

EUROPEAN RACE BULLETIN

INSTITUTE OF
RACE
RELATIONS

Asylum: from deterrence to criminalisation

By Frances Webber



The IRR is carrying out a European Race Audit supported by the Joseph Rowntree Charitable Trust. Specific research projects focus on the impact of national security laws and the war against terrorism on race relations and the impact of the EU's new policy of 'managed migration' on refugee protection. The Institute of Race Relations is precluded from expressing a corporate view: any opinions expressed here are therefore those of the contributors. Please acknowledge IRR's European Race Audit Project in any use of this work. For further information contact Liz Fekete at the Institute of Race Relations, 2-6 Leeke Street, London WC1X 9HS. Email: liz@irr.org.uk

Introduction

The EU's spin about its harmonisation of asylum policy to create a supposedly fairer, more easily navigable system, masks the grim reality of life in Europe for would-be refugees. For European asylum policy today is determined by two simple but very rigid objectives: the need to reduce asylum claims and the need to increase the speed of removal of failed asylum seekers. If both objectives are to be achieved, targets must be set. But if these targets are not achieved through conventional and legal means, then governments shift the goalposts so as to criminalise a whole host of activities relating to asylum and asylum seekers. For instance, by rendering illegal the act of seeking asylum (or the supporting of those who try), politicians magically achieve their first target – the reduction of claims.

In this major review of developments in asylum law from 2002-2005, which covers over 100 cases from across Europe, leading UK human rights lawyer Frances Webber draws attention to the new ways in which the criminal law is being used in the asylum process, as well as against migrants generally. This is a direct consequence, she argues, of the EU's adoption of a penal framework to prevent the arrival of would-be refugees in Europe and to aid the departure of failed asylum seekers.

When asylum law is drafted within a criminal law framework, it is inevitable that the human rights parameters that influenced the original Geneva Convention will be undermined. Frances Webber examines a number of prosecutions brought against individuals who, through their humanitarianism, have sought to assist asylum seekers or undocumented migrants. What emerges is a tendency for 'solidarity' itself to be regarded as criminal. Human rights campaigners, journalists, lawyers and religious leaders are among those prosecuted for such innocuous and unthreatening activities as housing the destitute, exposing degrading conditions in detention centres, or advising those under threat of deportation of their legal and civil rights.

But Webber's narrative is also a damning indictment of our politicians who dare to legislate against basic human rights conventions. By bringing together a number of cases where individuals have resisted unjust laws, she demonstrates that Europe's humanitarian tradition is very much alive and well. Europe today has a new breed of conscientious objectors who will not be bowed by unjust laws. They have been at the centre of many landmark cases, such as that of Charles Frammezelle, convicted under laws designed to penalise those smuggling in illegal entrants for distributing clothing, food and medical aid to destitute asylum seekers in Calais. Some 354 organisations and 20,000 individuals came out in Frammezelle's support. They signed a manifesto declaring, 'If solidarity is a criminal offence, I demand to be indicted for this crime.'

Liz Fekete

Editor, European Race Bulletin

Asylum: from deterrence to criminalisation

In this major review of developments in asylum law from 2002-2005, the ERB draws attention to new laws which criminalise asylum seekers and those who seek to act in solidarity with the victims of persecution.

European governments are increasingly resorting to criminal laws to deter the arrival of would-be refugees. Criminal penalties now exist in a number of European Union (EU) member states, at various stages of the process, from arrival to departure:

- penalties for smuggling, or for helping asylum seekers reach a safe country;
- carriers' liability penalties for carrying undocumented or clandestine migrants, for failing to supply full passenger information or failing to prevent unauthorised disembarkation;
- passenger penalties for seeking to enter on false documents, or by other forms of deception, or for arriving with no documents;
- penalties for those who provide assistance, in the form of housing or humanitarian aid, to those not entitled to be in the country;
- employer sanctions;
- penalties for third parties failing to provide information on irregular migrants or failed asylum claimants;
- penalties for failed asylum claimants who fail to cooperate with their own expulsion;
- penalties for third parties trying to prevent expulsions.

New offences of aiding illegal entry

In early 2004, a Swiss parliamentary commission declared null and void the conviction of Aimée Stauffer-Stitelmann, who was convicted in 1945 of crossing the border into France to help smuggle fifteen Jewish children into Switzerland to save them from the Nazis. She was imprisoned for fifteen days.¹ A humanitarian smuggler operating in Switzerland today would be liable not to fifteen days' but to six months' imprisonment – and between 1998 and 2001, 3,500 people were prosecuted and convicted of helping people to enter the country illegally, where there was no evidence of personal gain.²

In November 2002, the EU adopted a Directive and a Framework Decision on 'Strengthening the Penal Framework to prevent the Facilitation of Unauthorised Entry, Transit and Residence'.³ The directive requires member states to create offences of directly or indirectly aiding the unauthorised entry, movement or residence of nationals of third

countries, or participation as an accomplice or an instigator. The offences must be punished by 'effective, proportionate and dissuasive penalties', although (in a hard-fought concession to humanity) family members of a person smuggled in may be exempted from penalty. The directive had to be implemented in all member states by December 2004. It permits (but does not require) states to refrain from prosecuting those helping people enter or remain in breach of immigration laws for humanitarian motives.

The Netherlands government was one of those which opted not to exempt from penalty those who help people to enter illegally, for humanitarian reasons, although a minister disavowed any intention of penalising humanitarian-grounded assistance. Helping undocumented migrants to stay is only criminal if it is done for gain.⁴ German law has for many years penalised those who assist illegal migrants for gain, or those who do so repeatedly, whether or not for gain. The most notorious use of the law occurred in the late 1990s, when taxi-drivers, picking up passengers who turned out to be unauthorised migrants, were sent to prison and had their licences revoked in some cases.⁵

A British parliamentary committee expressed concern that the British government had indicated that it did not wish to give immunity to persons whose motives were humanitarian, but this concern was allayed by the assurance that UK law did not criminalise persons or organisations bringing asylum claimants to the UK 'otherwise than for gain'.⁶ What the Home Office did not tell the committee however, was that this 'humanitarian immunity' does not apply to humanitarian smuggling, or to providing false documents with which asylum claimants enter the country – in other words, it does not apply to those helping people enter or remain in breach of immigration laws, but only to those who bring people to ports to enable them to claim asylum without coming in illegally.

In 2001, while the draft Directive was being negotiated in the European Council, the English Court of Appeal dismissed an appeal by Rudolph

Alps, who was charged with assisting illegal entry for bringing in his nephew, a Kurd who needed to escape persecution in Turkey, on the passport of another (British) nephew. His argument that the Geneva Convention's protection of *bona fide* refugees from penalties for illegal entry should apply to those helping them was roundly rejected.⁷ The English authorities' attitude to humanitarian smuggling is clear: whether or not financial gain is involved, the courts have consistently held that smugglers must go to prison, and the motive is relevant only to the length of the sentence. In 1998, in what became known as 'guideline cases', Le Van Binh's sentence of three years for bringing in a fellow Vietnamese was reduced to two years because of the lack of evidence of financial gain, and Rudi Stark's sentence of five years' imprisonment for smuggling nine Kosovans in his camper van was reduced to three years.⁸ This punitive level of sentencing continues: in 2003, sentences of two years were upheld on brothers who used one of their (British) passports to bring in another brother from Pakistan.⁹

In the UK, the maximum sentence for assisting people to breach immigration law is now fourteen years – up from seven years when the offence was first created in the Immigration Act 1971.¹⁰ The offence of bringing asylum claimants to the UK for gain, to enable them to claim asylum, which was added in 1999, carries the same sentence. It is exactly the same as the maximum sentence for human trafficking, although there is the world of difference between the two activities.

