Criminalisation of Humanitarian Assistance to Undocumented Migrants in the EU

A Study of the Concept of Solidarity

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ABSTRACT

This thesis examines the concept of solidarity and how it can contribute to the understanding of the criminalisation of those who provide humanitarian assistance to undocumented migrants in Europe. It also looks at acts of resistance against such criminalisation. Alternative explanations are explored on the basis of theories of solidarity, previous research and collection of material from international and European institutions on the legal situation within the European Union. Particular attention is given to illustrative cases focusing primarily on the more or less publicly acceptable provision of healthcare and the less publicly acceptable provision of housing. Criminalisation can be understood in the light of exclusive solidarity only for those with citizenship or residence permit and as a part of immigration enforcement by deterring those who want to help and therefore discouraging irregular migrants from staying in the EU. Resistance against such criminalisation is built locally, on the basis of solidarity with undocumented migrants that are relatable and familiar, which also explains why solidarity is harder to achieve on a national and European level. Resistance against criminalisation is also built on faith, dignity and other grounds such as cost-benefit estimates for cities tackling issues such as social inclusion and public health.

Keywords: Solidarity, Criminalisation, Undocumented Migrants, Humanitarian Assistance, Services

CONTENT

1. BACKGROUND

1.1. Introduction

Across Europe there is a growing trend to criminalise those who express solidarity with undocumented migrants in need. Let me give an example from January 2015: a migrants rights activist in France was called before the city court, accused of facilitating the irregular residence of several migrants. He provided them with proof of accommodation in order to allow them to access social and medical services and to file a claim for asylum. A collective of 29 associations organised a protest outside the court with signs reading 'Solidarity is not a crime' (Vindy 2015).

Solidarity is one of the founding values the European Union (EU) and its Treaty of Lisbon (2010). It is a specific principle in the area of freedom, security and justice, the economy, and counteracting terrorism and natural disasters. It is also set out as an individual right in the European Charter of Fundamental Rights (5.2.2). Within the EU the concept of solidarity and migration is often limited to a discourse about solidarity of 'burden-sharing' of migration flows between EU Member States (4.1). Outside the EU, the Union and its Member States provide aid and assistance to enable people in third countries suffering from war, natural and humanitarian disasters to access basic services; but when it comes to people on EU territory without access to basic services, the same principle of solidarity seems to no longer apply for policy makers.

To reduce irregular migration, many EU Member States seek to create living conditions that will compel undocumented migrants to leave their territory and deter others from arriving (PICUM 2013 a-c; Provera 2015). National governments increasingly attempt to limit solidarity by forbidding non-governmental organisations (NGOs) and professional service providers (such as healthcare professionals and lawyers) from providing essential services (such as healthcare, shelter, food and clothing) to undocumented migrants. Prohibition may also include denied state funding for services provided to undocumented migrants and obligation to report undocumented migrants to the authorities (5.3.3-4).

I have chosen to study the issue of criminalising solidarity because it is both topical and timely. Firstly, it is topical because solidarity with undocumented migrants is increasingly criminalised and penalised in many EU Member States (5.3). Secondly, it is timely because the EU is currently evaluating its law from 2002 (European Commission 2015) that regulates criminalisation of facilitating undocumented migrants' entry and stay, giving Member States the option but not obligation, to exempt humanitarian assistance from criminalisation (5.2.2).

1.2. Aim and research question

My aim is to examine the relationship between concepts of solidarity, as defined in theory and research (3.0 and 4.0) and the practice of criminalisation of humanitarian assistance to undocumented migrants in the EU. In order to discuss the meaning of solidarity and its implications, I will provide a number of illustrative cases to show criminalisation of solidarity and resistance against it in practice, on a local, national and European level. I will focus on two different forms of provision of services to undocumented migrants: healthcare and housing. I have chosen healthcare because it is generally considered the most accepted by the public and authorities and housing because it is the service that is the most challenged, and the situation has become worse over the last years (FRA 2014a:13).

The issue of criminalisation of humanitarian assistance to undocumented migrants can also be analysed in relation to concepts other than solidarity. I have chosen solidarity for two reasons. Firstly, the notion of 'criminalisation of solidarity' when referring to sanctions against humanitarian support to undocumented migrants (Carrera & Parkin 2011; Fekete 2009; PICUM 2003; Roy 2014) is not yet as well known and commonly referred to as for example solidarity in terms of 'burden-sharing' of migration flows between EU Member States (Bell 2010; Goldner Lang 2013). Secondly, research on criminalisation of humanitarian assistance to undocumented migrants has a rather policy oriented and legalistic approach (Provera 2015) and a theoretical and practical perspective is largely missing. I will therefore examine meanings of solidarity in the context of the latter. In addition, my thesis may provide a contribution to a wider academic discussion on irregular migration, by looking at the criminalisation of those that want to help undocumented migrants.

I will ask the following questions:
- What are the characteristics of and relationships among solidarity with irregular migrants, criminalisation of acts of such and the resistance against this criminalisation in the EU?
  - How can regulations that criminalise humanitarian assistance to undocumented migrants be understood in connection with solidarity?
  - How can resistance against criminalisation of humanitarian assistance to undocumented migrants be understood in connection with solidarity?

1.3.   Delimitations

Due to the limitation of this thesis I have narrowed down the scope and will therefore not address the following issues:

- **Humanitarian assistance to undocumented migrants when entering Europe**: This includes those who help irregular migrants to cross borders by land, air or sea, for example criminalisation of fishermen who are saving migrants. I will focus on solidarity with irregular migrants only when they are already in Europe.

- **Cases-studies before 2005**: I have chosen to mainly limit my illustrative cases (6.0) to not precede 2005, because December 2004 was the transposition deadline for the EU Facilitation Directive (5.2.2).

- **Cases from outside the EU**: I have chosen to focus on the countries that are bound both by international obligations and by the EU. My material is therefore based on research that focuses only on cases within the EU Member States.

- **Representative examples for all EU countries and all forms of services**: Legislation differs vastly across Europe (FRA 2014a), I therefore do not attempt to be representative. Instead I have selected cases that can illustrate criminalisation of solidarity and resistance. I will mainly focus on two services: healthcare and housing.

- **Prohibition of employers employing irregular migrants**: This is a related area but under the Employer Sanctions Directive (2009/52/EC). I will mainly look at criminalisation of those providing services, which is regulated under the Facilitation Directive (2002/90/EC) (5.2.2).

1.4.   Disposition

In Chapter Two I present the methods of my secondary sources, the value and use of case-based research and my own role as a researcher. I also lay out the terminology and definitions that I apply. Chapters Three and Four examine theories of solidarity and previous research on migration, irregular migration and solidarity. In Chapter Five I review international, European and national legal frameworks that criminalise humanitarian assistance to undocumented migrants. Next, I present illustrative cases of criminalisation and resistance (Chapter Six). Finally, I bring together the previous chapters in my discussion (Chapter Seven) to discuss my research questions, of how to understand criminalisation and resistance in connection with solidarity. In Chapter Eight I summarise my key findings and end with a few words about further research.

2. METHOD

Firstly, considering that my thesis is exclusively based on secondary sources I will discuss the methods behind my main empirical material (2.1). Secondly, although my thesis in strict meaning is neither a case study nor comparative research, I will argue that my cases are both illustrative and significant for my analysis (2.2).

2.1. Material

2.1.1. Previous research

The previous research (4.0) includes academic articles from several disciplines, such as social science, political science, and law, accessed via University databases. One additional source comes from researchers associated with an independent think tank named the Centre for European Policy Studies (CEPS 2015). It was founded in 1983 in Brussels, Belgium and carries out state-of-the-art policy research on challenges facing Europe, including in the fields of justice and home affairs. As a part of my cases I have chosen to present selected elements of CEPS researchers' work (6.0).

2.1.2. Empirical material

My empirical material is presented in two chapters of my thesis: first, the legal framework (5.0) and second, the illustrative cases (6.0). Both chapters are mainly based on two sources: the EU Agency for Fundamental Rights (FRA), and the European Platform for International Cooperation on Undocumented Migrants (PICUM). I have also used material from international and European institutions (Council of Europe 2009, 2013, 2014a-b; European Commission 2014, 2015; IOM 2011) as well as some additional sources, presented below.

Firstly, FRA (2011a; 2014b) produces independent, evidence-based legal and social science research and advice for EU institutions and Member States on different topics, including immigration and integration of migrants (FRA 2011b). FRA aims– to provide legally comparable data of the situation in different Member States. Through national experts the agency collects information 'from sources including legislative instruments, court judgements and academic commentary' (FRA 2011a:1-2). FRA ensures the scientific quality of its research through a process of internal peer review and with the help of their Scientific Committee comprised of eleven independent experts selected on the basis of recommendations by the European Parliament (ibid 1-2).

Secondly, PICUM (2015) is an NGO that aims to promote respect for the human rights of undocumented migrants within Europe. The platform consists of '160 member organisations and over 180 individual members providing humanitarian support and assistance to undocumented migrants in 33 countries across Europe and in other global regions' (PICUM 2014c:24). One of the members of the organisation's Executive Committee is Franck Düvell, Associate Professor and Senior Researcher at Oxford University, an expert researcher in the field of irregular migration. PICUM provides cases and field studies, by using a variety of methods to gather information about the experiences of its members. PICUM (2003) has mapped the experience of various organisations that provide assistance to undocumented migrants. Their qualitative study covered the situation in ten Member States (PICUM 2003). The methods used were visits to organisations, in-depth qualitative interviews in person and by phone, complementary written information and setting up a working group (PICUM 2003:7-8). The cases referred to in the study predated 2005 and therefore I will not use them in my thesis, although I will still refer to PICUMs overall assessments of the situation for NGOs and service providers when considered valid.

Thirdly, I partly refer to Provera (2015), a researcher from Centre for European Policy Studies, who made a study on six Member States. Provera combined information from FRA and PICUM together with desk research, a workshop (including governmental representatives, civil society and academics), and a follow-up questionnaire to the participants for additional information (Provera 2015:5-6).

Finally, I have cited international and European institutions, in particular in chapter 5 about legal frameworks. To a limited extent I have also referred to Webber (2008:22-24), who provided cases of solidarity crimes across Europe, and the Council of Europe (5.1.1) which oversees the implementation of the European Convention on Human Rights, signed by 47 Member States, including all members of the EU. I refer to a specific case of the Council of Europe's Collective Complaints Procedure under the European Social Charter, where an NGO filed a complaint against a national government (further explained in chapter 5.2.1). When relevant, I have used media sources such as bloggers (Passeur d' hospitalités 2015; Sánchez 2013), newspapers (The Local 2015; Travis 2014; Vindy 2015) and websites for specific relevant campaigns (Salvemos La Hospitalidad 2013).

