



BVMN PROPOSED AMENDMENTS TO THE EU GUIDELINES ON HUMAN RIGHTS DEFENDERS:

Expanding the scope of the Guidelines:

The Guidelines rest upon and repeatedly stress the importance of the Special Procedures of the UN Commission on Human Rights (OHCHR), including the UN Special Rapporteur on Human Rights Defenders¹ and commit to use outputs and reporting from these Special Procedures to guide their own actions on protection for HRDs². The current Special Rapporteur, Mary Lawlor, in her first report in 2020³, outlines migrants rights defenders (MRDs) as an area of priority for the duration of her mandate due to the high level of exposure to violent attacks and human rights violations that they have been faced with. In concordance with this, the first communication she issued in her position was to the Government of Greece regarding the detention of a MRD and the intimidation and criminalisation of NGOs working to provide humanitarian aid on the Greek islands⁴. Mary Lawlor's most recent report, 'Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers'⁵, again brings into focus the situation of MRDs particularly in EU Member States (MS).

In spite of the repeated prioritisation of MRDs in EU MS under Mary Lawlor's mandate, including in her recent country visit to Greece⁶, the Guidelines at the EU level retain a focus on HRDs outside of the bloc. All the provisions laid out in the Guidelines refer to actions that can be taken in third countries by EU Missions, Delegations and MS representatives. There is still no protection mechanism for HRDs working on the territories of EU MS, except for those outlined with reference to transnational attacks against Third Country National (TCN) HRDs who are residing on EU territory but still subject to reprisals by their home States.

BVMN puts forward the position that HRDs acting on the territory of EU MS must also be granted protection at an EU level and have access to the protection mechanisms presented in the Guidelines for HRDs from third countries. This should be done with a particular emphasis on MRDs working within EU MS.

Statistics:

- ReSOMA Study⁷: In 2020, 171 individuals in 13 EU MS were criminalised for acting in solidarity with POM

¹ European Parliament. 2021. EU Guidelines on Human Rights Defenders (2021/2204(INI)). Available at: <https://bit.ly/3feJkWk>

² Ibid.

³ Lawlor, Mary. 2020. Report of the Special Rapporteur on the situation of human rights defenders. Available at: <https://bit.ly/3SGPvQy>

⁴ Communication AL GRC 2/2020. Available at: <https://bit.ly/3U39xWE>

⁵ Lawlor, Mary. 2022. Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum seekers. Available at: <https://bit.ly/3znxGPD>

⁶ Lawlor, Mary. 2022. Statement on preliminary observations and recommendations following official visit to Greece. Available at: <https://bit.ly/3Fqj8T9>

⁷ ReSOMA. 2021. The criminalisation of solidarity in Europe. Available at: <https://bit.ly/3W7dR92>



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- PICUM Study⁸: Between January 2021 and March 2022 at least 89 individuals were criminalised for supporting people on the move (POM) - four of these individuals were migrants themselves.
 - In 88% of cases, MRDs were charged with facilitation of entry, transit or stay, or of migrant smuggling.
 - In 28% of cases, MRDs were accused of money-laundering, espionage, and membership of a criminal organisation

Case Studies:

Croatia:

Members of Are You Syrious? (AYS), a BVMN member organisation, have faced targeted intimidation and reprisals in the context of the strategic litigation on the death of Madina Hussiny⁹. This conclusion has also been affirmed by Front Line Defenders. Dragan Umičević, a volunteer of AYS, was targeted due to his human rights monitoring activities in affiliation with Are You Syrious and was subsequently falsely charged with “assisting in the illegal crossing of the state border” of the family of Madina Hussiny¹⁰. Umičević subsequently lodged an appeal against the charge with the High Misdemeanour Court of Croatia.