Conflating smuggling and trafficking: the consequences

Trafficking always involves either force or deception (the trafficked person either believes he or she is going to a better life, or is forcibly taken). It always involves exploitation – the trafficker is importing a commodity, whether for sexual exploitation, for work in conditions of slavery, or for removal of organs.¹¹ It can never be for humanitarian purposes. Smuggling, on the other hand, may be for commercial or humanitarian purposes, but in either case, it is essentially the provision of travel services to people who cannot get where they want to go legally. Those who are smuggled are willing (frequently desperate) to avail themselves of it. The distinction is reflected in the UN's Protocol

to Prevent, Suppress and Punish the Crime of Trafficking, and its Protocol Against the Smuggling of Migrants by Land, Sea and Air, which were both adopted by the UN General Assembly in November 2000.¹² But the UN's distinction does not seem to be adhered to by EU states. By treating both activities as identical, or as involving the same degree of criminality, European states endanger the long and vital tradition of 'underground railway' humanitarian smuggling which has historically been the expression of human solidarity in response to the persecution of others, whether to spirit away escaped slaves in the US in the nineteenth century, or to smuggle victims of Nazism to safety in the twentieth. That is not to deny the role which criminal gangs play in smuggling and the extreme callousness with which some smugglers allow their charges to suffocate in sealed container lorries, or abandon them in leaky boats, or even deliberately sink them, to avoid capture.

But the footballer Desiré M'Bonabucya did not deserve the label of 'trafficker' when he was accused of bringing in his fellow Rwandans to Belgium by claiming them as family members.¹³ And Amir Heidari, known as the 'Robin Hood' of smuggling, an Iranian refugee based in Sweden who boasts that he has helped over 200,000 of his persecuted countrymen to flee to Sweden, has been compared with Oskar Schindler (who saved 1,200 Jews) or Raoul Wallenberg (who saved between 20,000 and 30,000). Yet Heidari has been convicted twelve times since 1984 and was due to be expelled from Sweden on account of his crimes, until, in June 2004, the UN Committee Against Torture requested a stay on his expulsion pending his complaint that he would face torture in Iran.¹⁴

Another side effect of equating smuggling and trafficking is that it allows European states to ignore the urgent humanitarian needs of victims of trafficking. The Trafficking Protocol recommends that states allow trafficking victims to remain in the country, at least in the short term, to have a space for reflection and to be able to give evidence against their traffickers. An EU draft directive which was meant to implement this recommendation and provide temporary residence permits to trafficking victims has been the subject of a struggle between the Parliament, which inserted more rights, and the

Council, which deleted them.¹⁵ In November 2004, the special representative on action against trafficking of the Organisation for Security and Cooperation in Europe, Helga Konrad, complained that member states often treated victims of trafficking 'as the guilty parties, placed in detention centres and deported instead of finding refuge', placing too much emphasis on border controls and internal security.¹⁶ A Council of Europe Convention on trafficking,¹⁷ which guarantees trafficked people a breathing period of thirty days and temporary residence permits for trafficked people who may be in danger if they return to their country, and/or to give evidence in criminal proceedings, has been snubbed by EU member states – only thirteen of the twenty-five have signed the Convention (the UK, Ireland, France, Finland and Denmark are not among them) and none has ratified it.

In Sweden, the public prosecutor, the police and the Migration Board announced a joint initiative in April 2004 in the form of a Bill to allow victims of trafficking to stay in order to testify against the traffickers – they were being removed from the country immediately, preventing them from testifying, and only two traffickers had been convicted. A late amendment to the Bill provides that victims who testify against their traffickers will be granted permanent residence.¹⁸ In the UK (which has also opted out of the proposed trafficking victims' directive) victims are given no special rights unless police specifically seek their stay in order to testify.

Penalising carriers, preventing rescue

The imperative of exclusions means that more and more people in different sectors of society are recruited as agents of immigration control. Airlines and shipping companies were the first coopted into the European war on asylum. Carriers' liability became compulsory in all member states in 2001 as a result of a directive which requires member states to impose financial penalties on air and sea carriers for each undocumented or falsely documented passenger.¹⁹ Airline staff finding passengers who intend to present asylum claims have prevented them from leaving the aircraft at their destination. The Spanish Committee for Aid to Refugees, CEAR, accused the Spanish state

airline Iberia of preventing would-be asylum seekers from disembarking.²⁰ Ships' captains finding stowaways have, on occasion, taken even more drastic action to prevent fines and confiscation of vessels, by casting them adrift on makeshift rafts, or simply throwing them overboard – dead or alive.²¹ In November 2005, two Ukrainian crew members of the *African Kalahari*, a Bahamas-registered freighter and its Polish captain, pleaded guilty in a South African court to endangering life, and the crew members to culpable homicide, for ordering seven stowaways into the sea near Durban dock to avoid penalties. The men's request for life jackets was refused on the ground that the ship's insignia would be recognised. Two non-swimmers in the group drowned.²²

Another EU directive imposes wide-ranging obligations on air and ships' crew to provide a range of passenger information on demand.²³ The UK has pushed its borders back to France, the Netherlands and Belgium (and in one operation to Prague) where passengers bound for Britain are examined,²⁴ and now requires fingerprints from visa applicants from twenty countries in Africa and Asia, as part of its hugely ambitious e-borders project.²⁵

One of the most alarming new developments is the extension of the carrier sanctions regime to captains who go to the rescue of shipwrecked, drowning and desperate passengers; they are now at risk of penalty. The captain of the Norwegian vessel the *MV Tampa*, which answered a distress signal on 26 August 2001 at the request of Australian search and rescue officials and picked up 438 asylum seekers from a sinking Indonesian fishing boat, was forbidden on pain of fines from landing his passengers on Australian territory, until a judge granted an order requiring the authorities to allow him to land them on 11 September 2001.²⁶ In July 2004, the Italian authorities went one step further and arrested three aid workers, Elias Bierdel, director of the refugee aid group Cap Anamur, the ship's captain Stefan Schmidt and crew member Vladimir Achkevich, who rescued a group of thirty-seven shipwrecked African migrants and landed them on Sicily. The ship came across the men adrift in a dinghy one hundred miles from Lampedusa, but was prevented from landing for eleven days and only got permission after the captain issued an emergency call, reporting that

those aboard were ready to throw themselves overboard if they were not allowed to land. The three were arrested immediately for aiding illegal immigration. A judge ordered the men's release after several days, but their ship remained impounded.²⁷ The Cap Anamur committee was set up in 1979 to assist Vietnamese boat people, and was hailed for its humanitarian work, bringing 10,000 to Germany in the 1980s in an old freighter of the same name and providing assistance to another 30,000. But in 2004, the German interior ministry denounced as irresponsible Bierdel's declaration that the ship would go back to the Mediterranean to continue its humanitarian mission of rescuing shipwrecked and drifting refugees on the high seas, and warned the men that they could be prosecuted in Germany for doing so.²⁸

Although the crew of the world's largest container ship, the *Clementine Maersk*, were not arrested, they were roundly condemned by local MPs and by the tabloid press for bringing twenty-seven migrants whom they had rescued in the Mediterranean, to their next port of call in Felixstowe, UK. UNHCR praised the crew for following international maritime law and custom and their moral instincts, after other ships had apparently ignored the migrants and left them to a possibly disastrous fate.²⁹

UNHCR and the International Maritime Organisation were so concerned about the effect of carrier sanctions and the *MV Tampa* case on the willingness of captains to rescue passengers that they convened a conference in September 2005 which strengthened captains' and states' obligations under the two international Conventions dealing with rescue at sea, the 1979 Convention on Maritime Search and Rescue (SAR) and the 1975 Convention for the Safety of Life at Sea (SOLAS). The amendments ensure that the obligation to provide assistance is regardless of nationality or status of those needing rescue, and requires states to cooperate among themselves and with sea masters to ensure that survivors can land in a place of safety.³⁰

Prosecuting refugees for document deception

In the preceding section we have shown how would-be refugees are driven to use illegal and dangerous ways of reaching safety and how those helping them in their quest are penalised.