2.2. The researcher's role

I currently work for a European NGO in Brussels, which deals with issues related to my thesis. My knowledge and experience of international and European institutions, and my

professional network has provided me with access to both formal and informal expertise. While all the material I have used is publicly available (8.0), I have particularly benefitted from my working relations with colleagues from the EU Agency for Fundamental Rights (FRA), the NGO working with undocumented migrants (PICUM) and researchers from the think tank CEPS. As well as learning about their research they have also directed me towards other sources, such as relevant articles in the media. I have also had the opportunity to participate in relevant EU stakeholder meetings and conferences, which I have referred to as complementary sources (European Migration Forum 2015; Ryngbeck 2015a). The above-mentioned ways of accessing material has enabled me to make an analysis in a way that I might have not been able to do otherwise. On the other hand, my profession limits my ability to conduct interviews as a neutral researcher. Silverman (2011) has addressed the aspects of a biased approach by arguing that 'conclusions and implications to be drawn from a study are (...) largely grounded in the moral and political beliefs of the researcher' (Silverman 2011:415). While working on this thesis, I have used the advantages of my professional role, while at the same time attempting to remain critical and cautious in my analysis.

2.3. Case-based research

On the basis of my secondary sources (2.1) I have collected a variety of cases (6.0) to illustrate solidarity both in relation to criminalisation of humanitarian assistance to undocumented migrants in Europe, and to resistance against criminalisation. During the course of my research it became clear to me that the number of cases accessible is limited. Learning this, I decided to include different examples across the EU even if they were not comparable with each other. While my focus has been mainly on access to healthcare and housing services, I have included a few similar examples beyond this delimitation. Albeit comparatively few in number, the cases I present are powerful illustrations of the relationship between solidarity, criminalisation and resistance. Flyvbjerg has contested conventional views of case-based studies and argued the many advantageous of case-based studies (Flyvbjerg 2006:242). My method can be defined partly as theoretical sampling and partly as case-based. Theoretical sampling is a way of gathering data to 'check hunches and to (…) confirm the theoretical category' (Silverman 2011:71). In my case this means applying the theoretical concepts of solidarity against research and my empirical material. Case-based research according to Bellamy is used to develop theory, rather than to test it. It focuses on a small number of cases studied in depth, and it cannot analyse large numbers of cases or volume of data (Bellamy 2012:103). Silverman argued that case-based studies aim to tests

'provisional hypothesis by comparing with another case' (Silverman 2011:376). Flyvbjerg on the other hand proves the point that case study is a valid and reliable scientific method in itself, and not only valuable if linked to a hypothesis (Flyvbjerg 2006:220-221).

Firstly, 'closeness of the case-study to real-life situations (…) is important for the development of a nuanced view of reality' (ibid 223-224) and cases as such are important for the researcher to learn and develop their skills. In other words, context-dependent knowledge is equally valid as theoretical context-independent knowledge, in fact it can be more valuable, especially in human affairs (ibid 223-224).

Secondly, an example such as Galileo testing and falsifying Aristotle's law of gravity by a single observations, demonstrates that with a strategic chosen case it is possible to draw a conclusion. Although, it is important to ensure that formal generalisations are not the only scientific inquiry legitimatising ones method (ibid 225-228). Bellamy (2012) adds that even if case-based research may not make generalisations or representative claims, it is important that they can 'determine whether or not they can make warranted inferences from their cases to any wider population' (Bellamy 2012:108, 111-112).

Thirdly, Flyvbjerg (2006) argues against the common critique that case-based research tends to 'seek out cases exhibiting the most extreme' (Bellamy 2012:106) by claiming the contrary: strategically selected atypical and extreme cases may contain richer information and can clarify both the causes behind a problem and its consequences, instead of only the symptoms and frequency (Flyvbjerg 2006:229). A critical case may enable the researcher to confirm or rule out whether a certain hypothesis is valid for all or many cases or for only a few or no cases. The 'most likely' cases can falsify propositions and the 'least likely' cases can serve as verifications (ibid 230-231). While specific paradigmatic cases set standards by highlighting general societal and cultural characteristics, no pre-conditioned criteria for these cases exist. A case can be either extreme, critical or paradigmatic, or all these features together. Ultimately, what counts is the researcher's experience, assessment and intuition whether the cases chosen can provide valid claims (ibid 232-233).

Fourthly, Flyvbjerg (2006) reminds that 'the question of subjectivism and bias toward verification applies to all methods, not just to case study and other qualitative methods' (Flyvbjerg 2006:235). In fact, it is more likely that the research through conducting in-depth case studies may find that the hypothesis was wrong and that it needs to be revised (ibid 235).

Another purpose of case-based research can be to aim for comprehensive reforms, as a way to improve whole systems and not single organisations or isolated practices (Kin & Davis 2001:85). What is needed is 'questioning questions, testing assumptions, and

examining rival explanations' (ibid 76). In order not to end up with a piecemeal approach, diverse evidence needs to be united. While classic case studies focus on single entities such as individuals, organisations and decisions, comprehensive reforms concentrate on the evaluation of example practices and programs (ibid 77). In general, the case study method is particularly good to deal with 'real-life blurring between phenomenon and context' (ibid 77).

To conclude, even if cases cannot be comparable they still have a significant function to play for research. A limited number of illustrative cases may be enough to say something meaningful and general about a society.

2.4. Terminology and definitions

In this thesis I will use the terms of 'irregular migration' and 'undocumented migrants', instead of the term 'illegal migration'. The Council of Europe has stated the importance of the choice of language and claims that the concept of illegal migration is stigmatising due to its crime-related associations (Guild 2010:8-9; PICUM 2014b). PICUM provides a useful description of what irregular migration is and who an undocumented migrant may be. The term 'irregular' has also been endorsed by the United Nations (OHCHR 2014), the International Organisation for Migration (2011), the European Commission (2014), and the EU Agency for Fundamental Rights (FRA 2011a; 2014a).

- **Irregular migration**: 'Irregular crossing on border does not automatically lead to illegal residence, nor does illegal residence mean that the entrance has been illegal. Many asylum seekers have crossed Europe's borders clandestinely, and have regularised their status by applying for asylum. Many illegal residents have been legal for some time (e.g. they may have had an entry visa at one time)' (PICUM 2003:10).

- **Undocumented migrants**: 'may be rejected asylum seekers, rejected candidates for family reunification, labour migrants without residence permit (foreigners who lose their labor/ residence permit after their work contract ends), students who have lost their study permit, tourists who have overstayed their tourist visa, embassy staff who have lost their diplomatic/ consular status through dismissal or other circumstances' (PICUM 2003:10).

3. THEORY

I will hereby provide different theories of solidarity, divided into three parts: First I start with a societal level (3.1) where I introduce Emilie Durkheim's concept of mechanical and organic solidarity and Charles Taylor's idea of faith-based universal solidarity. Second I examine theories of inclusive and exclusive solidarity relating to the nation-state (3.2). Third I present the level of the individual (3.3) when solidarity requires familiarity and relatability between individuals.

3.1. Solidarity on a societal level

3.1.1. Mechanical and organic solidarity

The concept of mechanical and organic social solidarity is a part of sociologist's Emile Durkheim's (1902) theory about society and the division of labour. Durkheim explained the development from simple traditional societies based on mechanic solidarity to modern industrial societies built on organic solidarity, stating that modern time is characterised by organic solidarity, mechanic solidarity still remain a part of our society (Durkheim 1902:xv). For the purpose of this thesis I will refer to a narrow reading of Durkheim's concept of mechanical solidarity, because this is foremost relevant for my analysis (6.0). I will only briefly mention the concept of organic solidarity.

Mechanical solidarity can be described as a form of resemblance between people based on shared morality and consciousness. It is a sort of agreement of who belongs to a society, a nation, and what is considered universally criminal and punishable by law. Some acts are defined as criminal on the mere basis of immorality, even if they are not dangerous for the society. Durkheim also gives the examples of events that are not classified as criminal nor immoral, such as a crash on the stock market or an economic crisis, which affects a society much more than an individual murder or acts considered impure according to religion, and therefore is forbidden (Durkheim 1902:58-60). By coming together in solidarity a group collectively conform, in other words it is 'solidarity that repressive law expresses' (ibid 81-82). Crime occurs only when a mutual respected agreement is in fact not truly universal, and therefore is being violated (ibid 65, 79).

Organic solidarity on the other hand does not appeal to morals and consciousness. It is focused on the functions and division of labour that uphold a society (ibid 89). Mechanical solidarity relates to laws regulated in the criminal code, while organic solidarity is reflected in

the civil code. While mechanic solidarity unites people around a common idea of a society, organic solidarity differentiates people. The latter is rather a 'negative solidarity' establishing boundaries between people's own rights and things, such as property (ibid 92-94, 102).

Prosser, who studied public services regulations based on social solidarity, found support in Durkheim's emphasis on morality as the roots for such a solidarity approach to regulations (Prosser 2006:381).

3.1.2. Universal solidarity

Philosopher Charles Taylor focuses on a universal moral solidarity, also called humanitarian solidarity (Smith & Laitinen 2009:64). Taylor (2010) argued that 'a society's sense of solidarity can be sustained only if all its different spiritual groups recreate their sense of dedication to it' (Taylor 2010) and that religions provide a basis for solidarity and should therefore not be marginalised in society (ibid).

Smith & Laitinen (2009) have reconstructed discussions by Taylor in order to consolidate their theory of solidarity. Universal solidarity is about 'humanitarian actions aimed at improving the conditions, or alleviating the suffering, or protecting the human rights, of people outside one's own society' (Smith & Laitinen 2009:64). The reasons behind this form of solidarity are humanity and dignity and that 'humans have a certain dignity because they have a 'potential for goodness and greatness'' (ibid 64-65). Taylor argued that universal solidarity is only possible if one believes in God (ibid 68).

Philosopher Richard Rorty made a clear distinction between solidarity as an essentialist concept of humanity, a natural part of each human being, and on the other hand, solidarity without adhering to a core self (Rorty 1989:189). While Rorty himself represent the latter, he explains how solidarity as an essentialist concept derives from the Christian belief that one should love all God's children equally as human beings, and later it has come to been taken up by secular ethical universalism (ibid 191). Rorty is criticised for in fact offering an 'alternative essentialism', as his notion of solidarity being created as a social bond when human beings feel 'humiliation' indirectly means that he believes humans 'have a nature (...) which may be repressed or violated' (Wilde 2004:164).

3.2. Solidarity on a nation-state level

3.2.1. National solidarity

Sociologist Jürgen Habermas developed theories of democracies and nation-states, arguing that it is impossible to move away from state boundaries and national identities. Focus should instead be put on the nation-state's ability to change and its role in collective national memories (Spinner-Halev 2008:623). Solidarity among citizens is foremost needed in order to build emerging democracies and their institutions (ibid 605).

