prosecute Petrovic under article 115 of the foreigners' law, which provides that it is illegal to aid and abet immigrants who are attempting to remain in Austria illegally.

The use of threat, however, seems to have had the contrary effect in steeling the nerves of those few principled politicians who are prepared to support the sans papiers. Nathalie Perrin-Gilbert, mayor of the first arrondissement of Lyons, told the press that she had sheltered sans papiers in her home and though she was not a revolutionary but an 'elected person' with a duty to 'respect the country's law', she felt that when a conflict arose between respect for the law and providing assistance to people in danger, it was 'important for elected people' such as herself 'to set a good example.'¹⁵

Entangling more people into aiding illegal entry laws

What seems to be happening is that the 'aiding illegal entry' laws are being used as a kind of net, in which different categories of people – including priests, teachers, social workers and politicians - risk becoming entangled. One example of this comes Ireland where a provision in the January 2008 Immigration, Residence and Protection Bill imposes criminal sanctions on anyone who solemnises or permits a form of marriage which is not valid under the legislation. As presently drafted, it could even be used against priests who are now under pressure to report suspected marriages of convenience to the minister of justice. Father Kevin Doran described the proposed measure as 'distasteful', adding that it was unacceptable to check on the immigration status of couples in the context of celebrating the sacraments and that priests don't have national boundaries'. The maximum penalty for this offence would be a five-year prison sentence and a fine of €500,000.¹⁶

In Austria, where several politicians have been threatened with prosecution under such laws, the Green Party is now calling for article 115 to be rescinded, and a parliamentary motion was drafted to that effect. While the law does not seem to be widely used,¹⁷ its effect can be devastating. In December 2007, in Carinthia, the home of retired teacher Christa Janischek, was turned upside down during a search for an illegal immigrant. The 'crime' that had brought her to the authorities' attention was to offer free German language classes to asylum seekers.¹⁸ The prosecution under article 115 of the relatives of an undocumented

migrant involved a new legal departure, according to lawyer Georg Bürstmayr. In August 2007, an undocumented migrant's wife and daughter, themselves both legally resident in Austria, were given a two-month suspended prison sentence for aiding illegal immigration. Their crime was failing to disclose that he was living with them. Bürstmayr argued that while charges had been brought against the relatives of 'illegals', in the past, prosecutors had tended to withdraw the charges before they came to court.¹⁹ Another prosecution of this type was reported to us by a UK immigration lawyer. She told us that in September 2006, a Sudanese refugee from Darfur was sentenced to twelve months' imprisonment for aiding the illegal entry of his wife, also a refugee from Darfur, whom he brought to the UK on a false passport since she was stranded on the border with Chad with no passport and no means of obtaining one.

Another consequence of the EU's approach to 'aiding illegal entry' is the pressure placed on neighbouring countries, particularly in the Maghreb, to introduce similar laws. Laws criminalising illegal entry, and as a byproduct those who provide assistance to 'illegals' (including humanitarian organisations) were introduced in Morocco in 2003 and in Tunisia in 2004 under the guise of countering trafficking. More recently, in August 2008, the Algerian government introduced new legislation aimed at making illegal immigration a criminal offence, and penalising those who directly or indirectly facilitate illegal immigration (including housing a foreigner without declaring the fact) with fines or imprisonment for up to five years. The law, apparently aimed at traffickers and smugglers (*harragas*) was criticised by Mohammed Ben Hamou of the opposition Algerian National Front (FNA), who argued that 'The government must get to the root of the problem and look into the reasons which drive graduates, unemployed people, women and even the elderly to take such risks to get to Europe, instead of searching for the easy solution.'²⁰ Just as alarming has been the use of a 2006 law designed to control clandestine evangelical proselytising groups against those, who for humanitarian reasons, come to the aid of sub-Saharan Africans. In February 2008, Pierre Wallez, a French Catholic priest, was given a one-year suspended prison sentence after he visited a group of Christian sub-Saharan Africans who were stranded in the border town of Maghnia after making the perilous journey across the Algerian desert, and prayed with them. An even harsher sentence was handed down to an Algerian Muslim doctor who was sentenced to two years without parole for providing medical assistance to sub-Saharan Africans. The medicines he used were paid for by the Catholic aid group, CARITAS, but he was accused of stealing the drugs from a local health centre.²¹