European governments don't just criminalise smugglers and penalise rescuers – they criminalise the refugees themselves. The Refugee Convention, to which all European governments subscribe, prohibits the imposition of penalties on asylum seekers who arrive in the country illegally, provided they present themselves to the authorities and make their claim.³¹ In 1999, a case brought in the English High Court exposed the illegal prosecution, conviction and imprisonment of hundreds of asylum seekers who had entered the country on false documents.³² The law was changed and a specific defence provided which was meant to protect *bona fide* asylum claimants.³³ But in 2004, a new criminal offence was introduced to penalise passengers who destroy or dispose of travel documents on or before arrival, which makes it difficult to return asylum claimants to their countries of origin or embarkation.³⁴ The immigration minister who brought in the new law, Beverley Hughes, said it was necessary 'to break the hold of the criminal facilitators',³⁵ but the law targets the passengers, not the agents, and has been used to send to prison over 200 asylum claimants, including minors, elderly people and victims of torture.³⁶ In a test case on the new law, the Court of Appeal ruled that if parliament had decided not to comply with the Refugee Convention, the courts could not interfere.³⁷

In the Netherlands, the public prosecutor announced the resumption in July 2005 of prosecutions of passengers with forged passports, who have not been prosecuted since 2003. The suspension of prosecutions was not in order to comply with the Refugee Convention but because of court overload.³⁸ And in Switzerland, in December 2005, the Supreme Administrative Court upheld the conviction of a Russian asylum seeker who entered the country illegally, although he claimed asylum promptly.³⁹ A new Asylum Bill adopted in the same month goes even further – it provides that undocumented asylum seekers will in principle no longer be entitled to have their refugee claim examined, a measure flagrantly in breach of the Convention.⁴⁰

Prosecution and censorship of campaigners

Refugees seeking asylum at the ports and airports of Europe have other hazards to fear apart from the risk of being prosecuted. Many

European governments detain asylum claimants about whom they have suspicions. While Malta is the only EU country which has adopted the Australian policy of detaining all asylum claimants who arrive undocumented – a breach of the spirit of the Refugee Convention, if not its letter – asylum claimants across Europe are frequently housed in detention, accommodation or reception centres where abuse is rife. But those who seek to expose these conditions can now find themselves excluded from these centres under various new initiatives or prosecuted under the criminal law.

Appalling, inhuman detention conditions are only possible because centres are normally closed and the public do not know what goes on there. That is perhaps why European governments have often been very reluctant to allow NGOs or journalists in to these centres and, on occasion, have even subjected those who get inside them to prosecution. In Malta, the Home Minister refused access to immigration detention centres, despite a petition signed by one hundred journalists, and a White Paper proposed access to the centres only in exceptional circumstances.⁴¹ In Spain, NGOs and journalists were denied access to detention centres in Andalucia to investigate conditions at centres in Algeciras, Málaga and Tarifa.⁴² In France, a draft decree under the Sarkozy law aimed to get the human rights organisation CIMADE out of the detention centres, following its reports condemning extreme overcrowding, lack of hygiene, violence, frustration and lack of morale in the centres, all exacerbated by the law increasing the legal maximum period of detention from twelve to thirty two days.⁴³ And in Italy, Fabrizio Gatti, a journalist who went undercover, posing as a Romanian asylum seeker in January 2000 to investigate conditions at the notorious via Corelli detention centre in Milan (because access to journalists was denied) was convicted in May 2004 of giving false identity details to police and given a suspended sentence of twenty days' imprisonment.⁴⁴ He won a prize for his reports on conditions in the centre, where abuses were rife and it was later closed. But in July 2004, staff of Médecins sans Frontières were denied access to immigration detention and reception centres following publication of a damning report on conditions in the centres, which called forth an accusation of 'disloyalty'

by the responsible minister.⁴⁵ As for Gatti, in October 2005 he published another inside exposé, this time of filthy and degrading conditions in a closed centre on the island of Lampedusa, revealing beating, robbing, insults and humiliation of inmates. As a result of his second exposé, UNHCR, the International Committee of the Red Cross and the International Organisation for Migration were granted access to the centres, although the allegations of violence were denied by the minister.⁴⁶

Gatti's prosecution was for assuming a false identity. In Germany, the attempt to censor information about the conditions of asylum seekers has been more blatant. Criminal charges of defamation have been brought against asylum claimants who complain about their conditions. In November 2004, two asylum seekers, Abdel Amine and Mohammed Mahmud, were acquitted of charges of defamation brought against them following their publication of an open letter in summer 2002 denouncing the conditions in which they lived in the asylum hostel at Rathenow. They accused the management of massive and constant intrusions on privacy – by filming, opening letters and entering residents' rooms at will – and of employing known neo-Nazis. The organisation responsible for running the hostel lodged proceedings, which were taken up by the state prosecutor. At the trial, over two dozen witnesses confirmed all the allegations in the open letter and the defendants were acquitted.⁴⁷

As Gatti has pointed out, allegations by asylum seekers about the abuse they suffered in the centres, including rape, abduction and violence, could never be proved against the centre's staff because 'once an undocumented migrant files a complaint, they're immediately sent back to the country of origin, because the law allows it'.⁴⁸ This kind of 'censorship by deportation' appears to have occurred in the case of Dédé Mutombo Kazadi, a member of the Belgian sans-papiers group UDEP, who was deported the day before he was due to give a press conference denouncing police raids at open asylum centres, as the spokesperson for residents at the Petit Château. He and his wife and three-month old baby were removed when they went to report, with no opportunity to collect clothes and belongings.⁴⁹ And in the UK, many witnesses to the conditions and events at Yarl's

Wood detention centre, where a fire broke out on 14 February 2002, had been deported before the trial of eleven detainees on charges of violent disorder.⁵⁰

Others who have been penalised for speaking out about the treatment of refugees and asylum seekers include passers-by; Mrs Nikitopoulou was detained for two days in Athens over the 2005-6 New Year for protesting at the violent beating of a handcuffed Sudanese man.⁵¹ And French border policeman Roland Gatti was disciplined for criticising the inhumanity of the policy of deporting undocumented migrants, particularly families with children, in an article in *Libération*.⁵² In Germany, the Federal Supreme Court ruled in favour of Frankfurt airport, which had issued a ban on anti-deportation demonstrators entering airport grounds.⁵³

New agencies coopted into surveillance and control

The combination of punitive welfare provision and the ban on work, the likelihood of speedy refusal and removal, and the risk of detention as a (declared) asylum seeker in many EU states, has removed any shred of incentive to claiming asylum. Thus people fleeing war, persecution, rape and torture are often reduced to a precarious, illegal existence, frequently super-exploited by rapacious gangmasters and living on the margins of societies. Research in the Netherlands reveals that nearly one-fifth of all Netherlands companies use illegal labour. In Spain, a promise to regularise migrants who could not produce evidence of work but were prepared to denounce employers for exploitative wages and appalling conditions has not materialised – only three of the hundreds who denounced their employers have received papers. The others have been refused, or their applications are still pending – despite the fact that their action has cost them their jobs and some live in fear of reprisals.⁵⁴ In the UK, raids on workplaces are very commonplace and employees who have produced false documents in order to obtain work are regularly sentenced to prison terms of nine months or more.⁵⁵ An Algerian facing up to eighteen months for using forged documents to obtain work said, 'I am not here to beg on the streets. I will not steal to feed myself. My only crime is to find work.'⁵⁶

In the wake of the tragedy in February 2004

when the rising tide took the lives of twenty-three Chinese cockle pickers on Morecambe Sands, desperate migrants were still undertaking the dangerous employment, and cockle pickers were still being arrested in large numbers; in July 2004, seventy cockle pickers were arrested in a swoop in North Wales, of whom fourteen were taken to removal centres.⁵⁷

Pushing desperate migrants out of the asylum process and into the invisibility of the undocumented underclass may suit the politicians who can show the statistical decrease in asylum claims while business benefits from the undocumented migrants' work. But at the same time, it justifies the vast range of powers available to police and immigration officers, including powers to demand ever more information about non-EU users of services from an ever wider range of people, who are effectively forced into cooperation. These now include not only employers and marriage registrars, but housing, health and education officials.