Spinner-Halev pointed out that national identity markers do not explain solidarity with people that are not a part of the nation (ibid 612). In fact, national messages only serve the national majority, and often bring disadvantages for others (ibid 614). Furthermore, national solidarity often weakens when a nation has established its dominance (ibid 614). Only when the majority's interest is secured and not threatened can the national identity allow itself to include its minorities (ibid 616). While national identities are based on ethnicity or abstract principles, they can be created, sustained and altered through political processes. Spinner-Halev gave the example of 'German Jews' and 'German Turks' (ibid 623).

Political theorist Hannah Arendt conceptualised a form of universal solidarity that encompasses the plurality of humankind. By observation of the French Revolution, Arendt claimed however that the concept of nation and citizenship prevailed over that of humankind. This meant that stateless people and refugees do 'not fit into the fabric of any state' (Reshaur 1992:731-732). A possible solution given by Arendt was the federal principle as a way to organise the infrastructure for universal solidarity (ibid 733-734).

Durkheim commented that solidarity in 20th century politics has been replaced by other concepts such as community, multiculturalism and human rights. Solidarity and collective social provisions have been weakened by individualism and state-centred democracy (Wilde 2007:171-172).

3.2.2. Inclusive and exclusive solidarity

Hannah Arendt and Charles Taylor both defined concepts of inclusive and exclusive solidarity. Arendt defined 'exclusive solidarity' as based on a community of interest to remove shared conditions which place one at risk, put differently as an act of self-help (Reshaur 1992:725). On the other hand 'inclusive solidarity' 'comprehends those who suffer and those who seek to make common cause with them' (ibid 725). An example given by Arendt was how Denmark established solidarity with Jews during the Nazi occupation

(ibid 728-729). Taylor differentiated between universal solidarity and between two other concepts (Smith & Laitinen 2009:57). The first one was civic or citizen solidarity, which can be a building block of patriotism and well-functioning democracies (ibid 52pp). The second one was socio-economic solidarity based on a sense of community and a mutual exchange of benefits (ibid 59-60).

Reshaur pointed out that while Arendt acknowledged that solidarity is not only about lifting oppression but also to overcome exploitation, she hardly mentioned solidarity in a socio-economic context. Arendt considered decent housing an administrative matter while Reshaur argued that it is about human dignity, which Arendt herself claimed was a legitimate goal of solidarity (Reshaur 1992: 736).

3.3. Solidarity on an individual level

3.3.1. Familiarity and relatability

Richard Rorty (1989) mean that solidarity requires creating a sense that 'the other' belongs to 'us'. Rorty explained that the reason why for example Danes and Italians saved Jews during the World War II was not due to solidarity based on the mere fact that they were also human beings. Rather, people were locally relatable; such as they were fellow citizens, belonged to the same profession or sports club, or were parents of small children (Rorty 1989:190). Therefore what is needed for greater solidarity according to Rorty, is to develop a sense of 'we', which includes people that are very different from ourselves, put differently, solidarity is made and not found (ibid 192, 195).

Staples (2011) argued that Rorty's theory is not applicable to stateless persons, (who I would argue, are in many ways in comparable situations as irregular migrants). The reasons are that Rorty's theory presupposes liberal communities that share norms and a sense of moral identity. These liberal communities are agents of sympathy and can call for a greater human rights culture based on solidarity with the marginalised (Staples 2011:1013-1014). Staples explained however that Rorty considered that the liberal communities share morality and language, while the most marginalised, the stateless, are the ones that have lost their dignity. Loss of dignity includes loss of culture and language. Without the community of culture and language Rorty in fact implied that a stateless person lacks morality and ways to communicate (ibid 1015-1016). Staples concluded that solidarity is therefore limited, and can only be stretched as far as it is 'compatible with the conditions of the liberal community' (ibid 1020).

3.3.2. Social movements

Allen (1999) compared feminist theorist Judith Butler's and Arendt's views on solidarity. Butler rejected the concept of solidarity, by arguing that it disables an understanding of how social movements formulate and strive for common goals. Arendt on the other hand formulated solidarity as non-repressive, non-exclusionary and achievable through collective political actions (Allen 1999:101-102). Just like Reshaur (1992), Allen discussed Arendts examples of Danish political acts of solidarity with Jews in Denmark (ibid 110-111). Solidarity should be considered a kind of power achieved, and with regards to successful feminist movements, Allen called for solidarity to be built with other movements such as those for gay rights, racial equality and labour rights (ibid 115).

Wilde (2007) questioned to what extent forces of globalisation provoke different forms of local solidarities (Wilde 2007:172). Social movements can be considered a new form of solidarity, such as ecological movements built on solidarity to future generations and other life forms (ibid 174). While the state competes for its interest in relation to other states, it is up to the global civil society to be the agent for promoting humanitarian values (ibid 179). It is possible to argue for human solidarity by learning about and empathising with other people's suffering, but it is easier when a group shares identity and moral obligations with these people (ibid 177). Wilde (2004) criticised both Rorty's anti-foundationalist approach and philosopher Axel Honneth's inter-subjectivist concept of solidarity (Wilde 2004:162). Wilde argued that 'ideological divisions require an explicitly ethical response' and that the 'radical-humanist approach to human solidarity' is a good example of this (ibid 176). Honneth is abstract and formal, he believe solidarity 'occurs in groups when each individual understands that she or he is 'esteemed' by all citizens to the same degree' and, considers that developing such an argument in relation to capitalism is a matter of social movements and not theory (ibid 165-166). Therefore, Wilde supported Erich Fromm's theory of radical humanism, influenced by Marx, which affirms that we can be happy only if developing solidarity with others (ibid 170).

In this chapter I have attempted to categorise theories of solidarity in three levels: societal, nation-state and individual. Several of the concepts could also be classified differently. Noteworthy is that many theories exclude important considerations, such as solidarity with irregular migrants.

4. PREVIOUS RESEARCH

In this chapter, I first present general views on solidarity and migration (4.1). The second part (4.2) looks particularly at research on solidarity and irregular migration and the consequences of criminalisation and resistance. The final part presents two country specific studies of France and the United Kingdom (4.3).

4.1. Solidarity and migration

Parkin's (2013) overview of academic literature and research in the broad field of criminalisation of migration in Europe places the issue of solidarity in the intersection between criminal law and migration management. Parkin distinguished between crimes that only foreigners can commit and crimes that are committed by those assisting migrants (2013:7). For the latter, Parkin provided few points of reference to research (FRA 2011a; Webber 2008). Aliverti (2012a) noted that immigration crimes have been given more academic attention than immigration offences, and the criminalisation of migration has been given more attention by social scientists than by criminal law (Aliverti 2012a: 418).

Goldner Lang (2013) provided an overview of the meaning of solidarity in relation to EU policies on border, asylum and immigration, burden-sharing and responsibility-sharing (Goldner Lang 2013:1). In order for a common asylum and migration system to function it requires a burden-sharing mechanism based on solidarity and Goldner Lang identified four conditions of solidarity: 1) loyalty in fulfilling the obligations, 2) trust among Member States, 3) fairness in terms of distribution of asylum seekers across the EU, and 4) necessity to work towards a secure and stable Union (ibid 2). Goldner Lang concluded that while solidarity has been referred to in a number of EU documents, studies show that there is little agreement to the exact meaning and scope of the term solidarity (ibid 12).

Mau & Burkhardt (2009) countered the perception that the inclusion of migrants would undermine solidarity. Their view is that the nation-state in Western Europe has the organisational structure for solidarity because it provides the basis of political identity and social morals, which are the building blocks of social security systems (Mau & Burkhardt 2009:214). Development shows that there has been a denationalisation of solidarity practices since 1950s and 1960s due to migrants being granted permanent residence, and this has made the nation-state less central and has broadened the understanding of solidarity (ibid 214). By analysing different variables of data from the European Social Survey, Mau & Burkhardt came to the conclusion that while there are some links between migration and welfare state

solidarity, they are weak. The perceived threat of increased migration undermining solidarity is exaggerated, many other institutional and political factors have been shown to play a role, such as gross domestic product, unemployment and welfare regimes (ibid 224-226).

Following Mau & Burkhardt's point against the belief that increased migration undermines solidarity (ibid 224-226) is the example of Romero-Ortuno (2004). Romero-Ortuno questioned the perception that providing generous healthcare to irregular migrants is a 'pull factor' that counters the objective of restrictive immigration policies (Romero-Ortuno 2004:250). Based on a study of six EU countries, Romero-Ortuno concluded that access to healthcare for undocumented migrants is not a pull factor, nor does restrictive care push immigration away (ibid 266). While healthcare has expanded since the 1960 based on the principle of universality and human rights, in reality it is only universal for citizens, and is limited for undocumented migrants (ibid 248-249 and 6.1.1).

4.2.   Solidarity and irregular migration

Bell (2010) discussed how social solidarity is linked to EU citizenship, and how social rights are based on reciprocity between Member States. In the same way as third country nationals are not guaranteed equal rights in the EU, Europeans are not guaranteed equal rights outside the EU (Bell 2010:151). EU law and EU policy do not recognise irregular migrants as social rights holders, instead solidarity is foremost referred to as a matter between Member States in managing immigration (ibid 163). Bell provides two main arguments in favour of broadening the concept of social solidarity include irregular migrants: Firstly, the situation of irregular migrants has shown that they are a sizeable group within the EU population and that they are vulnerable to exploitation (ibid 155). Secondly, various international and European human rights laws refer to the principle of solidarity and the universal concept of human dignity, which can support the inclusion of irregular migrants (ibid 162). In conclusions, for social solidarity to be reflected in EU law and policy, it has to be rebuilt on a foundation of human rights (ibid 165).

Carrera & Merlino's (2009) studied the criminalisation of solidarity and third parties, and concluded that it 'fosters social exclusion and constitutes a direct challenge to an EU of rights'(Carrera & Merlino 2009:33). Social networks and solidarity is what enables undocumented migrants to access their basic rights (ibid 33). While migration control has foremost been focusing on EU's external borders and enforcing the return of undocumented migrants, this has changed. The trend across the EU showed the way national authorities put in place instruments, administrative and penal sanctions to enforce the involvement of third

parties in state migration control. This may imply an obligation for service providers to refrain from providing assistance to irregular migrants or being obliged to report to immigration control when learning about their residence status (ibid 13).

Carrera & Parkin's (2011) study showed how local and regional authorities can be frontrunners to preserve and protect undocumented migrant's 'dignity and access to fundamental rights', sometimes actively intervening in contradiction with national priorities and policies (Carrera & Parkin 2011:3, 16, 21). This development at local and regional level takes place against the backdrop of the economic crisis in the EU, which has led to a conflict between solidarity, welfare and wellbeing. The EU institutions play a central part in turning irregular migration into a matter of security and in the criminalisation of solidarity (ibid 1-2). Undocumented migrants are particularly at risk of poverty and social exclusion due to the specific obstacles they face, mainly because they are considered criminals. Irregular migrant's lack of legal status has as a consequence that they fear approaching service providers out of fear of being reported to immigration control. Therefore 'channels that provide migrants with a degree of solidarity and social inclusion' are blocked (ibid 10).