In December 2021, the High Misdemeanour Court of Croatia dismissed the appeal lodged by Dragan Umičević and fined him HRK 60,000 (€8,000), additionally ordering him to pay for the court costs, even though he was acting in accordance with the law¹¹. This is considered to be the highest financial fine in the history of Croatian misdemeanour courts and is widely interpreted as a retaliation for AYS’s work in supporting the strategic litigation of the family.¹² As this amount was highly over Umičević’s monthly income, he was unable to come up with this amount on his own¹³. Originally, the Croatian Ministry of Interior demanded a far higher amount of € 43.000, a prison sentence for the volunteer, as well as a ban of the CSO’s operations.¹⁴ The Court argued that Umičević helped facilitate illegal border crossing of the group, despite overwhelming evidence proving that the family was already in Croatia when they contacted AYS. The case is widely recognised as an

⁸ Gionco, Marta and J Kanics. 2022. Resilience and Resistance in defiance of the criminalisation of solidarity across Europe. Available at: <https://bit.ly/3N949it>

⁹ The final judgement of the ECtHR is available at: <https://hudoc.echr.coe.int/eng/?i=001-213213>

¹⁰ To monitor their access to asylum, they contacted AYS whilst already on Croatian territory. Therefore, Dragan Umičević approached police officers at the border checkpoint to inform them about the presence of the family and their intention to ask for asylum. This prevented their third pushback and made them available as witnesses in the court case connected to their daughter’s death.

¹¹ HINA. 2021. Over HRK 60,000 Raised for AYS Volunteer to Help Him Pay Fine. Available at: <https://bit.ly/3gBrRrd>

¹² Lukić, S. 2021. Najveća prekršajna kazna ikad: Aktivist mora platiti 60.000 kuna jer je pomagao migrantima! Available at: <https://bit.ly/3WaNvJN>

¹³ Are You Syrious?. 2021. AYS News Digest 14–15/12/2021: Volunteer convicted in Croatia for preventing pushback. Available at: <https://bit.ly/3Db1e49>

¹⁴ HINA. 2021. Over HRK 60,000 Raised for AYS Volunteer to Help Him Pay Fine. Available at: <https://bit.ly/3FIM4vz>



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example of pressure against human rights defenders¹⁵. The verdict also directly contradicts previously issued verdict of the European Court of Human Rights, in the case of little Madina Hussiny.

Greece:

In 2020, the Greek government accused 33 CSO members of forming a criminal organisation, espionage, facilitation of illegal entry, and violation of State secrets, among them were volunteers of two BVMN member organisations: Mare Liberum and Josoor. As there was neither a trial nor an indictment on the latter, this case can be considered as continued harassment in the form of legal action against the volunteers in question, while at the same time leading to negative media coverage and defamation of CSOs' commitment to protect the fundamental rights of people-on-the-move.

Whilst the case of criminalisation was initiated in 2020, it's clear that the intimidation and reprisals for their work coordinating humanitarian aid and documenting human rights violations has continued throughout 2021.

Throughout 2021 staff and volunteers of Josoor were unable to travel to Greece due to the active legal case against them. This has greatly restricted the scope of their human rights documentation work and curbed the ability to attend meetings with other organisations or participate in events, conferences or high-level meetings. As an organisation that continues to cooperate with UN mechanisms, including multiple special procedures, these travel restrictions have also limited Josoor's ability to meet with or cooperate with UN Special Rapporteurs during their planned country visits to Greece.

Furthermore, throughout the year, members of the organisation have experienced acute psychological stress due to the digital surveillance placed on them. The digital surveillance, including the tapping of their phones, has led some team members unable to work and in turn has led to self-censorship.

Lastly, the intimidation and reprisal initiated by Greece has led to a limited access to funding in 2021. Following this criminalisation attempt, some of Josoor's funds (private funding) were withdrawn in summer 2021, which has had an ongoing influence on the organisation's work. In October 2022, due to a number of issues raised by the ongoing criminalisation of the organisation, Josoor was forced to cease operations supporting POM at the EU's external border¹⁷.

BVMN member organisations operating across the EU have been subject to both formal and informal criminalisation on behalf of both State and non-State actors for engaging in

¹⁵ Seebrucke. 2021. We Stand with Dragan Umicevic from Are You Syrious. Available at: <https://bit.ly/3T1b04O>

¹⁶ Statewatch. 2018. Croatia: Criminalising solidarity. Available at: <https://bit.ly/3DzBK1M>

¹⁷ Josoor. 2022. Announcement of the Dissolution of Josoor. Available at: <https://bit.ly/3gMz3B9>



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activities defending the rights of POM and providing material, humanitarian aid. The cases above detail specific incidents where member organisations have engaged extensively with EU and UN human rights mechanisms and have subsequently been formally targeted by the national authorities of MS. However, volunteers on the ground in Greece and Croatia have also reported numerous cases of media smear campaigns, verbal abuse from authorities, and the targeting of their premises, vehicles and selves for excessive police checks and forms of vandalism or violence¹⁸.