Employment:

Historically, it was just hotels which had to keep records of the addresses and nationalities of all their guests. Now, in a number of countries, including the UK, the Netherlands, Belgium and Germany, employers are required to check would-be employees' immigration status and can be fined and in some cases imprisoned for employing irregular migrants and those without permission to work. In Germany, the Rhineland Palatinate Administrative Court ruled that employers must also bear workers' deportation costs, since their employment prolonged their stay in Germany.⁵⁸ In January 2001, a roofing company in Hanau was ordered to pay €1,207 to cover the cost of deporting two Polish workers who were in Germany on tourist visas.⁵⁹ In the Netherlands, where illegal residence is punishable as a petty offence, fines for employing people without work permits rose from €900 to €3,500 in 2004,⁶⁰ and in Britain, a new Bill proposes penalties of £2,000 per worker, matching the penalties for carriers.⁶¹ In the Swiss canton of Vaud, employers have been ordered to dismiss employees whose asylum claims have been rejected and who have no lawful status, on pain of fines. Forty employers have refused.⁶² Penalties for employers who employ undocumented migrants in Switzerland can be up to SFr 1m and up to five years' imprisonment and serious or repeated

offences can lead to exclusion from the market and cuts in state subsidies. Cantons are permitted to use surveillance of employers through unions, offices and committees.⁶³

In the UK, the ready availability of workers makes employers frequently very willing to cooperate with immigration officials in finding irregular migrants in their workforce – computer equipment-makers Epson ‘tipped off’ police and immigration officers who raided their factory in March and arrested nearly fifty workers, of whom thirty-one were said to be ‘illegal’,⁶⁴ and a recruitment company’s ‘tip-off’ led to 113 early morning workers being taken off coaches in Leicester on their way to work, of whom thirty-five were held as illegal entrants.⁶⁵ The incentive to cooperate is sharpened by the need for the employers to avoid prosecution. Owners of a care home in Stockport ‘cooperated fully’ in an immigration raid which resulted in ten workers being charged with passport fraud.⁶⁶

Registrars:

In a number of EU countries, even registrars have been co-opted. In France, mayors conducting marriages may ask foreigners for their papers, check the legality of their residence, and refer ‘suspicious’ marriages to the courts or even halt them.⁶⁷ In the UK, registrars have since 1999 been required to report any suspected ‘sham’ marriage between an EU and a non-EU national,⁶⁸ and since 2004 may not perform a marriage between such a couple unless the non-EU partner has a fiancé(e) visa or has written permission to marry from the Home Office. The same rules apply to civil partnerships between same-sex couples, introduced into UK law in December 2005. And registrars’ refusal to issue birth certificates to children born in Germany to undocumented migrants was upheld by the Berlin senate, although the practice leads to fathers being treated as single. In one case, this led to a two-year-old child being removed to a foster family, since her mother was unable to care for her owing to illness and her father, who had been caring for her, was detained for removal as a single man.⁶⁹ In Switzerland, undocumented asylum claimants can’t get a driving licence or even buy a mobile phone.⁷⁰

Housing:

In the UK, many NGOs are subcontracted by the Home Office to provide temporary accommodation to asylum claimants – but they must evict them once a claim has definitively failed.⁷¹ In the Netherlands, where the Linking Act has prevented unauthorised migrants from obtaining public housing since 1998, the government announced in 2004 that it was taking measures against private landlords who rented accommodation to illegal immigrants, whereby rental contracts could be declared void and tenants illegally subletting could lose their home.⁷² Inspectors were going door to door in Rotterdam to check 12,000 suspect addresses.⁷³ A ‘Memo on Illegal Migrants’ to parliament at the end of April 2005 stated that those providing shelter to undocumented migrants were obliged to inform the police.⁷⁴ In Spain, local councils in Catalonia and the Basque country refused to hand over information on immigrant registration to police, saying it put the immigrants concerned at risk and that the interior ministry had the right to access data on undocumented migrants in their registration districts only in connection with criminal investigations.⁷⁵ The Socialists supported a Popular Party law requiring foreigners to register, but the main unions, CCOO and the UGT, support immigrants who say that police access to the register could in practice strip undocumented migrants of their rights to health and education, by deterring them from registering.⁷⁶ And in France, three NGOs – GISTI, the League of Human Rights and IRIS – have applied to the supreme administrative court, the Conseil d’Etat, seeking annulment of a decree of August 2005 which authorises mayors to set up a database recording the personal data of those offering hospitality to foreigners on visit visas. The decree authorises the storage of information, including the financial situation of the host, the size of the homes, number of rooms and details of other occupants, for up to five years.⁷⁷ In Finland, the interior minister has proposed that reception centre staff pass on confidential information about asylum applicants to immigration, police and border police, to deal with ‘the abuse of asylum’.⁷⁸

In Germany, where the Law of Obligatory Residence penalises any asylum seeker leaving the district of the Aliens’ Office to which they are registered, property owners are obliged by law to ensure that tenants register at the local

registration office.⁷⁹ The Aliens' Act requires all public offices to report not only undocumented migrants, but also infringements of the residence obligation by asylum seekers, and any other ground for expulsion, to the Foreigners' Office.⁸⁰ A campaign against the Obligatory Residence law has been launched, as politically active asylum seekers convicted of infringements have refused to pay fines on the basis that the law violates their rights to freedom of movement and assembly.⁸¹

Education and health:

In Germany, the Greens have recently called for an amendment to the Aliens Act requirement that all public officials report irregular migrants, arguing that it deters irregular migrants from seeking medical care and education for their children.⁸² Although there is a universal right to emergency medical treatment, the law is unclear on whether healthcare providers and hospitals are required to report. A Catholic charity, Malteser Hilfsdienst, has set up a network of health centres in German cities to provide health care to undocumented migrants and has sought assurances of confidentiality for patients as well as protection from prosecution for providing help to illegal aliens.⁸³ Such assurances may not be forthcoming; the Bonn public prosecutor's office was said, in June 2005, to be investigating kindergarten teachers in the city on suspicion of aiding and abetting illegal residence, because of the teachers' failure to report children without valid residence documents to the authorities. The local authority issued a letter to kindergarten heads in April urgently recommending that schools demand to see passports or registration certificates before enrolling children, to determine their residence status.⁸⁴ The information clearly goes direct to the Aliens' Office; in Berlin, children were reportedly taken straight from their school classroom to an expulsion detention centre in Berlin-Köpenik in December 2004.⁸⁵

Since the Linking Act of 1998, only urgent medical care, legal aid and education to age 18 are available to undocumented migrants in the Netherlands.⁸⁶ There is no legal obligation on health workers to inform on patients in Sweden, but the hostility against asylum seekers is such that in April 2004, two hospitals reported failed asylum seekers who sought treatment to police and the migration board, with the result that a woman and two children were detained for expulsion.⁸⁷ The

UN Special Rapporteur criticised Sweden for denying equal rights to medical care to asylum seekers and irregular migrants.⁸⁸ In Greece, the interior minister ordered public schools to expel children whose parents did not have residence permits, against the protests of the education minister, who ordered the schools to re-enrol them.⁸⁹

While there is (as yet) no duty on health workers or teachers in the UK to provide information on undocumented migrants seeking medical treatment or education, access to all but emergency medical treatment is now contingent on immigration status – in fact, there are few services indeed to which immigration status is irrelevant. In 2004, the NHS regulations in the UK were revised to exclude failed asylum seekers from free primary and hospital health care. A Vietnamese failed asylum seeker was turned away from ante-natal treatment at a hospital in Bromley, Kent despite being seven months pregnant, for non-payment of a £2,750 bill for a 24-week scan.⁹⁰ The situation is likely to get worse with the introduction of identity cards in the UK, which ministers have admitted will be used as entitlement cards for immigrants, thus creating an immediate underclass of those ineligible for them.⁹¹ In France, two decrees published in July 2005 limited even further irregular migrants' access to health care, following the condemnation by the European Committee on Social Rights in December 2004 for requiring parents of sick children to provide proof of three months' residence as a condition of providing treatment.⁹²

Role of local authorities

In most EU countries, failed asylum seekers can't work and can't get benefits unless they agree to return home. When their country of origin is a war zone like Iraq or Somalia, or a byword for repression like Iran or Zimbabwe, the dilemma of such failed asylum seekers is clear. In November 2005, around 200 Iraqi Kurds were evicted from their accommodation in Sheffield by order of the Home Office. A number who complied with reporting conditions to the immigration service in Bolton were held and fifteen were sent back to Iraq by military transport plane.⁹³ Some local authorities in Britain were refusing to evict failed asylum seekers with families under new provisions in November 2005 and thirty-three authorities said the eviction policy was incompatible with their

responsibilities to children.⁹⁴ In the Netherlands, some local authorities held out for years against the government demand that they evict failed asylum seekers, but in January 2004 the authorities of Amsterdam, Rotterdam, the Hague and Utrecht finally agreed to carry out evictions following a promise by immigration minister Rita Verdonk that those evicted would not be on the streets but housed in special centres.⁹⁵ A shadow network of centres for homeless people had by then been established by churches and social organisations, often funded by local authorities (against the wishes of central government). In Denmark, a third of those in homeless shelters were found to be immigrants or refugees, up from 5 per cent five years ago,⁹⁶ and in Norway, the country's largest municipalities are protesting that the government's asylum policies are creating a homeless population, turned out on to the streets with no rights.⁹⁷

Some local authorities take to the role of immigration policeman, however, putting children at risk. In Sweden, undocumented children are not excluded from the right to education, but schools are not obliged to receive them, and in Malmö, officials decided that the children of undocumented migrants could not go to school. The embarrassment led the government to allocate 50 million Swedish kröner for the education of 'hidden' children.⁹⁸ In the Spanish enclave of Melilla, it was the education minister who refused 300 children access to school because of a lack of residence permit.