Among the obstacles in terms of healthcare are requirements to provide documentation that they can cover the costs; lack of information; and the need of a translator. Hospital administration may have a duty to report and medical practitioners and health providers may lack information about what care they are obliged to provide (Carrera & Parkin 2011:12; PICUM 2003:53). With regard to housing, most Member States do not grant undocumented migrants and their families the right to access housing, nor assistance (Carrera & Parkin 2011:13 and 5.3.1).

Fekete (2009) provided examples of several EU governments seeking to criminalise acts of solidarity, with the intention not so much to prosecute as to warn those in civil society and public office that the threat of prosecution is real (Fekete 2009:84). The cases presented by Fekete illustrated a wide range of ways governments manage to instill fear in service providers, NGOs and individuals.

Provera (2015) compared criminal law in six EU countries (the UK, France, Italy, Germany, the Netherlands and Spain) with regard to irregular migrants and those acting in solidarity with them. Provera distinguished between institutional, normative and empirical legitimacy of a law: acting in solidarity with irregular migrants may undermine all these aspects because it is not considered the right thing to do and is therefore being contested and resisted (Provera 2015:7). The research shows that all the six countries punish by law those who assist undocumented migrants to stay irregularly in the country (ibid 18 and 5.1.3).

Furthermore countries impose a duty to report the presence of irregular migrants, for example public servants in Italy and Germany are under an obligation to report, but medical professionals are exempted. The same exemption exists informally in the Netherlands (Provera 2015:18). France has introduced exemptions to the criminalisation of solidarity (FRA 2014; Annex:10; Provera 2015:17). The UK on the other hand, has several measures in place such as an obligation for education providers to report, and for landlords to check the immigration status or to face fines (Provera 2015:19). Overall penalties imposed on those assisting persons to irregularly enter or stay are shown to be at least equal to or more severe than those against the irregular migrant themselves (ibid 16). Provera explained that the main policy rationale behind these criminal laws is the argument that criminal law is more efficient than administrative measures (ibid 19). At the same time these penalisation provisions do not have the deterring effect anticipated to control immigration (ibid 26). Consequences of criminalising irregular migrants and those assisting them includes that irregular migrants are being marginalised, more vulnerable to exploitation, and risk racial profiling (affecting also the regular migrant population). They are also being isolated socially and legally from their rights (ibid 27).

Citizens may demonstrate disapproval with the authority of the institutions by contesting and violating these criminal laws (Provera 2015:30). Such resistance (5.1.3, 5.2.2) is particularly visible at the local and regional governmental level. Furthermore, NGOs and service providers offer the services that national government fail to provide, while risking prosecution for assisting irregular migrants (ibid 34-35). Still current legislation in the EU creates a 'confusion among service-providers and those wanting to assist irregular migrants about the extent (if any) of assistance they can legally provide to irregular migrants' (ibid 27). Provera argues that the EU assumes that it can, with enforcement of laws, perfectly control immigration. If this conception is proven wrong and the EU is not able to fully control immigration, this would call into question whether the objectives of criminal law measures in immigration enforcement are proportionate to what they actually can achieve (ibid 8).

4.3. Country specific research

Allsopp (2012) conducted a case study of the French system, analysing how the concepts of *Fraternité* and *Solidarité* are understood by French citizens, in relation to the issue of providing assistance to vulnerable undocumented migrants (Allsopp 2012:3-4). *Fraternité* encompasses a tension between universalism and the particularism of the state (ibid 7). The concepts has been used for example by the church to point out the inclusive equality before

God (ibid 9) and by politicians such as Nicolas Sarkozy and Jean-Marie Le Pen to refer to exclusive solidarity with its own nationals (ibid 10-11). *Fraternité* has also been used to argue civil disobedience, to act in solidarity with vulnerable migrants against an oppressive government, 'holding the government to account for what it is 'supposed' to do' (ibid 20-21). The former French immigration minister Éric Besson provided a narrow definition of humanitarian action, excluding 'those who participate in an active collaboration, through passion, ideology or impudence, with networks indignantly exploiting human deprivation', which led to critical reactions from NGOs (ibid 23-24). Allsopp presented alternative marginalised discourses to the dominant universal obligations versus nation-state responsibility. One discourse regards 'religious imperative to act' and 'freedom to support all those who are suffering' (ibid 25), another refers to non-citizens, who are not linked to the history and ideology of the country itself (ibid 27).

Aliverti's (2012b) studied UK's fast and large expansion of both 'over-criminalisation' and 'over-punishment' of immigration regulations, with the main aim to remove irregular migrants. These regulations have been put in place as a way for the government to show decisiveness and toughness in a political time of social unrest and dismantling of the welfare state (Aliverti 2012b:420-421, 424). Although, the low and discretional enforcement demonstrates that the labelling of immigration offences is ambiguous, and symbolic rather than real (ibid 424, 428, FRA 2014a). The majority of the cases are victimless and not serious offences. The use of criminal law is therefore not proportionate, instead less intrusive and punitive interventions could be resorted to. Furthermore, these laws have shown not to have the deterring effect envisaged, which illustrates the contradiction between policy objectives and practices (Aliverti 2012b:426). Additionally, their enforcement may be seen as unethical because it lacks the positive aspect of control stemming from protecting the public against crime (ibid 515). When there are obstacles to administrative proceedings, authorities may pragmatically turn to criminal law to proceed with the removal of migrants who entered the country irregularly (ibid 519). Prosecution has shown to have been handled arbitrarily and depends on factors such as the resources of the responsible policy department and which crimes are considered a priority at the time being (ibid 520-521).

5. LEGAL FRAMEWORK

In this section I will present the legislative frameworks on an international, European and national level. This will be crucial for the understanding of my illustrative cases that will follow in the next chapter (6.0).

5.1. International level

The Convention for the Protection of Human Rights and Fundamental Freedoms, known as the European Convention on Human Rights (ECHR) came into force in 1953, and makes the Universal Declaration of Human Rights binding. With regards to undocumented migrants the first three articles are often referred to because they protect the migrants and disregard their residence status. Article 1 ECHR states that the parties have the obligation to respect human rights and 'shall secure to everyone within their jurisdiction the rights and freedoms', Article 2 ECHR states 'everyone's right to life shall be protected by law' and Article 3 ECHR points out that 'no one shall be subjected to torture or to inhuman or degrading treatment or punishment' (ECHR 2015). 'The denial of food, shelter, medical treatment etc. are all potential breaches of Article 3 ECHR as they may reduce the individual to a circumstance which is inhuman and/or degrading' (Council of Europe 2009:17).

The United Nations (UN) has two main instruments with specific relevance for facilitation of undocumented migrants: the UN Protocol against the Smuggling of Migrants by Land, Air and Sea and the UN Convention against Transnational Organised Crime (UNODC 2015). They have been ratified by all EU Member States, except for Ireland. Particular relevant for the topic of my thesis is the Convention against Transnational Organised Crime because it can be used for the exclusion for family members or other support groups such as religious groups or NGOs from punishment. Article 2a focuses on financial or other material benefits in reference to organised criminal groups (FRA 2014a:8).

> ''Organised criminal group' shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit' (UNODC 2015: Article 2a).

5.2. European level

5.2.1. The Council of Europe

The Council of Europe Collective Complaints is a process were NGOs can lodge a complaint against a member state that has signed but not properly implemented the European Social Charter. So far 14 out of 28 Member States allow for NGOs to lodge complaints (Council of Europe 2013). The European Committee of Social Rights, the body charged with supervising the application of the European Social Charter, has held that 'legislation or practice which denies entitlement to medical assistance to foreign nationals, within the territory of a State Party, even if they are there illegally, is contrary to the Charter' (Council of Europe 2009:26). It is to be noted that treatment denied by states to this group of persons may raise very serious issues with regard to their right to life (Article 2 ECHR) and their freedom from inhuman or degrading treatment (Article 3 ECHR) (ibid 2009:26). While the decisions of the European Committee of Social Rights are not legally binding, they still have legal significance for the interpretation of national and international law, and they can be used for political pressure and lobbying having a central effect in achieving legal and policy changes in a country (PICUM 2013:30).

5.2.2. The European Union

The term solidarity in itself occurs several times in the European treaties. Firstly, the Treaty on the European Union (Treaty of Lisbon 2010:13pp) states that solidarity is one of its founding values (Article 2) 'solidarity between generations… among Member States… among people' (Article 3), and a principle of the Union's external actions (Article 21, 24). Secondly, in the Treaty on the Functioning of the European Union (Treaty of Lisbon 2010:47pp) solidarity refers to 'a common policy on asylum, immigration and external border control' (Article 67) and 'sharing of responsibility' (Article 80). Furthermore, it also refers to solidarity between states with regard to economic policy of the EU (Article 122), in particular on energy (Article 194). Finally a specific clause deals with solidarity if a state is 'the object of a terrorist attack or the victim of a natural or man-made disaster' (Article 222). The European Charter of Fundamental Rights (Treaty of Lisbon 2010:389pp) outlines individual rights, including a chapter on solidarity that specify worker's rights (Article 27-33), social security and assistance (Article 34), healthcare (Article 36), access to services (Article 36) and environmental and consumer protection (Article 37-38). While the treaty grants citizens

rights, social and health protection measures are not expressly restricted to nationals or lawfully staying third-country nationals. (FRA 2011a:7).

Ross (2007) states that in the EU legal framework public services as a social rights are 'the least developed or accentuated in the list of solidarity concerns' (Ross 2007:2). The reference to services of general economic interest in the EU Charter of Fundamental Rights shows that national solidarity concerns supersede transnational solidarity. Ross argued that solidarity holds a normative power and should be given a clearer voice in securing the effectiveness of EU goals and laws (ibid 5).

Concretely the EU has one legislation in place. The Facilitation Directive (2002/90/EC) 'defining the facilitation of unauthorised entry, transit and residence', and its accompanying Framework Decision (2002/946/JHA), that oblige EU Member States to 'strengthening (…) the penal framework to prevent the facilitation of unauthorised entry, transit and residence'. While the directive implements UN instruments (5.1), it further covers facilitation of stay, where the UN Protocol does not apply (5.1). Member States are given the option to punish or not provision of humanitarian assistance without financial gain. Article 1 of the Facilitation Directive (2002/90/EC) reads:

> '1. Each Member State shall adopt appropriate sanctions on:
>
> (b) any person who, for financial gain, intentionally assists a person who is not a national of a Member State to reside within the territory of a Member State in breach of the laws of the State concerned on the residence of aliens.
>
> 2. Any Member State may decide not to impose sanctions with regard to the behaviour defined in paragraph 1(a) by applying its national law and practice for cases where the aim of the behaviour is to provide humanitarian assistance to the person concerned.'