The boundaries of medical assistance

The government of Cyprus has also taken an iron fist to those who, for humanitarian reasons, provide financial support or health care for the sick and desperate. In a case unprecedented in its severity (and meanness), the immigration authorities brought a series of prosecutions against the highly-respected NGO, Action for Equality, Support and Anti-Racism (KISA). This was the first time that a solidarity organisation in Europe that has launched a financial appeal to cover the costs of health care for a migrant worker, has found itself prosecuted under the criminal law. KISA was forced to launch an international campaign for the protection of its organisation and members against the state's attempt to harass its staff and criminalise its human rights work. Thankfully, it seems that the case has now been dropped. But not before KISA had endured months of uncertainty due to what many perceived as a crude attempt by the state to set the limits of solidarity.

The facts of the case date back to 2001 when KISA launched a public appeal on behalf of a seriously ill legally-resident migrant domestic worker, who needed urgent surgery. She had been let down by her employer, who had refused to pay for her health care despite provisions under the Aliens and Immigration Law and her employment contract. As she could no longer work, the sick woman was at immediate risk of deportation. Despite having sought advice about the legality of the appeal in advance, the chair and treasurer of KISA found themselves facing a criminal prosecution for organising a financial appeal without official authorisation. This was an extraordinary move. In the past, such a prosecution would only have been brought in cases where a collection of money constituted embezzlement or fraud. On 16 June 2004, the Chair of KISA's steering committee was convicted and fined. The court also ordered the confiscation of the money, believed to be deposited in the Bank of Cyprus.

In fact, the sum had been transferred from the Bank of Cyprus account long before the prosecution had taken place. The reasons for this were simple. As a result of KISA's public appeal, the Cypriot authorities had

been subjected to a barrage of criticism. The hospital that had initially refused to operate on the migrant domestic worker, reversed its decision and gave the treatment to the sick woman free of charge. In its initial appeal, KISA had advised all those who responded to its call, that in the event that their contributions were no longer required for this specific migrant domestic worker, the money would be transferred to a separate account to pay the health care costs of other migrant workers facing similar problems.

For this, the chair of KISA, Doros Polykarpou was accused again, this time in his personal capacity, and subjected to the threat of a second prosecution, this time for fraud. Polykarpou was charged with disobeying a court order and receiving stolen goods, the maximum penalty for which was a two-year prison sentence. Prior to the dropping of the charges, KISA pointed out that no other organisation had been prosecuted in this fashion before, and that the charges amounted to serious intimidation and discrimination and a direct attack on the moral integrity of the organisation itself, and all those connected to it.²²

One might consider the case against KISA a form of state intimidation. But human rights defenders and medical professionals acting on health issues can be ground down in less obvious ways. In Greece in September 2008, the aid agency Doctors Without Borders announced that it had been forced to end a humanitarian project on the island of Lesbos because of the authorities' total lack of cooperation. When MSF opened an office within the Lesbos holding centre, its intention was to provide urgent health care and improve squalid living conditions. But good intentions came to nothing, as neither the local authority nor the police were prepared to take responsibility for the squalid sanitation at the facility, and as a result repairs could not be made and the facilities were almost never cleaned.²³ In October, the authorities announced that nearly all the immigrants held at the centre were receiving emergency care; they had been poisoned after drinking contaminated water from rusty and mouldy pipes.²⁴

The French medical profession is also increasingly worried that new pressures are being brought to bear on doctors who certify patients too ill to be deported. A statement issued by the Union of Medical Inspectors of Public Health (SMISP) suggested that the government was undermining a 1998 law which recognised the right to stay for health reasons if, in a doctor's professional view, deportation of the seriously ill would be unsafe. (In the past this has applied mostly to HIV/ AIDS cases, but medical opinions in cases involving serious mental health problems have also been taken into account). In one high profile case, psychiatrist Michael Remark found himself hauled before the regional medical association of Aquitaine after politicians complained about his intervention in support of a woman from Kosovo, whose deportation he considered unsafe on the grounds that she would not be able to obtain vital medical treatment if returned. Because Remark had informed his colleagues about the state of the woman's health, and launched a petition on her behalf, he was reported to the medical association for disclosure of the confidential records of a patient. Remark is currently appealing a verdict against him.²⁵ In another telling case, the prefect of Puy de-Dôme, decided to strike off from the list of medical experts consulted in deportation cases, three psychiatrists and consultants linked to Doctors Without Borders. NGOs would refer cases to these medical professions, who would then send evaluations to the Department of Health and Social Services (DASS); on the basis of this evidence, the DASS would advise the prefect on the medical consequences of deportation. According to one of the psychiatrists dismissed 'This decision will affect the most vulnerable, often individuals and families... in danger of dying in their countries, including those who have psychiatric disorders.'²⁶