Criminalising solidarity

The point of all these deterrent measures is to force out of the country failed asylum seekers and irregular migrants, by making them destitute, with no rights to work, to shelter or to basic livelihood. And the inhuman, perverse logic driving these policies of 'deterrence' also demands that those who, through religious vocation or human solidarity, seek to provide the means of subsistence refused by the state may themselves be criminalised. Compassion is thus criminal, and politicians who show signs of sympathy may be guilty of 'incitement'.

In March 2004, the Dutch immigration minister accused the leader of the opposition Labour party, Ruud Koole, of 'inciting' party mayors to civil disobedience by calling on them to defy the government's demand that they evict failed asylum

seekers from council accommodation. Koole said he hadn't asked them to defy the law, merely asked them to 'gather information on the distressing situation of asylum seekers threatened with deportation'.⁹⁹ Red Cross workers at asylum reception centres across Belgium, backed by the Secta-CNE union, went on strike in September 2003 when colleagues were fired following an accusation that they had allowed asylum seekers to work at one of the centres. The justification for the sackings was that the 'irregularities' could have entailed heavy penal sentences.¹⁰⁰

In the United Kingdom, harbouring an illegal entrant or overstayer has been criminal since the 1971 Immigration Act. The offence carried a maximum penalty of six months' imprisonment, but was virtually never used. In 2002, the law was changed to remove the separate offence of harbouring; now, someone providing support or accommodation to an immigration offender could be convicted of the 'generic' offence of assisting someone to enter or remain in the country illegally, which carries a maximum penalty of fourteen years' imprisonment.¹⁰¹ Bucking the trend, the Spanish Supreme Court reversed an attempt by the Spanish authorities to criminalise those accommodating failed asylum seekers. In November 2005, the Court quashed convictions for aiding and abetting illegal immigration, imposed by the Cadiz court on three people who had rented rooms out to undocumented migrants. Quashing sentences of four years, the judges said that the purpose of the law was to deter people smuggling, and merely providing reasonable accommodation at a non-exploitative rent could not amount to an offence.¹⁰²

The imperative of reducing asylum claims and removing claimants has led governments to bulldoze any humanitarian effort which appears to obstruct that aim. In September 2003, Spanish police evicted Médecins sans Frontières workers and closed down a camp they had set up to look after asylum applicants and undocumented migrants who could not find space in the government's temporary holding centre in its north African enclave of Ceuta.¹⁰³ And the Red Cross camp of Sangatte, opened to provide basic shelter to undocumented migrants and asylum claimants in Calais, was closed at the behest of the British authorities in November 2002. In the Netherlands and the UK, organisations working with undocumented migrants and failed asylum seekers which have challenged government policy have

faced, or been threatened with, cuts to their funding. In the Netherlands, the Dutch Refugee Council was threatened with a funding cut by integration minister Verdonk if the organisation continued to support actions against government policy, such as its €15,000 project supporting rejected asylum seekers.¹⁰⁴ And in the UK, the National Coalition of Anti-Deportation Campaigns (NCADC), which had its funding suspended in 2002 for alleged 'political' statements, was forced to close regional offices in February 2006 following funding cuts in 2005.¹⁰⁵

Article 21 and the Frammezelle case

'If solidarity is a criminal offence, I demand to be indicted for this crime!' So said 354 organisations and 20,000 individuals who signed a manifesto following the indictment in June 2003 of Charles Frammezelle, aka 'Moustache', a former teacher and humanitarian aid worker who, with his colleague Jean-Claude Lenoir, took in undocumented migrants from the streets of Calais and lent them their names so that they could receive money from their families.¹⁰⁶ They belonged to the Collective for urgent support to refugees (C'Sur) set up to provide humanitarian assistance, distributing clothing, food and medical aid following the closure of the Red Cross camp at Sangatte in November 2002. Iraqi and Sudanese asylum seekers were among those who set up makeshift camps in woods outside Calais, sleeping on cardboard under shelters of plastic sheets and rugs strung over branches and collecting daily supplies of bread, tinned sardines and fruit from an official feeding centre.¹⁰⁷ Frammezelle said, 'I couldn't stand knowing they were living outside without shelter when it was pouring with rain, when it was very cold in winter.'¹⁰⁸

Frammezelle and Lenoir were convicted on 20 August 2004 under a law designed to penalise those smuggling in illegal entrants, Article 21 of the 1945 Foreigners' Law. They were convicted again in 2005 for 'contempt of police', for protesting against police violence during round-ups of migrants, and received fines of more than €8,000, on top of the suspended sentences for continuing their humanitarian work. The fines have made it more and more difficult for their organisation to continue their solidarity work with destitute asylum seekers.¹⁰⁹ When the law was amended in 2003 to prohibit direct or indirect assistance to illegal entry, movement or stay in

France, interior minister Nicolas Sarkozy reassured humanitarian organisations that the changes would not penalise humanitarian organisations providing genuine support and care for foreigners. The purpose of the law, he said, was to target 'criminal networks which exploit immigrants and put their lives at risk'. At the time, the migrants' aid organisation GISTI said that if that was the government's intention, it should clarify the law accordingly.¹¹⁰

Article 21 had already been used in the 1990s to penalise (among others) a young woman who had tried to get married on two occasions, each time to an undocumented migrant; against someone who had helped members of his family cross the border, and another who had given shelter to a 'sans-papiers'.¹¹¹ When Jacqueline Deltombe was convicted in February 1997 of sheltering her Zairean 'sans-papiers' friend, sixty-six film-makers appealed for civil disobedience and a petition of 120,000 signatures was presented to the Assembly.¹¹² The law was amended to give partial immunity to those harbouring undocumented, close family members in 1998, but in 2003, the maximum sentence was massively increased to ten years. The EC Directive which occasioned the 2003 amendment allowed member states to exempt humanitarian assistance from the scope of the criminal law and to stipulate that only assisting illegal entry or stay 'for gain' would be criminalised – but the French government failed to take the opportunity offered by the directive.¹¹³ When Frammezelle and Lenoir were convicted, Abbot Jean-Pierre Boutoille accused the authorities of using the men to set an example to deter other humanitarian networks. He had earlier called for the prosecution of the state for its failure to assist those suffering from exclusion. Declaring that the Security Bill did not 'secure the security of the weak, who can't afford to protect themselves', he called on the state to 'wage war on poverty, not the poor' and to stop prosecuting those forced to beg and to squat.¹¹⁴

Those whose job is to provide assistance have found themselves investigated or charged for doing their job. In March 2003, the director of a hostel in Vaucluse, France, was arrested on suspicion of housing undocumented migrants and a few months later, the director of the Sonacotra hostel in Ajaccio, Corsica, was arrested on a similar charge, although neither was proceeded with.¹¹⁵ In Austria, FPÖ justice spokesman Dieter Böhmdorfer has

called for penalties for relief organisations that 'knowingly assist in the abuse of asylum', which some commentators suggest could even penalise those helping asylum claimants prepare their asylum claim,¹¹⁶ while ÖVP interior minister Strasser ordered investigations into two asylum lawyers after they criticised the law in a parliamentary hearing. Georg Bürstmayr, who offered legal representation to Chechen asylum seekers, was accused of assisting illegal entry, while Nadja Lorenz was under investigation for disobedience to laws following her assertion, as spokesperson for SOS Mitmensch, that assistance for traumatised refugees threatened with deportation was justified. Amnesty International described the investigation of the lawyers as containing 'all the elements of political persecution' and shortly afterwards they were halted by the public prosecutor's office.¹¹⁷