The Facilitation Directive entered into force in December 2002 and it was supposed to be transposed into national law by December 2004. The Framework Decision (2002/946/JHA) includes in Article 6 a reference to the 1951 Convention Relating to the Status of Refugees, explaining that punishment for facilitation of entry and stay should not apply to those who help migrants in need of international protection (European Commission 2015; FRA 2014a:9).

5.3. National level

According to European law, Member States have the duty to issue return decisions to irregularly staying third-country nationals. This is explicitly regulated in the Return Directive (2008/115/EC) (FRA 2011a:45-46). As described above, Member States are obliged to apply

UN instruments against smuggling and organised crime and EU law against intentionally assisting a person to irregularly enter or stay in the EU. Ireland is the only EU member state that has opted out of the relevant UN instruments or EU law and consequently has no national punishment based on rules on facilitation of stay. In contrast to Ireland, all other EU Member States have legislation and punishment against facilitating the stay of undocumented migrants. All Member States regulate facilitation of stay through their criminal code, except Latvia and Lithuania that consider it an administrative offence (FRA 2014a, Annex:16-17). Some EU Member States penalise facilitation of stay with fines or imprisonment, others with both (FRA 2014a:8-9). A complete list of each country's legislation can be found in the annex to the EU Agency for Fundamental Rights Report (FRA 2014a, Annex:1-29). In total, eight countries do not allow for any legal exemptions from punishment, neither for facilitation of stay that is not for profit, nor for humanitarian assistance. These countries are Bulgaria, Croatia, Denmark, Greece, Latvia, Luxembourg, Romania and Slovenia. Other countries have outlined a few exceptions. Article 77 of the Belgian Immigration Act explicitly allows for two exemptions: renting accommodation and giving assistance if it 'was provided for humanitarian reasons' (FRA 2014 Annex:2). Italy clarifies that humanitarian assistance is not a crime if provided 'to foreigners in need, irrespective of their status'. The French Code of the Entry and Stay of Foreigners and Asylum Law, Article L 622-4 (FRA 2014 Annex:10) is based on the concept of dignity and allows for 'provision of food, accommodation or medical care to ensure dignified and decent living conditions for the non-national, or any other assistance to preserve the dignity or the health and wellbeing' of the non-national. Furthermore, both France and Austria allow humanitarian assistance to spouses, children and parents, France also includes siblings. Malta accepts that individuals help their family members as well, but only for a period of seven days. Germany exempts 'persons who act within the scope of their specific professional or honorary duties' and the UK allows organisations to assist asylum-seekers if the services are not charged for. A number of other countries take into account other circumstances: in Austria there should be no 'intention to prevent official measures over time'; Denmark considers reduced or dropped penalty if the offender can argue their case; and Finland also takes into account the motive behind the act. Finally, Spain requires that 'the damage caused is not greater than the damage sought to be prevented' (FRA 2014, Annex:1-29).

When punishment is not limited to certain acts, there is a risk that persons who support irregular migrants may also be targeted and NGOs may be uncertain whether or not they risk punishment when they provide support (FRA 2014a:11-12; PICUM 2003:43).

5.3.1. Focus: Housing

As explained above, opposed to the UN Convention against Transnational Organised Crime, which defines organised crime on the basis of, among others, financial gain for assisting irregular entry, the EU Facilitation Directive also criminalises irregular stay. It is therefore criminal to assist undocumented migrants if the intention is to profit financially from the activity. This is the explanation why renting accommodation is often considered a crime because it involves a financial transaction (FRA 2014a:8).

Landlords are explicitly punished for renting accommodation to undocumented migrants in Cyprus, Denmark, Estonia, Greece and Lithuania. In eleven Member States (FRA 2014, Annex), landlords may also risk a fine and/or imprisonment, based on the national rules on facilitation of stay. In another seven countries (Bulgaria, Czech Republic, Finland, Latvia, Romania, Slovenia and Spain) the punishment is a fine and in aggravated circumstances, it may be imprisonment. Of the remaining five Member States (FRA 2014, Annex), France and Malta both exclude punishing those who accommodate a close relative, although the Maltese exclusion is limited to no more than seven days. Italy punishes landlords for renting accommodation to irregular migrants only if they take unfair advantage of their vulnerable situation. Belgian law allows the provision of accommodation if it is for humanitarian reasons. As Ireland does not punish the facilitation of stay, it also does not punish landlords for renting accommodation to irregular migrants' (FRA 2014a:13).

5.3.2. Focus: Healthcare

Member States may exclude healthcare from the legal scope of the Facilitation Directive as long as there is no financial gain. France is the only country with an explicit legal exemption (5.3). Overall, the most important barriers for undocumented migrants to access healthcare are the restrictive national laws and affordability of care and treatment - in other words legal and financial barriers. Doctors of the World 'calls on States to offer universal public health systems built on solidarity, equality and equity, open to everyone living on their territory' (Macherey 2015:6-7). The practice in some Member States is further illustrated below (6.0).

5.3.3. Duty to report

In addition to legislation criminalising humanitarian assistance, there are other national practices that exist to enforce immigration law. These practices include detection strategies and approaches, such as arresting migrants near service providers or data exchange with public service providers (FRA 2011a:45-46; OHCHR 2014:59, 140). Some of the organisations, institutions and churches providing social and health services and education across Europe therefore face legal issues when trying to help undocumented migrants because of requirements to report them to the authorities (Eurodiaconia 2014:2; FRA 2011a:44). For example, teachers may be obliged to report migrant children enrolled in school (FRA 2011a:44). To illustrate, in 2004 heads of kindergartens in Bonn, Germany, were obliged by the public prosecutor's office to report undocumented children. The information was passed on to the Aliens Office and the children were moved to a detention centre in Berlin (Webber 2008:21). Such strategies generate fear and prevent undocumented migrants from accessing basic rights or seeking redress when these are violated' (FRA 2011a:45-46; Eurodiaconia 2014:2).

5.3.4. Restricted funding

Other sanctions may include that service provider get restrictions and/or sanctions for using funding for services also to undocumented migrants. Overall, it is difficult to obtain funding for working with undocumented migrants (PICUM 2003:77-78). A significant example are the structural and practical barriers for service providers to accommodate undocumented migrant women's need to access a shelter when escaping domestic violence. As an example, in Belgium, most centres do not receive reimbursement from the state and if the undocumented women cannot afford shelter themselves, the providers cannot help them (HRW 2012:49).

To sum up, the majority of laws consider providing humanitarian assistance to irregular migrants to a high degree as criminal. Additionally, service providers may be obliged to report undocumented migrants to the authorities or face restricted funding.

6. ILLUSTRATIVE CASES

In this section I provide a number of illustrative cases of criminalisation of solidarity and resistance against such criminalisation. While assisting irregular migrants may be considered a crime of facilitating both irregular entry and stay, this thesis is limited to assistance where migrants are already in an irregular situation in the EU (see delimitations 1.3). Undocumented migrants are often excluded from services that help to meet basic needs such as healthcare, shelter, food and clothing, as well as legal advice and protection, education and training (PICUM 2003:5, 22).

I have chosen to focus mainly on two different forms of provision of services to undocumented migrants: healthcare and housing. I will categorise the cases according to criminalisation (6.1) and resistance to criminalisation (6.2). I have selected healthcare because it is generally considered the most accepted by the public and authorities (PICUM 2003:52), and housing because it is the service that is the most challenged and where the situation has become worse the last years (FRA 2014a:13; PICUM 2003:55). Most examples of criminalisation are in the area of housing. In terms of resistance against criminalisation, most of the examples concerns healthcare.

Assistance that is given by established organisations is a rather small percentage of the assistance undocumented migrants can rely on: most help they receive comes from their own networks of family and compatriots (PICUM 2003:8, 74). Consequently, it may also affect the low number of known cases. Undocumented migrants are depending on the solidarity of their ethnic and/or religious community and NGOs (ibid 26, 42). Some work with all or certain categories of undocumented migrants or provide help to everybody, regardless of their status (ibid 77-78).

6.1. Criminalisation of solidarity

Criminalisation of solidarity takes different forms. In 2015, a migrants' rights activist in France was called before the city court, accused of facilitating the irregular residence of several migrants. He provided undocumented migrants with proof of accommodation in order to allow them to access social and medical services and to file a claim for asylum (Vindy 2015).

Webber (2008) illustrates with examples, although mostly predating 2005, that solidarity criminalisation across Europe is targeting a variety of NGOs and individuals, including politicians as well as religious people, such as nuns and imams (Webber 2008:22-

24). In some EU countries it is considered criminal to support anti-deportation campaigns, for example in Britain, as a court case shows (Fekete 2009:86). Aliverti (2012b) conducted a study based on interviews with practitioners and officials at the UK Border Agency and analysed court cases of immigration-crimes, including those of facilitation. The study showed that smugglers were rarely prosecuted, instead it were individuals helping a friend or relative who were prosecuted. In fact, petty crimes were targeted and not the ones profiting (Aliverti 2012b:513, 521). Aliverti gave a few examples of persons convicted for helping family members to enter the state, including:

> 'two friends who assisted the sister of one of them to enter the UK and to claim asylum, the lawyer asked the judge for a mitigated sentence because the offence was 'done for humanitarian reasons. This case is about saving one's life.' The person assisted was granted refugee status. Both defendants were convicted for the offence of facilitation and sentenced to 15 and nine months in prison, respectively' (Aliverti 2012b:522).

6.1.1. Focus: Healthcare

There are few known cases of criminalisation of the provision of healthcare to irregular migrants, this may be because it is generally accepted by the public and the authorities (PICUM 2003:52), even if in a limited form. Although some Member States make healthcare services available by law, they are often not accessible due to financial, administrative and other barriers (Carrera & Parkin 2011: 17; PICUM 2014c:3). Migrants are given treatment only in emergency situations and if their condition threatens public health (Deutshes Rotes Kreuz 2011:26-31; Romero-Ortuno 2004:245). A study of six EU countries shows that in some Member States healthcare providers may be reluctant to assist, because providing the service to an irregular migrant that is not insured or able to pay, may negatively affect the doctor's or manager's income (Romero-Ortuno 2004:267). I will not go into the cases because they are outdated for the scope of my thesis.

In a case prior to 2005 from Cyprus, an NGO was prosecuted for providing financial support to a migrant woman in order for her to receive urgent medical care, which resulted in the chairperson of the NGO being fined (Fekete 2009:88). In Italy, the right-wing political party Lega Nord proposed an amendment to the Italian 'security package', to repeal the protection for doctors treating patients with an irregular immigration from prosecution. In April 2009 the proposal was withdrawn (Council of Europe 2009:16).