Sowing confusion amongst public bodies

Over the last few years, more legislation has been introduced aimed at forcing those working in the public sector to carry out immigration functions. In the past, organisations representing the medical and education professions have spoken out against these laws. But although professional organisations have resisted incorporation into an immigration control function, the laws tend to spread confusion, and confusion as to what the law provides can lead doctors, nurses and teachers to believe that providing a service to someone without papers constitutes a criminal offence.

In France, the government has sought to make the country's labour inspectorate subordinate to the immigration ministry. A government decree resulted in the labour inspectorate being removed from the control of the General Directorate of Employment and placed under the authority of the recently inaugurated Ministry for Immigration, Integration, National Identity and Co-development. The four trades unions which represent the labour inspectorate issued a legal challenge, stating that it was not their duty to combat

unauthorised stay but rather to combat 'illegal work' (which should not be confused with the employment of foreigners without a work permit, as its meaning is far broader). From this they concluded that it was wrong to force them to play an active role in the government's fight against illegal immigration, or incorporate them into the Aliens Police Force.²⁷

Other examples where the seeds of confusion were sown come from Sweden where, several years ago, officials in Malmö took a blanket decision to exclude all undocumented children from nursery provision on the grounds that it would 'protect' principals from having to make individual decisions. The Swedish medical profession is now concerned about the implications of a recent law which limits asylum seekers' rights to health care and, as a result, turns doctors into an extension of the Swedish Migration Board. Doctors, medical students and hospital employees held a protest demonstration outside the Swedish parliament. One medical journal featured an article which, while focusing on the increase in attempted suicides amongst asylum seekers, pointed out that those who attempt to take their life and are hospitalised, leave hospital with bills of as much as 125,000SEK.²⁸ Local authorities in Malmö, Scane and Västra Götaland are countering the high cost of medical care for the undocumented by introducing a subsidised patient fee (the same as applies to regular asylum seekers) for the undocumented.²⁹

Sweeping aside the critics of detention

Target-driven deportation policies have led to serious overcrowding and human rights abuses in Europe's detention centres. Acts of despair and anger, including self-mutilation, suicide attempts, hunger strikes, and desperate protest measures (such as setting fire to mattresses) are multiplying. In the UK in 2008, we have seen repeated hunger strikes at Yarls Wood and Harmondsworth and a 73 per cent increase in incidents of self-harm in the first six months of 2008.³⁰ In August 2008, in Belgium, violence erupted at the Steenokkerzeel detention centre 127 bis.³¹ Earlier, in May, police were called to the Merksplas detention centre when unrest erupted and mattresses were set on fire after the authorities reported that a Cameroon national had committed suicide following a failed deportation attempt.³² In France, tear gas was used in August 2008 to stop protests at Mesnil-Amelot centre at Charles de Gaulle Airport after two small fires broke out in one day. But the worst single incident occurred in June 2008 when France's largest Administrative Retention Centre (CRA), the Vincennes detention centre (Val-de-Marne), was burnt to the ground. Protests had erupted after a Tunisian detainee died, allegedly of a heart attack. Fifteen days before the fire, the National Commission for the Control of Retention Centres (CRAZA) wrote a report to Immigration Minister Brice Hortefeux describing a 'climate of tension and violence which reigns permanently in all the CRAs, especially Vincennes, where the slightest thing would be enough to light the fuse.'³³

Once again, the authorities are directing their ire at those who expose detention conditions, rather than correcting human rights abuses. No more so than in France. Here, the internationally-respected organisation CIMADE (Committee in Aid of Evacuees) is fighting tooth and nail against government attempts to restrict its mandate and limit its overseeing role in detention centres.³⁴ Currently, CIMADE is the only NGO allowed into France's 27 Administrative Retention Centres, but the immigration ministry has introduced new legislation which will restrict access to the detention centres as well as introduce a 'duty of neutrality and confidentiality' for any organisation that is willing to take on a new more limited overseeing role.³⁵ At the same time, NGOs have been blamed by the governing Union for a Popular Movement (UMP) for the Vincennes fire, and face a multiplicity of lawsuits. The situation is so dire that in August 2008, six associations issued a joint press statement pointing out that immigration officials are attempting to exonerate themselves of their responsibility for the human rights crisis by seeking to blame aid groups rather than analysing what is wrong with asylum policy.