Recommendations:

Following the example of the UN Special Rapporteur Mary Lawlor in prioritising the plight of MRDs and calling attention to those acting within EU MS, BVMN wishes to put forth the following recommendations for additions to the Draft Report on the EU Guidelines for HRDs:

- The inclusion of a subsection in the Guidelines that focuses specifically on HRDs acting within MS territories and being subject to intimidation and reprisals by the national authorities of EU MS. This should include:
 - A secure whistle-blower mechanism accessible to those working within EU Institutions and national MS institutions for those dealing with migration, asylum and refugees
 - The inclusion of a special protection mechanism within the Facilitator's Package that exempts humanitarian assistance activities from charges of smuggling and trafficking
 - Guarantees that administrative and law enforcement officials are given training with regards to respect for the rights of those advocating for migration related issues.
- We also call for the Draft Report to recognise migrants rights defenders (MRDs) as a focal priority alongside WHRDs, LGBTQIA+ rights defenders, and indigenous people's rights defenders.

Further attention to the topic of technology and surveillance of HRDs:

The issue of new advanced technologies and Artificial Intelligence (AI), and striking a balance between the protection of citizen's rights and the stimulation of innovation in development within the EU has come to the fore this year. The use of surveillance spyware to target journalists, politicians, diplomats, lawyers, civil society actors and other citizens has become of increasing concern, leading to the establishment of the Pegasus Inquiry Committee¹⁹. This phenomenon is inextricably linked to the work of HRDs across the globe, as surveillance technologies have disproportionately been used against HRDs to facilitate intimidation and reprisals against them. The undemocratic use of surveillance against HRDs has most recently been demonstrated in Greece's Predatorgate scandal²⁰, following similar

¹⁸ Border Violence Monitoring Network. 2022. Criminalisation Report: Accused of Solidarity. Available at: <https://bit.ly/3f90410>

¹⁹ European Parliament. 2022. EP inquiry committee for Pegasus and other spyware launched. Available at: <https://bit.ly/3fbX3gs>

²⁰ Euractiv. 2022. Greek spyware and wiretapping scandal now on EU agenda. Available at: <https://bit.ly/3sGwpPL>



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events in Hungary, Poland, Italy and Spain²¹. One of the victims of the spyware was journalist Malichudis who has reported extensively on human rights violations at the Greece/Turkey border and has worked together with CSOs to uncover testimonies and data on the practice²². Whilst BVMN welcomes the commitment in the Draft Report to prioritise the fight against the misuse of surveillance technology and to adopt a global moratorium on the sale and transfer of such technology²³, we posit that this point should be developed further and connected to specific EU level legislation to avoid leaving excess room for discretion on the part of MS.

Recommendations:

- Any and all surveillance technologies used within EU MS should be in line with the Artificial Intelligence Act (AIA) and the AI Liability Directive when both legislative packages are passed.
 - All surveillance and spyware technologies must be submitted to Data Protection Impact Assessments (DPIAs) and Fundamental Rights Impact Assessments (FPIAs) and the results of these assessments should be made publicly available.
- The Guidelines should be subject to review by the Pegasus Inquiry Committee following the completion of their investigation to ensure that all usage of spyware and surveillance technologies within EU MS are in line with their recommendations.

²¹ European Parliament. 2022. Greece's Predatorgate: The latest chapter in Europe's spyware scandal? Available at: <https://bit.ly/3D8kij5>

²² Investigate Europe. 2021. #Pressfreedom: I am the journalist being watched by the Greek secret service. Available at: <https://bit.ly/3f6s45z>

²³ European Parliament. 2022. Draft Report on the EU Guidelines on Human Rights Defenders (2021/2204(INI)). Available at: <https://bit.ly/3sBlnu2>