6.1.2. Focus: Housing

Most Member States criminalise provision of accommodation to undocumented migrants (see national legislation, chapter 5.3.1).

Landlords in the UK may be punished for renting accommodation to migrants in an irregular situation. Migrants can rent flats only informally, which exposes them to a greater risk of abuse and exploitation (FRA 2014a:13; Residential Landlords Association 2013). Irregular migrants cannot claim their rights when for example the landlord asks for a too high rent or refuse to return the deposit (PICUM 2003:20-21). The situation has become worse since FRA's last report in 2009 (FRA 2014a:13). Since December 2014, landlords across Birmingham and the Black Country are obliged to check the immigration status of their tenants and face a £3,000 fine if they fail to comply. In 2015 the government may decide to enforce the system across the whole UK. The aim is to 'create a hostile environment' to make it difficult for undocumented migrants to stay in the country and for landlords to exploit them (Travis 2014). Since 2007, France stores data on anyone providing accommodation to foreigners without authorisation to stay (Fekete 2009:85). In April 2009, a woman in France was charged with aiding and abetting her fiancée, who was irregularly present in France. The couple had been living together for over five months. When they applied to marry they were questioned, the groom was expelled from France for irregularity and Jennifer Chary was charged with the offence which carries a penalty of five years in prison and a €30.000 fine. Following substantial publicity about the case, the prosecutor decided to drop the charges, and the fine and imprisonment were revoked (Council of Europe 2009:16; Guild 2010:15-16). Since then, the law in France has changed. In 2007 in Austria, a wife and daughter received a two months suspended prison sentence for not disclosing that their undocumented husband and father was living with them (Fekete 2009:86).

It is relevant to point out that existing shelter systems in Europe often aim to provide re-integration assistance for homeless people. These systems do not take into account the specific needs of migrants, even less undocumented migrants (PICUM 2013:14). Excluding migrants from shelters makes them even more vulnerable and marginalised, for example undocumented parents risk losing custody of their children if they cannot provide adequate shelter (PICUM 2003:55; 2014a:15). Edgar Legaspi, a migrant in the Netherlands explains that undocumented migrants are forced to rely on contacts within their communities and while solidarity can function as the basis for temporary housing and shelter, 'this is rarely a long-term solution' (PICUM 2014a:10).

6.2. Resistance against criminalisation

Citizens may demonstrate disapproval against the authority of the institutions by contesting and resisting these criminal laws. Such resistance is particularly visible at the local and regional governmental level (Provera 2015:30). Unlike national decision makers, regional and local authorities have realised that inclusion costs less than exclusion and by allowing irregular migrants to access services, they can tackle issues around public health, social cohesion and homelessness. Consequently they engage with migrants to resolve their irregular status (Eurocities 2015:1; Ryngbeck 2015a). As an example, Utrecht, a municipality in the Netherlands, contested its national policy by providing accommodation and medical shelters to rejected asylum seekers, and distributing leaflets to inform irregular migrants about their rights (Provera 2015:31).

The following two cases (6.2.1-6.2.2) demonstrate resistance in terms of mobilisation of NGOs: the first one on a campaign against national reform in Spain, and the second on a complaint with the Council of Europe against the Netherlands. Both cases encompass assistance with healthcare and housing, I have therefore chosen to present them prior to the focus sections on healthcare and housing (6.2.3-6.2.4).

In addition to the cases (6.2.1-6.2.4) I have included stakeholders' proposals (6.2.5) to illustrate structured forms of resistance, such as civil society organisations recommendation on how to change EU law and policy.

6.2.1. Spanish campaign 'Salvemos la Hospitalidad' (Let's save hospitality)

In the end of 2012 the Spanish government proposed a reform of the Criminal Code to criminalise solidarity with undocumented migrants. This led to a campaign by Spanish activists called 'Salvemos la Hospitalidad' (Let's save hospitality). The reasoning behind the campaign was that a state should not enforce rules criminalising solidarity. Instead it should 'step back' and not interfere with humanitarian and altruistic motives (Salvemos La Hospitalidad 2013a). In an interview one of the representatives of the campaign, Roberta Borda, said 'It was something which had nothing to do with the cuts, the crisis, the economic situation (…) It was something (...) that should never be [in the Criminal Code]: solidarity' (Sánchez 2013). Through social media and petitions the campaign gained strong support. In order to make the social opposition more official, motions were raised against the reform in city halls, provincial councils and regional parliaments. Andalusia Acoge, Secretary General of the campaign concluded that 'this shows that common sense doesn't have an ideology' (Sánchez 2013). By the end of 2013, the Government amended its proposal to explicitly

'exclude criminal punishment in all cases in which the actions has been carried out with a humanitarian purpose' (Provera 2015: 32; Salvemos La Hospitalidad 2013b).

6.2.2. Ruling by the Council of Europe against the Netherlands

In a recent case by the NGO 'Conference of European Churches (CEC) versus the Netherlands' (Complaint No. 90/2013) the European Committee of Social Rights concluded that the current Dutch social welfare system violates the rights of undocumented migrants, and that is not conforming with the European Social Charter's Article 13.4 (the right to social and medical assistance) and Article 31.2 (the right to housing). While the CEC claimed there was a breach of the European Social Charter, the Dutch government claimed the European Social Charter was not applicable to the case of irregularly residing migrants (Council of Europe 2014:2-3). The CEC emphasised that 'no exception to the right to emergency assistance should be allowed in situations where human dignity or life is at stake', denying services such as food and shelter are 'disproportionate means' considering it does not significantly affect the capability of the country's migration policy to control migration flows (ibid 14). The Dutch government on the other hand argued that migrants have a choice to leave and allowing access to housing and healthcare would only discourage cooperation to voluntary return. The Netherlands considered that they balance 'humanitarian interests' by allowing access to education for undocumented children, legal assistance and necessary medical treatment, and reiterated that the state has the sovereign right to control its borders (ibid 15-16). The European Committee of Social Rights ruled that denying access to housing and healthcare to adult undocumented migrants without resources constitutes a violation of the European Social Charter, namely Article 13.4 and 13.2. The Committee concluded that the Netherlands must provide adequate shelter to undocumented adult migrants, regardless of whether they have been requested to leave the country. They argued in line with CEC, that shelter is a matter of 'human dignity' and referred to previous case law of the Council of Europe Collective Complaints with regards to housing and homelessness (ibid 2014:21-22).

6.2.3. Focus: Healthcare

Many local and regional authorities have found innovative ways to overcome financial, administrative and other barriers that exist for undocumented migrants to access healthcare. The examples below illustrate how local authorities sometimes provide more inclusive

policies than national laws allow for, and are key advocates for improving the situation for irregular migrants (PICUM 2014c:4, 20; Ryngbeck 2015a).

In Belgium, emergency care is free of charge for everyone but in order for undocumented migrants to access the care there is a high administrative barrier to be passed. They need to register in order to receive a medical card and social assistance requires a house visit to determine destitution. These requirements lead to fear hindering actual access. Municipalities such as Molenbeek in Brussels and the city of Liege have shown flexibility with regards to the first medical visit (PICUM 2014c:5-6). Germany requires hospitals to inform the welfare office of planned surgeries, as a results undocumented migrants are only able to access emergency treatment. The city of Frankfurt has become a benchmark of good practice by cooperating with civil society setting up drop-in centres offering anonymous medical consultation and treatment. The city of Kiel intends to introduce an anonymous healthcare insurance certificate to ensure that undocumented migrants can visit a doctor without the fear of being reported (ibid 9-10). The Italian government has challenged the region of Puglia and Tuscany for extending access to healthcare for irregular migrants beyond the minimum urgent care allowed at national level, however the Constitutional Court found these claims inadmissible (ibid 12-13). Until September 1, 2012 all people living in Spain were guaranteed the right to free public healthcare. But as a reform was introduced linking this right to Spanish citizenship, undocumented migrants rights were limited to emergency care. Yet, the government of Catalonia and the regional government of Andalusia have adopted a complementary provision allowing irregular migrants register to access primary healthcare (ibid 14-16). In Sweden undocumented migrants have been required to pay the full costs for receiving emergency care. International attention and mobilisation of civil society resulted in a reform from July 1, 2013 that reduced the cost to a very small fee (ibid 17-19).

6.2.4. Focus: Housing

As explained above (5.3.1) housing is the service most challenged when being provided to undocumented migrants. As the service involves a financial transaction it is often considered a crime (FRA 2014a:8 and 5.1). For this reason, I have only two cases to illustrate resistance to criminalisation: The first case was already presented in 6.2.2. In it the Council of Europe case against the Netherlands (6.2.2) ruled in favour of both the right to social and medical assistance and the right to housing.

The second case is that of the Residential Landlords Association (RLA) in the UK. RLA has strongly opposed the introduction of the obligation on landlords across Birmingham and the Black Country to check the immigration status of their tenants (Travis 2014). RLA, representing 20.000 landlords and 250.000 properties in the UK has provided several arguments against the proposal of the UK Home Office's on immigration checks for tenants (The Residential Landlords Association 2013). In a survey of its members, 82 percent of the responding landlords answered that they did not support the Home Office proposal. Among others RLA argued it is wrong to expect landlords that are 'untrained British civilians' with no expertise in immigration matters to take on the work of immigration officials, who are 'trained UK border agency staff' (ibid 4, 13). Tackling irregular migration in this way is misleading and will not rebuild public confidence (ibid 7). Only in Europe there are 404 potential different identity documents, such a non-standardised system is too complicated for landlords to handle (ibid 5, 11). Furthermore, it will lead to increased discrimination because many landlords will prefer the easy option of only renting to UK nationals (ibid 5, 12). While the case of RLA is about resistance, its rationale is foremost against the duty to report (see 5.1.3) and not solidarity. Migrants' Rights Network (2014) in the UK also argued against the proposal of landlord checks for migrants but used a different rationale; they focused on the social consequences for irregular migrants, such as discrimination and further vulnerability, as well as the risk of ending up in destitution and homelessness (Migrants'Rights Network 2014).

6.2.5. Stakeholders' proposals

In 2002 PICUM (2.1.2) developed non-binding ethical guidelines aimed for social workers, aid workers, advisors, advocates and supporters when assisting undocumented migrants. The guidelines were based on the general principle of protecting 'the human dignity of all individuals' (PICUM 2002:1). It argued that it is legitimate to disobey laws if 'a state excludes its inhabitants from essential means of survival' then 'these residents have the right to disobey (…) in order to survive' (ibid 4-5), and forbidding assistance to undocumented migrants is in conflict with fundamental ethics. Although, it pointed out that it is harder to disobey the law in democratic countries, like EU Member States, than in undemocratic ones (ibid 4-5).