The French minister for immigration, Brice Hortefeux, has lodged a complaint against the association SOS Soutien aux Sans Papiers, citing an article in *Le Parisien* in which its president Rodolphe Nettier was quoted as having called for the burning down of detention centres. (Nettier maintains that what he actually said was to express understanding for the reasons why those at Vincennes set fire to their mattresses, etc and that opposition to detention was a form of legitimate protest since migrants held in detention centres were unfairly deprived of their liberty.)³⁶ This is all part of a multiplication of lawsuits against French human rights defenders. For instance:

■ In February 2008, Romain Dunant, a member of Réseau Education Sans Frontières (RESF), was found guilty

of slandering Nicolas Sarkozy and fined €800 plus the symbolic sum of one Euro, payable to Sarkozy. When Sarkozy was interior minister, Dunant had written an email message to the ministry in which he wrote 'So this is Vichy coming back'. His crime, then, was to compare Sarkozy's deportation policies to the second-world-war expulsion of the Jews during the Vichy regime.³⁷

■ Another prosecution was that of League of Human Rights activist Michael Guerin, who was charged with attacking the honour and esteem of civil servants. His crime was to have written a letter to the prefect of Loire-Atlantique asking him to waive an expulsion order. But because Guerin had copied others into the letter, and one of these recipients published his letter on the internet, Guerin was deemed liable and prosecuted.³⁸

■ UMP spokesperson, Frédéric Lefebvre said that the 'riot' at Vincennes was incited by sympathisers of undocumented immigrants in the RESF, 30 of whose supporters, he said, were protesting outside the detention centre at the time of the fire. 'It is not acceptable that the collective organisations like RESF come making provocations outside these centres with the risk of endangering foreign detainees'. Lefebvre demanded 'the greatest firmness against these collectives' which carry out actions 'in proximity to areas where they have no reason to be... All the consequences must be drawn, including judicial ones, if the responsibility of the members of RESF is established'. RESF stated that 'the words would be those of a vulgar comedian if they did not conceal a tragic reality; the fate reserved for the undocumented immigrants by government policy'.³⁹

Similar prosecutions have been launched over the years in Germany. Most recently:

■ In September 2006, in Hamburg, the authorities closed down the local reception centre for asylum seekers (a ship) and transferred it to an isolated area in the forest, outside Hamburg. Members of the solidarity network 'Fluechtlingsrat-hamburg' organised protests. In an article for the solidarity organisation's website about the demonstration, specific criticisms were made about the quality of decision-making within the Hamburg immigration service, and the way in which interviews with asylum seekers were carried out, sometimes revealing a tendency towards racist stereotyping. One immigration official was named in this respect. The Hamburg public prosecutor launched an investigation with the view to bringing charges against the author of the article, who was a social worker. She only learnt about the investigation when she was contacted by the police, who telephoned her at her workplace. The official accusation against her was of giving the name of the immigration officer to the public, and insulting him. But it was also rumoured that she was under investigation for violating her professional duties by giving personal data on young asylum seekers to the public. In the event, the case never came to court.

Penalising airline protests

Opposition to deportations is at its most passionate in the area of deportation flights and the associated brutal manhandling of deportees. And it is here where domestic opposition marries up with international condemnation of Europe's declining human rights standards. It is here, too, that governments (as well as police, immigration authorities and some airline companies) are most implicated in attempts to criminalise those who protest. Some protesters have no links to NGOs but are just ordinary citizens sickened when they are forced to witness acts of extreme brutality. But others are linked to NGOs or campaigning organisations. In Sweden, nine activists from No One Is Illegal found themselves charged with the rather grand offence of 'airport sabotage' after a protest at Bromm airport on 15 April 2008 aimed at preventing the deportation of a 22-year-old man to Eritrea.⁴⁰