In Belgium, two social workers were acquitted on charges of human trafficking and association with criminal gangs in January 2006 after a four-year ordeal which began in June 2002 when they were arrested while working for refugee welfare organisation *Soziale Dienst van de Socialistische Solidaritat* (SDSS). Myriam Vastmans and Jaffar Nasser Gharaee were active in assisting migrants and asylum seekers for fifteen years. Following their arrest, they were detained for seven weeks before the court ordered their release pending trial. Their case joins the ranks of notorious prosecutions which includes the prosecution of Ms Verschaeve in April 1997 for the crime of cohabitation with her partner while aware of his irregular status. Ms Verschaeve was convicted under a law which criminalised knowing assistance in illegal residence, exempting 'merely humanitarian' assistance; the court held that this referred to charity, not friendship or love. Her conviction was overturned on appeal and the law was changed to exempt from prosecution all whose actions were 'mainly' humanitarian in motivation.¹¹⁸ However, Belgian law is unclear whether assistance provided to failed asylum seekers is legal, although a new Asylum Bill adopted in December 2005 is expected to provide clear guidelines for social workers in the field. Meanwhile, interior minister Patrick Dewael stated in a January 2006 newspaper article that the public had a duty to report anyone who was assisting migrants to remain illegally to the police. He 'clarified' the statement the following day, saying that only public officials were under a legal duty, but it was clear that the government

intended to prosecute anyone helping irregular migrants to stay in the country. A number of rights groups have launched a petition against any tightening of the law.¹¹⁹

In France, police searched the home of radio journalist Bleurette Dupin, who reported on the case of a failed asylum seeker in August 2005, after the woman's two children went missing, preventing the family from being deported. The children, aged 14 and 15, were said to be 'terrorised' by the idea of deportation to DRC, where their father disappeared and their mother suffered serious abuse and was hunted. Police sought to justify their action on the ground that the journalist's telephone number was in the deportee's address book. Journalists' unions condemned it as 'totally contrary to freedom of the press'.¹²⁰ Also in France, an activist who sought to assist a Congolese mother of two children by taking her children to safety when their mother was arrested for removal, was held overnight in police custody on suspicion of 'kidnapping'.¹²¹

Acts motivated by religious conscience criminalised

Churchmen and women have not been exempt from the long arm of the anti-solidarity law, either. In Germany, rights groups noticed an increase in 2003 in cases brought against priests giving 'church asylum'.¹²² In February 2003, a member of the Emmaus community was held for refusing to surrender an Algerian failed asylum seeker housed by the community to border police for expulsion. But this case is only one of many across Europe which involve penalisation of religious communities and its leaders who attempt to act in solidarity with asylum seekers.

In Switzerland, the authorities have not flinched from arresting and convicting members of religious orders who have taken in rejected asylum seekers in obedience to their religious duty of charity. In 2005, the head of the Daughters of Charity of St Vincent de Paul, sister Marguerite Joye, was convicted of providing shelter to two Kosovans for a month in March 2002 and fined SFr 100, and ordered to pay SFr 70 in costs at the Freiburg police court. She said, 'When I think of the risks which sisters took during the [Second World] war to protect the persecuted, it is nothing.'¹²³ She was one of a number of religious figures similarly charged. Sister Hélène Donzalez, known as 'Sister Emmanuelle', 61, was found guilty of aiding and

abetting illegal immigration in November 2003 in respect of the same incident, and was fined SFr 100.¹²⁴ Socialist cantonal MP and former priest Bernard Bavaud was convicted in 2003 and teacher Madeleine Passat in 2004, of aiding illegal stay without financial reward, for offering hospitality to homeless Kurds. Both had their convictions upheld on appeal, and the fine imposed on the MP was tripled.¹²⁵ They say that they would rather go to prison than pay the fine. Their defiance has inspired hundreds of people in the town to denounce themselves to the public prosecutor, declaring that they had provided hospitality to illegal immigrants.¹²⁶ Similarly, when a court in Bellinzone fined a woman SFr 200 for offering hospitality to twelve Ecuadorian undocumented migrants, 141 inhabitants of her town of Tessin declared they had done the same.¹²⁷ Bucking the trend, a fine of SFr 200 against Fr Deillon, member of the White Fathers order, for harbouring an undocumented Kurdish family for a year in 2001-2, was quashed in July 2005 by a Swiss court.¹²⁸

The Spanish authorities have also penalised members of religious orders for solidarity actions. In Ceuta, the Carmelite order of Bedruna was under investigation in 2002 for its aid to asylum claimants. The allegation was that nuns took immigrants to the headquarters of the police commissioner to enable them to apply for asylum and to seek admission to a reception centre. The nuns were alleged to have over twenty immigrants staying on one floor of their property.¹²⁹ In the same year, a Catholic priest was sentenced to six months' imprisonment for assisting illegal entry, after admitting to trying to bring a Moroccan immigrant to mainland Spain hidden in his vehicle. The court accepted that the priest's motivation was wholly humanitarian, in the light of the Moroccan's difficult personal situation, and said he would not be required to serve the sentence provided he paid a 540-euro fine.¹³⁰ The churches have had an important solidarity role in Spain, where lock-ins have been organised by immigrants in Barcelona churches in support of regularisation campaigns. The success of the action in 2001, when 14,000 ended up receiving papers, led to a repeat in 2004, but on that occasion the immigrants were violently evicted, and many were arrested and deported.¹³¹

Those penalised are not always Christians, either. An imam was arrested in Ceuta in January 2004, on an allegation of harbouring two Moroccan immigrants. It was the first arrest of an imam in

the enclave and the man was highly respected in the Muslim community.¹³²

Violation of sanctuary

In the pursuit of failed asylum seekers for their expulsion, the German and British authorities in particular have no scruples about breaking down the doors of churches and mosques, destroying the sanctity of such places along with the age-old tradition (formerly part of medieval law) that they are inviolable. The first breach of sanctuary in the UK occurred in 1989, when after two years in the Church of the Ascension, Hulme, in Manchester, Viraj Mendis was arrested and deported to Germany. The bishop of Barking condemned the breach of the sanctuary of a mosque by police in riot gear in July 2002, when Farid and Feriba Ahmadi were arrested in the Ghausia Jamia mosque in Lye, West Midlands, where they had taken sanctuary four weeks earlier.

In May 2003, police in North Rhine-Westphalia stormed the chapel of a Dominican convent in their pursuit of members of a Kurdish family who had failed to appear for their deportation hearing. The family had arrived in the country in 1996 and the mother and two daughters were granted asylum or humanitarian leave, but the authorities insisted on deporting the father and two sons of the family. When Sister Klarissa Watermann refused to hand the men over, police forced their way in and searched all the sisters' rooms including those of bedridden nuns. Praying nuns were pulled out of the chapel and the men were driven off in handcuffs. Police threatened criminal proceedings against the sympathisers as 'accessories to an infringement of the law on aliens'.¹³³

Similar tactics were deployed in Brandenburg in January 2003, when police without a search warrant forced their way into the rectory of Oranienburg parish priest Johannes Kölbl in Schwante looking for a Vietnamese man, Xuan Khang Ha, and his 5-year-old German-born son. In response to the invasion of sanctuary, the parish lodged charges of coercion and trespass against the police, but the public prosecutor halted the legal action within a week, and instead launched proceedings against the priest, and his colleague Christoph Vogel, who were charged under section 92a of the Foreigners' Law with assisting the illegal entry or stay of foreigners. Although the proceedings were eventually dropped, the state prosecutor's office

threatened to act 'more vigorously' against church sanctuary in the future. Ha, a former contract worker, had made an asylum claim which was rejected in 1995, and had sought sanctuary after an earlier attempt to deport him had failed. The parishes had been trying for months to find a solution to the issue of Vietnamese and African failed asylum seekers in church sanctuary, but the authorities had persistently refused to discuss the issue.¹³⁴

Church sanctuary was breached in lower Saxony in December 2004, when police forced their way into a parish building of St Jakobi, in Peine, and arrested a Vietnamese family with a 10-year-old autistic child. The family had been living in Germany for thirteen years. Criminal charges were brought against the parish priest, who refused to lift the church sanctuary.¹³⁵

New penalties for resisting removal

The criminalisation of asylum claimants and those supporting them continues right to the door of the aircraft. Netherlands law criminalises those repeatedly apprehended by police without papers.¹³⁶ In Switzerland, migrants without residence permits are fined if they are caught on the street, and the fine increases if they are caught again.¹³⁷ In the UK, rejected asylum claimants who fail to cooperate in a number of ways with their own expulsion face criminal prosecution and the prospect of up to two years in prison. Failure on demand to provide information, documents or fingerprints, to apply to the authorities of another country, to complete a form accurately and to attend an interview and answer questions accurately and completely, is all criminal behaviour for immigrants.¹³⁸ Captains of aircraft who allow deportees off the plane can also be prosecuted under little-known provisions of the Immigration Acts.¹³⁹