In 2009 the European Commission in cooperation with the European Economic and Social Committee set up a forum on integration, and since 2015 it also deals with issues of

migration. The European Migration Forum comprises of more than 100 representatives, including both national and European NGOs, EU institutions, local and regional authorities and EU Member States. In January 2015 the forum discussed, among others, 'a comprehensive approach to counter migrant smuggling'. Civil society came up with recommendations to decision-makers, including the endorsement of the EU Agency for Fundamental Rights' opinion to revise the Facilitation Directive to exclude humanitarian assistance, as well as the idea to 'create a firewall between immigration control and access to justice and services for migrants (…) to enable migrants and civil society organisations to report smugglers, violence and abuse by for example employer, landlord or partner, without risk of being deported' (European Migration Forum 2015). At the occasion of the forum Dimitris Avramopoulos, the European Commissioner for Migration, Home Affairs and Citizenship, expressed his support: providing 'assistance to smuggled migrants shall not be criminalised. I fully agree with this, of course, as I also agree on the need to protect the fundamental rights of those who are being smuggled. Those who we need to punish are the smugglers' (Avramopoulos 2015:3).

One of the NGOs active in this field is Social Platform. It consists of 48 European networks of social NGOs and 'build strategic alliances between NGO actors and EU officials' (Cullen 2010:318). It was founded in 1994 on the initiative of the European Commission. In March 2015 the Platform launched a campaign against 'Criminalising Solidarity' for the revision of the Facilitation Directive. It includes a survey with national NGOs and service providers if they felt pressure to exclude undocumented migrants from the services they provide, if they experienced any form of sanction due to the delivery of humanitarian assistance to an undocumented migrant and if they have had to conceal their activities to avoid sanctions in order to be able to provide these services. The responses will be gathered anonymously during 2015 to influence the European Commissions evaluation of the Facilitation Directive (Social Platform 2015).

7. DISCUSSION AND CONCLUSION

Building on my previous chapters, which describe the characteristics of and relationships among solidarity with irregular migrants (3.0-6.0), I will hereby discuss different answers to my research questions (1.2). Firstly, I will reason on how regulations that criminalise humanitarian assistance to undocumented migrants can be understood in connection with solidarity (7.1). Secondly, I will consider how resistance against criminalisation of humanitarian assistance to undocumented migrants can be understood in connection with solidarity (7.2).

7.1. Understanding criminalisation

There is not one single understanding of criminalising humanitarian assistance. On the contrary: theory, research, law and cases all provide different perspectives. I will provide four possible answers to how regulations that criminalise humanitarian assistance to undocumented migrants can be explained in connection with solidarity.

Firstly, one could claim that **European societies share an understanding that it is morally justifiable to criminalise those helping undocumented migrants**. Durkheim (3.1.1) provides a societal explanation of mechanical solidarity as the building block of the criminal code: it unites people by defining shared morality and consciousness through repressive laws. Criminalisation of facilitation of stay of irregular migrants is regulated through the criminal code in 26 out of 28 EU Member States (5.3). Durkheim argued that criminal law is built on shared moral grounds and some acts are considered criminal even if they are not dangerous for a society (3.1). Whether helping irregular migrants is considered dangerous is therefore not relevant, both ways it can be criminalised if a society as a whole considers it immoral. This explains why even petty crimes are criminalised (6.1), it also makes Provera and Aliverti's question of the purpose of the EU Facilitation Directive (5.2.2) redundant: they argued that if the aim of the directive is to control migration by targeting not only criminal networks but also those who act in solidarity, it is both disproportionate (4.2) and unethical (4.3).

Secondly, one could claim that **solidarity is for helping those with 'membership', which requires citizenship or residence permit**. In other words, solidarity is both exclusive and bound by the nation-state. Arendt and Taylor explained that solidarity is an exclusive phenomenon to be shared only with people eligible to be members (3.2.2), and undocumented

migrants are not. This means that criminalising humanitarian support to undocumented migrants is legitimate because undocumented migrants do not hold a membership, and are therefore not part of the group with whom one act in solidarity with. In this context, solidarity is for citizens belonging to the nation-state and this can, according to Habermans, only be expanded if the majority's needs are secured (3.2.1). Mau & Burkhardt (4.1) challenge the perception that migration as such denationalises a state, and thereby expand the concept of solidarity, albeit only to a certain degree, by including migrants with residence status. An interesting aspect is the idea by Arendt that solidarity may be possible on a federal level (3.2.1).

Thirdly, building on the explanation of exclusive solidarity based on membership of the nation-state, the national cases (6.0) offer an additional possible explanation: that **criminalisation contributes to immigration enforcement by deterring those who want to help and therefore discouraging irregular migrants from staying in the EU**. In the Council of Europe case against the Netherlands (6.2.2) the Dutch government defended its right to restrict provision of housing as a way to discourage undocumented migrants from staying, and instead encourage them to return to their country of origin. Other explanations are provided by those who argued against criminalisation. As far as the UK is concerned, Aliverti and Fekte argued that the UK's harsh law of up to 14 years imprisonment is merely a way of deterrence and showing political toughness (4.2). The Residential Landlords Association in the UK opposed what they understand as a way to rebuild public confidence by forcing a third party to take on the work of immigration officials, and Travis implied it is a way to create a hostile environment for migrants to stay and landlords to exploit them (6.1.2). As far as healthcare is concerned, Romero-Ortuno explained that provision of generous access to healthcare services is considered by some EU countries as a 'pull factor' that counter the objective of restrictive immigration policies (4.1). All these assessments indicate that sanctions against humanitarian assistance are in place first and foremost in order to evoke fear among citizens that otherwise might act in solidarity with irregular migrants. If this is the case, then this also explains why the law is poorly enforced, and only a few number of cases are to be found (4.2-4.3).

Fourthly, it can be argued that **law-making that criminalises humanitarian assistance takes place on a European and national level, where soldidarity cannot exist**. Rorty (3.3.1) reasoned that solidarity is being built on the local level where people know and relate to each other. Solidarity does not exist at a distance, which explains why the EU and national governments can put in place laws and regulations that also criminalise humanitarian

assistance to undocumented migrants. Even if solidarity is built locally among people that know each other, such an individual level is not a part of the judicial system as Durkheim states to (3.1.1), which explains why criminalisation remains. Only France, Austria and Malta partly recognise family ties as a reason for exemption from criminalisation, other Member States disregard the individual level in their law-making (5.3). Staples criticised Rorty's theory claiming that solidarity is limited also on a local level only to those that share the language and culture of the the community (3.3.1), which may exclude undocumented migrants.

7.2. Understanding resistance

Many of the answers to understanding criminalisation (7.1) can also serve as explainations of resistance against criminalisation of humanitarian assistance to undocumented migrants in connection with solidarity. I will hereby provide four alternative answers.

Firstly, Durkheim's theory of mechanical solidarity (3.1.1) provides the explanation that European societies share an understanding that it is morally justifiable to criminalise those helping undocumented migrants (7.1). However, **European societies disagree on whether or not it is morally justifiable to criminalise those helping undocumented migrants**. Representatives for the campaign 'Salvemos La Hospitalidad' (6.2.1) argued that solidarity has no place in the criminal code and states should not intervene with altruistic motives. PICUM's guidelines to professionals assisting undocumented migrants, state that disobeying laws is legitimate on the basis of the principle of dignity (6.2.5). Allsopp who studied solidarity in France came to the same conclusion that an act of solidarity can justify disobedience (4.3). Resistance can also be founded on **faith-based universal solidarity**. Some service providers justify their resistance and support to undocumented migrants on the basis of a religious faith or belief (Caritas Europe 2012; Eurodiaconia 2014). This supports Taylor's idea of universal solidarity, which includes all human beings, but is only possible if reconciled with a Christian faith (3.1.2).

Secondly, **resistance is built locally, in solidarity with undocumented migrants that are relatable and familiar**. Rorty's theory (3.3.1) explains that the EU and national governments can put in place criminal laws and regulations because solidarity cannot exist at a distance (7.1.2). The same theory shows that solidarity is built locally in a community, and that people are inclined to help if the irregular migrant is for example a neighbour, friend or colleague. In fact family members and friends provide support the most (6.0). The condition

for solidarity is a perception that the person is 'one of us' (3.3.1) and this explains that resistance takes place on the local and regional level, where authorities go against national policies as a way to preserve undocumented migrants' dignity and access to fundamental rights (6.2). France, Austria and Malta's exemptions' for family members (5.3) demonstrate both Taylor and Arendt's theory of exclusive solidarity (3.2.2) and Rorty's theory of solidarity with undocumented migrants who are 'one of us'. Also, based on Wilde and Allen's arguments that social movements are new forms of solidarity and a ways to build common goals (3.3.2), **resistance can be considered a social movement of solidarity**. The work of European NGOs such as PICUM and Social Platform (6.2.5) can be understood as such movements, and so can the nation wide campaign 'Salvemos la Hospitalidad' in Spain (6.2.1).

Thirdly, a **determining factor that justifies solidarity and resistance is the concept of dignity.** Several examples illustrate the value of dignity. According to Taylor, dignity is a part of humanity and the reason behind universal solidarity (3.2). The French law is unique in the sense that it defines humanitarian assistance as a way to 'preserve the dignity or health and wellbeing' (5.3). In the case of the Council of Europe against the Netherlands, the European Committee of Social Rights justified their decision on the basis of dignity (6.2.2). PICUM defined their ethnical guidelines on the principle of dignity (6.2.5). Further, dignity is a part of theories on inclusive solidarity as a marker for a community of shared culture, language and state.

Fourthly, **resistance can be built on other grounds than solidarity**. The case of the Residential Landlords Association demonstrate resistance that is not based on solidarity but rather on the fact that the landlords object the obligation to take on the task of immigration control, which they are neither trained nor designated to do. For some local and regional authorities their approach to include undocumented migrant and provide access to services is a way to tackle general problems of public health, social cohesion and homelessness, and thereby lower their costs for social exclusion (6.2).

7.3. Main findings

I have found that the characteristics of and relationships among solidarity with irregular migrants (3.0-6.0) is limited both in theory and research, and that several possible answers exist to understand the criminalisation of such acts and the resistance against this criminalisation in the EU (7.0).

As mentioned in the introduction (1.1) one of my reasons for studying criminalisation of solidarity was that the EU is currently evaluating the implementation of the 2002

Facilitation Directive (5.2.2). Existing and new cases (6.2.5) may therefore end up contributing to a comprehensive reform, which was exactly what Kin & Davis (2001) pointed out could be an important aim of case-based research (2.2). As a migrant in the Netherlands argued, solidarity can only be a temporary solution (6.1.2) to counter immigration laws that criminalise those helping undocumented migrants for humanitarian reasons. A permanent solution is needed, a reform which includes ensuring that solidarity is not criminal and undocumented migrants are ensured their basic human rights.