Over the last couple of years, solidarity groups have put airlines such as Air France, Brussels Airlines, British Airways, Virgin Nigeria, and XL Airways under intense pressure not to take deportees on board. But while XL Airways has reacted to protest at its role in the return of rejected asylum seekers to the DRC by ceasing such returns (as has Virgin Nigeria), other airlines, such as Brussels Airlines and British Airways (which received more than £4.3million from the Home Office in 2006 to carry rejected asylum seekers and their escorts)⁴¹ have displayed a rigid approach towards passengers (mainly African citizens but also European citizens of African origin) who object to the mishandling of fellow black passengers. In some cases, too, African governments have intervened to protest the treatment of African airline passengers. But it is not just African passengers who find themselves under threat of prosecution. As in the case of the politicians who have supported hunger-strikers in Belgium, or Arigona Zogaj in Austria, elected officials who protest have also found themselves subject to the threat of prosecution.

The ERA has documented prosecutions against those who protest in the UK, Belgium and France. In several cases, flights had to be cancelled, such was the level of protest on board the flight. Once again, the vast majority of prosecutions have taken place in France. It would seem that the French government had growing passenger resistance to deportations in mind,⁴² when in 2007 it introduced a law to increase the penalties for ‘inciting violent resistance to people in authority’. We have found information on the following cases that occurred in 2007-08.

Belgium

- In June 2008, Brussels Airlines removed a man and his wife (a French national) from a flight after they protested against the treatment of a Cameroon asylum seeker who was being forcibly expelled. The female passenger says violence was used against the asylum seeker, which the airline denies. It also denies the female passenger’s claim that they banned her from any future travel with the airline.⁴³
- In April 2008, three passengers who objected to alleged violence against Ebenizer Folefack Sontsa, a Cameroon national on board a Brussels Airlines flight, were removed from the flight, prevented from catching another flight that day and detained at the airport for several days. The Human Rights League has initiated a legal action against Brussels Airlines on behalf of one of those removed. Serge Fosso, a Cameroon national, was banned from travelling on Brussels Airlines for six months following his intervention. He had protested to the air hostess about the treatment of Sontsa, stating he was unable to travel under such conditions. Many passengers on board had reacted to the perceived manhandling of the deportee, but Fosso believes he was singled out because he attempted to make a video recording. After the deportee was removed from the flight, a team of policeman returned to remove Mr Fosso and the other two perceived ringleaders. Mr Fosso says he was kicked and punched in the head, before being dragged off the plane.⁴⁴

France

- In January 2008 Françoise Auguste, a Communist councillor and deputy president of the Rhône-Alpes regional council, was fined €5500 after being found guilty of hindering the flight of an aircraft following an incident in 2006 in which she protested against the deportation of a Kosovan family on board an Air France flight.⁴⁵
- In April 2007, Marie Françoise Durupt, a 60 year-old grandmother, was accused of inciting two sans papiers and other passengers ‘to rebellion with a view to violently resisting people in public authority’. Durupt was on board an Air France flight to Mali when three Malian men were brought onto the flight at the very last moment. The escorting police officers violently manhandled two of the Malians, who were resisting, and placed cushions over their mouths to stop them screaming. When Mrs Durupt heard the men complain that they could not breathe, she protested, declaring ‘I am ashamed to be French. I did not buy an air ticket to take part in such things.’ Although many people protested, she was singled out for arrest alongside a French-Malian businessman, Youssouf Soumounou. Mrs Durupt had never been involved in any protest on behalf of sans-papiers before. But her action was motivated by her belief in non-violence. The deputy mayor of the Parisian suburb, Bagnolet, who was also on board the flight, confirmed Ms. Durupt’s account in court. Although she and her co-defendant were acquitted of incitement to rebellion by the Bobigny correctional court, the state prosecutor has appealed the decision.⁴⁶
- In November 2006, a French-Malian activist, Kadidja, at Roissy airport for a family visit to Mali, discovering that a young sans papiers was being deported on the same flight, mobilised other passengers in a peaceful protest, refusing to fasten seat belts while the deportee remained on board. Police were called, the young deportee was threatened with a three-month prison sentence if he left the plane, and Kadidja’s removal from the flight was only prevented by solidarity action by the other passengers. On her return to France, Kadidja was charged with interference with the movement of an aircraft, an offence carrying up to five years in prison and an €518,000 fine. On 29 February 2008 her ordeal ended with acquittal by the Bobigny court.⁴⁷

UK

- A British Airways pilot on a flight to Lagos, Nigeria ordered all 136 passengers in economy class to leave the plane after they protested the treatment of a rejected Nigerian asylum seeker who was forcibly held down in his seat by a team of police officers. Once all the passengers were removed, the rejected asylum seeker was returned to the plane and returned to Nigeria – the only passenger in economy class.