France, too, has long had criminal provisions for those failing to leave when required. But those witnessing deportations, and trying to stop them, have also been criminalised. In August 2003, Romain Binazon, coordinator of *Coordination sans Papiers* in France, was arrested when he attempted to stop a deportation on an Air France flight, and charged with rebellion and incitement to rebellion for trying to encourage passengers to oppose the deportation of Congolese passengers.¹⁴⁰ Also in France, three legal residents of Malian descent were prosecuted for protesting against a deportation

attempt on another Air France flight in November 2002. They were accused of preventing the plane taking off for an hour, and inciting other passengers to prevent the deportation and to riot. Air France also brought civil proceedings for financial compensation for the hour's delay.¹⁴¹ Three passengers whose complaints prevented the deportation of a Congolese man to Senegal on a charter flight in December 2004 were charged with preventing the aircraft's departure and encouraging unlawful disembarkation, and were held for nineteen hours, fingerprinted and face a possible maximum sentence of five years.¹⁴² And in August 2005, four passengers on a flight from Paris to Mali who intervened when police used force on a deportee were arrested for breach of public order and prevention of free movement.¹⁴³

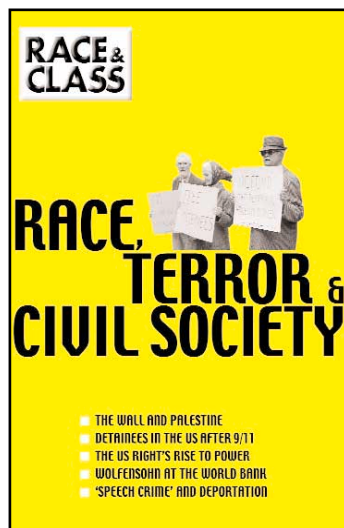
Even journalists attempting to record expulsions may find themselves at risk of arrest. In December 2002, a Malian TV crew which filmed border police manhandling deportees at Paris Charles de Gaulle airport was detained by police and film confiscated and erased.¹⁴⁴ And in Greece, even lawyers risk persecution. Almost two and a half years after participating in a protest against the summary refoulement from the island of Lesbos of up to twelve asylum seekers to Turkey, lawyer Stella Kalogeropoulou was informed in January 2006 that she is to be prosecuted for 'instigating a riot', an offence punishable by between two and five years' imprisonment. The Greek Helsinki Monitor has issued a press release condemning this case and other prosecutions of journalists and human rights activists in Greece.¹⁴⁵

References

- 1 *Swissinfo* 3.3.04.
- 2 Swiss Coordination Unit against the Trafficking in Persons and Smuggling of Migrants, Factsheet, November 2003.
- 3 Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence [Official Journal L 328 of 05.12.2002]; Council Framework Decision 2002/629/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of authorised entry, transit and residence [Official Journal L 328 of 05.12.2002]
- 4 *PICUM Book of Solidarity* (2003).
- 5 *Ibid.* Article 92a of the Aliens Law imposes penalties of up to five years' imprisonment.
- 6 House of Commons Select Committee on European Scrutiny, 25th and 26th Report, para 11.9ff.
- 7 *R v Rudolph Alps* [2001] EWCA Crim 218.
- 8 *R v Le van Binh, R v Stark* [1999] 1 Cr App R (S) 422.
- 9 *R v Toor* [2003] EWCA Crim 185.
- 10 Immigration Act 1971 ss 25, 25A.
- 11 For the legal definition of trafficking in UK law see Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s 4 (trafficking for exploitation), Sexual Offences Act 2003 s 139 (trafficking for sexual exploitation).
- 12 UN Doc A/55/383, adopted by Resolution A/RES/55/25, 15 November 2000. The Trafficking Protocol, which came into force on 25 December 2003, has 117 signatory states and 95 States parties (ie States which have ratified the Protocol as well as signing it). The Smuggling Protocol, which came into force on 28 January 2004, has 112 signatory states and 84 States parties.
- 13 *Migration News Sheet* April 2004.
- 14 *Migration News Sheet* July 2004. His complaint (CAT/250/2004) was held inadmissible at the Committee's session of November 2005.
- 15 Draft Council Directive on the short-term residence permit issued to victims of action to facilitate illegal immigration or trafficking in human beings who co-operate with the competent authorities, COM (2002) 71, 14994/03; *Migration News Sheet* April 2004.
- 16 *Migration News Sheet* November 2004.
- 17 European Convention on Action Against Trafficking in Human Beings, adopted by the Council of Europe's Committee of Ministers on 3 May 2005, opened for signature on 16 May 2005.
- 18 *Migration News Sheet* May 2004, December 2005.
- 19 Council Directive (EC) 2001/51/EC of 28 June 2001 supplementing the provisions of Article 26 of the Convention implementing the Schengen Agreement of 14 June 1985, OJ L187, 10.7.91.
- 20 *Migration News Sheet* July 2004.
- 21 Lawyers for crew members who denounced their captain for murdering stowaways and throwing their bodies overboard and were then granted protection in Canada against threatened reprisals said it was 'open season' for killing stowaways when the Canadian court ruled it had no jurisdiction because the crime was committed in international waters. *Migration News Sheet* June 2004.
- 22 *PICUM Newsletter* January 2006.
- 23 Council Directive (EC) 2004/82 on the obligation of carriers to communicate passenger data, OJ L261, 6.8.04. See House of Lords Select Committee on European Union, 2003-4 session, Fifth report, Appendix 4.
- 24 See Nationality, Immigration and Asylum Act 2002 (Juxtaposed Controls) Order 2003. The Prague operation, in which would-be asylum seekers were examined by British immigration officers and refused boarding on UK-bound aircraft, was held not to breach the Refugee Convention by the House of Lords in *European Roma Rights Centre v Immigration officer Prague* [2004] UKHL, although its application was held to have unlawfully discriminated against Roma.
- 25 The visa will not be issued until the fingerprints have been checked against a databank including the prints of people who have previously sought asylum. UK Visas to ILPA 14 October 2005.
- 26 Willheim, Ernst: 'MV Tampa: The Australian Response', *Int J Refugee Law* 2003 vol 15 p159. The Australian authorities sent a military force to the cargo ship to ensure that the rescued passengers were not permitted to land on Australian territory: see *Migration News Sheet* October 2005.
- 27 *Guardian* 14, 17 July 2004.
- 28 See 'European governments make an example of Cap Anamur refugees' on wsws.org.
- 29 'Captain criticised for bringing refugees to Felixstowe', 16 June 2005, irr.org.uk. Another Maersk vessel, the *Eli Maersk*, rescued a group of 39 Somalis and Ethiopians drifting in the Gulf of Aden on a small sailing boat a few weeks later. See *Migration News Sheet* October 2005.
- 30 *Migration News Sheet* October 2005.
- 31 UN Convention relating to the Status of Refugees 1951, amended by 1967 Protocol, Article 31(1).