One passenger, Ayodeji Omatade, singled out by airline staff as the ringleader of the protest, was arrested and held in police custody for ten hours. BA has banned him from travelling with the airline again. The treatment of the passengers became an issue in Nigeria, where the foreign affairs minister met with the British High Commissioner to request the protection of the Nigerian travelling public from the humiliation they face daily from foreign airlines.⁴⁸

The UK case is not the only one in which a flight was seriously disrupted. In some cases, flights have been cancelled. An Air France flight from Paris to Bamako, Mali had to be cancelled on security grounds due to opposition to the police treatment of Salif Kamate, a 50-year-old Malian man who had lived in France for 35 years but was being expelled for two drugs-related convictions. Once on board, Kamate was allegedly repeatedly hit by three policemen until he lost consciousness. He was carried off the aeroplane with an oxygen mask and taken to a waiting ambulance. Passengers, believing the man was dead, were in a state of shock.⁴⁹

As a result of cases such as those cited above, Air France and Brussels Airlines have come under intense pressure to stop their participation in deportation flights. Air France has resisted all such pressure, issuing a statement that it was not its role to question measures lawfully applied by the state. To this, Gérard Brisemeur of the Confédération Générale des Employées (CGE) responded, 'An individual bound and gagged in front of you is not the provision of service Air France should be offering.'⁵⁰

Criminalisation of sea rescues

The harsh new approach to those who, for humanitarian reasons, come to the aid of asylum seekers and those without papers has even percolated through to politicians' treatment of the coastal rescue services, the maritime profession and ordinary fishermen, putting in jeopardy the oldest of all humanitarian laws, that of rescue at sea. In the most shocking case of all, seven Tunisian fishermen who in August 2007 rescued a group of 44 Eritrean, Sudanese and Ethiopians whose inflatable dinghy was about to sink, were arrested on landing on the Italian island of Lampedusa and sent to trial on charges of aiding and abetting illegal immigration (an offence that carries a maximum sentence of fifteen years imprisonment in Italy).

Italian extreme-Right politicians seem intent on inciting the Italian rescue services to exclude immigrants from their remit. Bernardino De Rubeis, mayor of the Italian island of Lampedusa, describes the coastguard as 'taxi-drivers for organised crime rackets' and accused them of 'perpetuating the phenomenon of illegal immigration by coming to the aid of migrants crossing the Sicilian channel from Africa to Libya'.⁵¹ Strong words were followed by the promise of a hunger strike by Italian Northern League senator and deputy mayor, Angela Maraventano, who started her dramatic protest at the number of new arrivals from Libya on board a boat anchored in Lampedusa port.⁵²

Their invective is backed up by interior minister Roberto Maroni of the Northern League, who has promised to take an 'iron fist' to stem the flow, specifically by using the navy and coastguards to prevent immigrant boats entering Italian territorial waters. Such moves would be in violation of international law. Article 98 (1) of the UN Convention on the Law of the Sea requires states to 'render assistance to any person found at sea in danger of being lost', while regulation 33 (1) of the Safety of Life at Sea Convention binds all vessels to 'proceed with all speed' to the assistance of vessels in trouble. The 1979 Maritime Search and Rescue Convention (MSAR) demands that assistance be available 'regardless of the nationality or status of such persons or the circumstances in which that person is found'. The MSAR obliges provision to be made for medical needs and delivery to a safe place.

Meanwhile, following a deal with Libya, the Italian government is increasing the number of boats patrolling the Mediterranean Sea, with a view to turning the boats back before they reach Italian waters. Maroni told *L'Espresso* that he would personally be present the day the patrols begin, in order to ensure that Italy once again becomes 'masters of our borders'.⁵³

Where does such invective lead? Already, Greek coastguards stand accused of deliberately damaging the inflatable dinghies of African boat people by slashing them with knives, and pushing them back out to sea, leading to death for those on board.⁵⁴ And naval officers on board the French vessel *Arago*, taking part in a Frontex operation in the Mediterranean which had just intercepted two boats, were alleged to have directed their machine guns at the rescued migrants throughout the entire journey to the island of Lampedusa.⁵⁵ The constant demonisation of the boat people means that every sailor knows that a sea rescue brings with it unpopularity, hardship for the entire crew and possible imprisonment. They know full well what kind of

leadership to expect from elected politicians who are more concerned with how to stop the survivors landing on their shores than how to prevent the deaths. This has led UNHCR representative Laura Boldrini to conclude that, between them, the various Mediterranean countries are turning the sea into a 'wild west in which human life has lost its value and people in danger are left to fend for themselves.'⁵⁶

Two incidents in particular underlined UNHCR concerns. In June 2006, a Spanish fishing vessel, the *Francisco Catalina*, spent a week sailing the seas between Malta and Libya. The captain and crew had saved the lives of fifty boat people, including a pregnant woman and several children, but the Spanish government would not let the boat land because, it said, the rescue operation had taken place in Libyan waters. The Libyan and Maltese governments objected that it was a Spanish vessel which had rescued the boat people, so Spain was responsible. No government would let the boat land. Then, in May 2007, a group of 26 African migrants were left for three days clinging to a fish pen belonging to a Maltese trawler in Libyan territorial waters after the trawler's owner had refused to take them on board. They were finally rescued by a Spanish vessel, which however was left drifting for days as the Spanish, Maltese and Libyan governments argued as to which of them was responsible for those rescued.⁵⁷

The coastal guard, at least, are not at risk of prosecution for aiding and abetting illegal immigration. But ordinary fishermen are. Shamefully, the seven Tunisian fishermen arrested in August 2007 still face prosecution under European laws which, even if these men are found not guilty, have had a deterrent effect against any fisherman who attempts to follow his conscience and save lives. On landing on the island of Lampedusa on 4 August, their two fishing vessels were immediately seized.⁵⁸ The reward the fishermen received for their humanitarian intervention was immediate imprisonment in Agrigento on the southern coast of Sicily, where they were held until 10 September 2007, and they were only released after 100 MEPs signed an international appeal on their behalf. Five of those released were allowed to return to Tunisia, while the remaining two were placed under house arrest in Sicily. All the men were prevented from returning to their livelihoods as their boats were impounded. The trial has not yet taken place.

Thanks to Sara Prestianni of Migreurop and Hilka Becker of the Immigrant Council Ireland – Independent Law Centre, for providing additional information.

The organisations, the Platform for Intercultural Cooperation on Undocumented Migrants (PICUM) and Migreurop collate information on the new crimes of solidarity.

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Footnotes

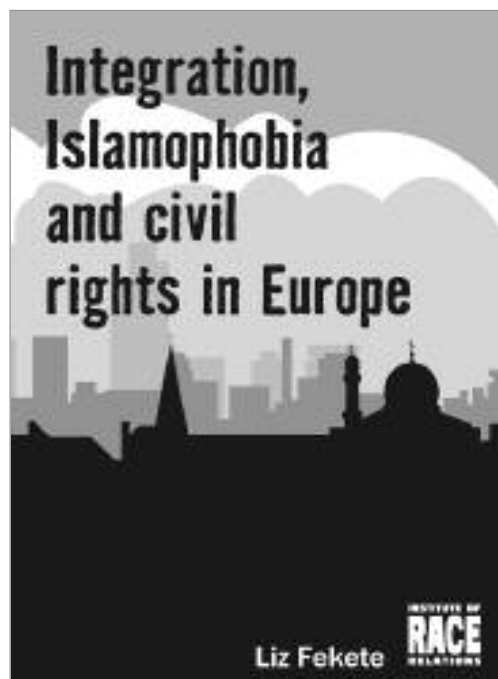
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INTEGRATION, ISLAMOPHOBIA AND CIVIL RIGHTS IN EUROPE

Liz Fekete



This report from the IRR finds that, contrary to public perception, the challenge to multiculturalism in Europe comes not from Muslim communities' unwillingness to integrate but from Islamophobia.

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