- 32 *R v Uxbridge Magistrates Court ex parte Adimi* [1999] 4 All ER 520.
- 33 Immigration and Asylum Act 1999 s 31.
- 34 Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s 2.
- 35 House of Commons Select Committee on Home Affairs, First Report Session 2003-4, para 19.
- 36 Statistics provided by the Immigration Law Practitioners' Association (ILPA).
- 37 *R v Navabi, R v Embaye* [2005] EWCA Crim 2865, See interrights.org, 'Commonwealth roundup'.
- 38 *Migration News Sheet* April 2005.
- 39 *Migration News Sheet* January 2006.
- 40 *Migration News Sheet* January 2006. In deference to critics, some exceptions are provided, but these will operate at the discretion of the border guards and there are no safeguards to ensure compliance with the Convention.
- 41 *MaltaMedia* 16.2.05.
- 42 *Infoapdha* 12.8.04.
- 43 *Migration News Sheet* June 2004.
- 44 *Statewatch* news online 23 June 2004.
- 45 *Statewatch* vol 14 no 2.
- 46 *Migration News Sheet* November, December 2005.
- 47 *Junge Welt* 2.11.04.
- 48 *PICUM Newsletter* February 2006.
- 49 *Solidaire* 21.9.05.
- 50 Harmit Athwal, 'Yarl's Wood trial: a miscarriage of justice?' www.irr.org.uk, 3.9.03.
- 51 *Migration News Sheet* February 2006.
- 52 *Migration News Sheet* October 2005.
- 53 *Junge Welt* 23.1.06
- 54 *El Periódico* 17.1.06.
- 55 'Court of Appeal reduces 15 months to 9 months for using false passport', *Leicester Mercury* 24.12.04. Recent high profile swoops include a raid on Brighton Palace pier in August 2005 in which 60 pier workers were questioned (bbc.co.uk, 24.8.05), raids on a Walkers crisps factory in Coventry in September 2005 in which 50 employees were questioned (iccoventry.co.uk 14.9.05) and a raid on Bernard Matthews' poultry processing plant in which 14 suspected illegal entrants were arrested (*EDP Business* 9.4.05).
- 56 *This is Lincolnshire* 23.5.05.
- 57 www.icnorthwales.co.uk 13.7.04.
- 58 *Junge Welt* 21.12.05.
- 59 *Frankfurter Rundschau* 17.1.06.
- 60 *Migration News Sheet* May 2004.
- 61 Immigration, Asylum and Nationality Bill, going through Parliament in February 2006.
- 62 *Migration News Sheet* January 2006.
- 63 *SwissInfo* 7.6.05.
- 64 www.bbc.co.uk 17.3.05.
- 65 www.bbc.co.uk 22.7.04.
- 66 *Stockport Express* 20.7.05.
- 67 *European Race Bulletin* 56 (forthcoming).
- 68 Immigration and Asylum Act 1999 s 24.
- 69 *Frankfurter Rundschau* 2.8.05.
- 70 *Migration News Sheet* September 2004.
- 71 Under Immigration and Asylum Act 1999 s 95, under which the National Asylum Support Service (NASS), a branch of the Home Office, took over asylum support.
- 72 *Migration News Sheet* May 2004.
- 73 *PICUM Book of Solidarity* 2003.
- 74 *PICUM Newsletter* September 2005.
- 75 *Mugak*, cited in *PICUM Newsletter*.
- 76 *European Race Bulletin* 50.
- 77 *Migration News Sheet* November 2005.
- 78 *Sanomat* 8.11.05.
- 79 *PICUM Book of Solidarity* 2003.
- 80 Residence Act s 87.
- 81 Ahmed Sameer was sentenced by Gotha local court in June 2004 to €272 or 70 days' imprisonment for repeated infringement; Cornelius Ynfanyi was fined €320; both are arguing that the penalties breach their human rights. Brandenburg Refugee Council has accused the Aliens' Office of Oberspreewald-Lausitz of harassment of political activists. See *Junge Welt* 7,10.12.04, 2.11.05; *Frankfurter Rundschau* 23.8.05.
- 82 *Frankfurter Rundschau* 31.12.05.
- 83 *Frankfurter Rundschau* 6.6.05.
- 84 *Junge Welt* 1.6.05.
- 85 *Junge Welt* 15.12.04.
- 86 *PICUM Book of Solidarity* 2003.
- 87 *Migration News Sheet* May 2004. According to the *Dagens Nyheter* (17.2.06), families who benefited from the recent Swedish asylum have informed that they are now required to pay for all medical treatment they received while in hiding.
- 88 *PICUM Newsletter* February 2006.
- 89 *Migration News Sheet* February 2004.
- 90 'Failed asylum seekers forced to go it alone', *Guardian* 14.12.05.
- 91 No2ID campaign website.
- 92 *Migration News Sheet* October 2005.
- 93 'Iraqis forcibly removed on overnight flights', *Guardian* 21.11.05.
- 94 'Asylum measure inhuman and disastrous, says

- report', *Guardian* 7.11.05; Barnardos, *The End of the Road*, November 2005.
- 95 *Migration News Sheet* February 2004.
- 96 *European Race Bulletin* no 49, 50.
- 97 *European Race Bulletin* no 49.
- 98 www.farr.se.
- 99 *Migration News Sheet* March 2004.
- 100 *Expatica News* 16.9.04.
- 101 See text and fn 8 above. In December 2005, the Court of Appeal dealt with the 'humanitarian' argument by saying that guilt depended on whether the assistance was provided to help someone remain illegally, or simply to help him as a human being, to avoid degradation or destitution, in *R v Javaherifard and Miller* [2005] EWCA Crim 3231, 14.12.05.
- 102 *El País* 24.11.05.
- 103 *Statewatch* vol 13 no 5, Aug-Oct 2003.
- 104 *PICUM Newsletter* September 2005.
- 105 See Harmit Athwal, 'Getting rid of the last resort', www.irr.org.uk, 23 February 2006.
- 106 As at March 2004. See 'Délit de solidarité', *Plein Droit* 59-50, March 2004, www.gisti.org. Over 6,000 signatures were obtained in the first fortnight of the campaign.
- 107 *Evening Standard* 20.8.04.
- 108 *Migration News Sheet* September 2004.
- 109 www.barbedwirebritain.org
- 110 *GISTI* 26.6.03.
- 111 'Délit de solidarité', fn 71 above.
- 112 Ibid; see also *Socialist Review* March 1997, www.socialistreviewindex.org.uk.
- 113 See text and fn 3 above.
- 114 *Libération* 5.11.02.
- 115 *Libération* 6.9.03.
- 116 *der Standard* 14.9.05.
- 117 *Böses Österreich* October-November 2004.
- 118 *PICUM Book of Solidarity* 2003.
- 119 *Migration News Sheet* January, February 2006, *PICUM* January 2006, www.cncd.be.
- 120 www.listes.rezo.net 24.8.05.
- 121 *PICUM* August 2005.
- 122 *PICUM Book of Solidarity* 2003.
- 123 *Migration News Sheet* May 2005.
- 124 *Migration News Sheet* January 2005.
- 125 *Migration News Sheet* February 2004, 2005.
- 126 *Migration News Sheet* February 2005.
- 127 *Migration News Sheet* June 2004.
- 128 *PICUM Newsletter* September 2005.
- 129 *Europa Sur* 23.1.03.
- 130 *El País* 8.6.02.
- 131 *Statewatch* vol 14 nos 3-4.
- 132 *Migration News Sheet* February 2004.
- 133 *Junge Welt* 7.7.03.
- 134 *Junge Welt* 9, 29.1.03; *Frankfurter Rundschau* 5.9.03.
- 135 *Junge Welt* 15.12.04.
- 136 *PICUM Book of Solidarity* 2003.
- 137 Ibid.
- 138 Asylum and Immigration (Treatment of Claimants, etc) Act 2004 s 35.
- 139 Immigration Act 1971 s 27.
- 140 *Libération* 25.9.04.
- 141 'Air France sues its own passengers', 23.11.03, www.noborder.org.
- 142 *Statewatch* February 2005.
- 143 *PICUM Newsletter* September 2005.
- 144 *Agence France Presse* 7.1.03.
- 145 *Migration News Sheet* March 2006.



Globalisation and the War on Terror have changed the face of racism and imperialism. Only one journal, Race & Class, has risen to the challenge.

Recent writers in Race & Class include:

Walden Bello, Joel Benin, John Berger, Victoria Brittain, Matt Carr, Ralph Coury, Liz Fekete, Avery Gordon, Jerry Harris, Neil MacMaster, A. Sivanandan, Antonio Tujan, Graham Usher...



RACE & CLASS

For a free sample copy of Race & Class ('The Politics of Fear: Civil Society and the Security State') phone: 020 7837 0041, e-mail: info@irr.org.uk or visit: <http://rac.sagepub.com/>

The IRR European Race Bulletin is edited by Liz Fekete and compiled with the help of:

Georgios Antonopoulos, Harmit Athwal, Jenny Bourne, Norberto Laguía Casaus, Heather Clarke, Tim Cleary, Steve Deegan, Rhona Desmond, Jonathan Ervine, Imogen Forster, Urmila Ghirrao, Margaret Goff, Sofia Hamaz, Trevor Hemmings, Lotta Holmberg, Vincent Homolka, Mieke Hoppe, Terese Jonson, Simon Katzenellenbogen, Changez A. Khan, Virginia MacFadyen, Louisa O'Brien, Sarah Parker, Thushari Perera, A. Ragunathan, Nicholas Sanders, Arnaud Vervoitte, Frances Webber and Chris Woodall.

Institute of Race Relations

2-6 Leeke Street
London
WC1X 9HS
Tel: 020 7837 0041
Fax: 020 278 0623
Email: info@irr.org.uk
Web: www.irr.org.uk