7.4. Further research

Several of the researchers I have referred to in my thesis propose further studies on the subject of solidarity and migration. Allsopp (2012) noted that there would be a need for a comparative study on the topic of criminalisation and solidarity, because criminalisation of assistance is a European-wide trend (Allsopp 2012:29). Provera (2015) suggested more empirical research to further clarify from which point acts of solidarity become criminal acts, and research methodology which accuretly caputers the effect that the EU Facilitation Directive is having on service providers, which goes beyond prosecution and conviction rates (Provera 2015:5). Prosser (2006) also called for more attention to social solidarity as a legal concept and rationale for regulations (Prosser 2006:365, 387). Further evidence and case-based research of criminalisation of humanitarian support to undocumented migrants in Europe will be crucial for the decision whether the European Commission will propose a revision of the Facilitation Directive by 2016.

Trends in Europe indicate a development of criminalisation of acts of solidarity with people most in need, which deserves to be taken seriously. While since 2012 in France the legislation allows for family members to assist undocumented migrants with legal advice, food, healthcare and housing, recent development question if criminalisation of solidarity is making a 'comeback' (Passeurs d'hospitalités 2015; Vindy 2015). In Italy Lega Nord put forward amendments to repeal the protection for doctors treating irregular migrants (Council of Europe 2009:16). In Norway the government put forward a far-reaching proposal against solidarity with an aim that was broader than targeting irregular migration. It suggested prosecuting beggars as well as those helping. Behaviour that would be sanctioned included for example providing transport, shelter or supplies to beggars (The Local 2015). In the Unites States such criminalising laws already exist in several cities, banning individuals and organisations providing food to homeless people (Ryngbeck 2015b). Even if both of the

proposals within the EU were withdrawn (Council of Europe 2009:16; The Local 2015), this indicates a worrying trend to be taken seriously, and therefore merits further research.

8. REFERENCES

Aliverti A. (2012a) *Making people criminal: The role of the criminal law in immigration enforcement*, Theoretical Criminology 16(4) pp 417-434, Sage.

Aliverti A. (2012b) *Exploring the Function of Criminal Law in the Policing of Foreigners: The Decision to Prosecute Immigration-related Offences*, Social & Legal Studies 21(4) pp 511-527, Sage.

Allen A. (1999) Solidarity after identity politics: Hannah Rendt and the power of feminist theory, Philosophy & Social Criticism, 25:97, pp 97-118.

Allsopp J. (2012) *Contesting fraternite: Vulnerable migrants and the politics of protection in contemporary France*, Refugee Studies Centre, Working Paper Series No. 82, pp. 1-38.

Avramopoulos D. (2015) *Keynote Speech at the European Migration* Forum, Commissioner for Migration, Home Affairs and Citizenship, 27 January, Available: http://ec.europa.eu/dgs/home-affairs/pdf/20150127_01_en.pdf (Accessed: 28 January 2015)

Bell M. (2010) *Irregular Migrants: Beyond the Limits of Solidarity*, pp 151-165, part of: Ross M. & Borgmann-Prebil *Promoting Solidarity in the European Union*, Oxford Scholarship Online.

Bellamy C. & 6 P. (2012) *Principles of Methodology: Research Design in Social Science*, Sage Publications.

Caritas Europe (2012) *Position paper on the rights of migrants in irregular situation*, November, pp 1-4, Available: http://www.caritas.eu/sites/default/files/121109cepositionpaperirregularmigration_0.pdf (Accessed: 17 May 2015)

Carrera S. & Merlino M. (2009) *Undocumented Immigrants and Rights in the EU: Addressing the Gap between Social Science Research and Policy-making in the Stockholm Programme*, Research Report 4 December, Centre for European Policy Studies, pp. 1-51, Available: http://www.ceps.eu/book/undocumented-immigrants-and-rights-eu-addressing-gap-between-social-sciences-research-and-polic (Accessed: 1 November 2014)

Carrera S. & Parkin J. (2011) *Protecting and Delivering Fundamental Rights of Irregular Migrants at Local and Regional Levels in the European Union*, Research Study 14 November, Centre for European Policy Studies, pp. 1-29, Available: http://www.ceps.eu/book/protecting-and-delivering-fundamental-rights-irregular-migrants-local-and-regional-levels-europ (Accessed: 19 February 2015)

CEPS – Centre for European Policy Studies (2015) *About us,* Available: http://www.ceps.eu/content/about-ceps (Accessed: 25 February 2015)

Council of Europe (2009), *Criminalisation of migration in Europe: Human Rights Implications*, Issue Paper by the Commissioner for Human Rights, pp 1-49. Available: http://oppenheimer.mcgill.ca/IMG/pdf/CoE-hamm-criminalisation-of-migration.pdf (Accessed: 11 February 2015)

Council of Europe (2013) *The European Social Charter's procedure of collective complaints*, Brochure from the Department of the European Social Charter and the European Code of Social Security, Available: http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/CollectiveComplaintsBrochure2013_en.pdf (Accessed 19 February 2015)

Council of Europe (2014a) *The European Committee of Social Rights: Conference of European Churches (CEC) v. the Netherlands*, Collective Complaints No. 90/2013, Available: http://www.coe.int/T/DGHL/Monitoring/SocialCharter/Complaints/CC90Merits_en.pdf (Accessed: 6 February 2015)

Council of Europe (2014b) *the Council of Europe in brief*, Available: http://www.coe.int/en/web/about-us/who-we-are (Accessed 25 February 2015)

Cullen P. (2010) *The Platform of European Social NGOs: ideology, division and coalition*, Journal of Political Ideologies, 15:3, pp 317-331.

Deutshes Rotes Kreuz (2011) *Position paper: Life in illegal residencey – a position*, Available: http://www.drk.de/fileadmin/Presse/Dokumente/web_DRK-Positionspapier_K-9-5-11.pdf (Accessed 24 February 2015)

Durkheim E. (2014 [1902]) *The Division of Labor in Society,* (transl. from French *De la division du travail social* (second edition) by Halls W.D.), Free Press, New York (this edition 2014).

ECHR - European Convention on Human Rights (2015) *Official texts*, Available: http://www.echr.coe.int/Pages/home.aspx?p=basictexts&c=#n1359128122487_pointer (Accessed 27 February 2015)

Eurocities (2015) *Political statement on asylum in cities*, May, pp 1-4, Available: http://www.eurocities.eu/eurocities/publications/EUROCITIES-statement-on-asylum-in-cities-WSPO-9WFNGE (Accessed 17 May 2015)

Eurodiaconia (2014) *Access to social and health services for migrants in Europe: overcoming barriers*, October, pp 1-28, Available: http://www.eurodiaconia.org/images/stories/2014_events/final%20migration%20report%20for%20web%20301014.pdf (Accessed: 27 February 2015)

European Commission (2014) *e-Library: Glossary*, Migration and Home Affairs, Available: http://ec.europa.eu/dgs/home-affairs/e-library/glossary/index_i_en.htm (Accessed: 11 April 2015)

European Commission (2015) *Fact Sheet - Question and Answers: Smuggling and Migrants in Europe and the EU response*, January Memo/15/3261, Available: http://europa.eu/rapid/press-release_MEMO-15-3261_en.htm (Accessed 18 May 2015)

European Migration Forum (2015) Available: http://www.migrationforum.net/ (Accessed: 28 January 2015).

Fekete L. (2009) *Europe: crimes of solidarity*, Race & Class, No. 50:83, pp 83-97.

Flyvbjerg (2006) *Five Misunderstandings About Case-Study Research*, Qualitative Inquiry, Volume 12:2, pp 219-245, Sage.

FRA - European Union Agency for Fundamental Rights (2011a) *Fundamental rights of migrant in an irregular situation in the European Union*, Available: http://fra.europa.eu/sites/default/files/fra_uploads/1827-FRA_2011_Migrants_in_an_irregular_situation_EN.pdf (Accessed: 1 November 2014)

FRA - European Union Agency for Fundamental Rights (2011b) *FRA research: providing robust, comparable data and analysis*, Available: http://fra.europa.eu/en/publication/2011/fra-research-providing-robust-comparable-data-and-analysis (Accessed: 14 March 2015)

FRA- European Union Agency for Fundamental Rights (2014a) *Criminalisation of migrants in an irregular situation and of persons engaging with them*, Available: http://fra.europa.eu/en/publication/2014/criminalisation-migrants-irregular-situation-and-persons-engaging-them (Accessed: 10 January 2014)

FRA- European Union Agency for Fundamental Rights (2014b) *About the FRA*, Available: http://fra.europa.eu/en/about-fra (Accessed: 25 February 2015)

Goldner Lang I. (2013) *Is There Solidarity on Asylum and Migration in the EU?*, Croatian Yearbook of European Law and Policy, Volume 9, Available: http://www.cyelp.com/index.php/cyelp/article/view/172/111 (Accessed: 13 January 2015)

Guild E. (2010) *Criminalisation of Migration in Europe: Human Rights Impl*ications, Council of Europe Issue Paper 4, Available: https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=1674040&SecMode=1&DocId=1535524&Usage=2 (Accessed: 4 February 2015)

HRW - Human Rights Watch (2012) *'The Law was Against me' Migrant Women's Access to Protection for Family Violence in Belgium*, November, Available: http://www.hrw.org/sites/default/files/reports/belgium1112webwcover.pdf (Accessed 27 February 2015)

IOM - International Organisation for Migration (2011) *Key Migration Terms,* Available: https://www.iom.int/cms/en/sites/iom/home/about-migration/key-migration-terms-1.html#Irregular-migration (Accessed 11 April 2015)

Macherey A. (2015) *Legal Report on Access to Healthcare in 12 Countries*, Medecins du Monde (MdM) International Network, Available: https://mdmeuroblog.files.wordpress.com/2014/05/mdm-legal-report-on-access-to-healthcare-in-12-countries-3rd-june-20151.pdf (Accessed: 19 July 2015)

Mau S. & Burkhardt C. (2009) *Migration and welfare state solidarity in Western Europe*, Journal of European Social Policy, Volume 19(3), pp 213-229.

Migrants' Rights Network (2014) *Immigration Bill briefing for House of Lords: The implication of landlord chekcs for migrants in the UK*, Available: http://www.migrantsrights.org.uk/files/publications/MRN_briefing-landlord_checks-House_of_Lords-Feb_2014.pdf (Accessed 17 July 2015)

OHCHR – United Nation Human Rights Office of the High Commissioner (2014) *The Economic, Social and Cultural Rights of Migrants in an Irregular Situation*, No. E.14.XIV.4, Available: http://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf (Accessed 18 May 2015)

Parkin J. (2013) *The Criminalisation of Migration in Europe: A State-of-the-Art of the Academic Literature and Research*, Centre for European Policy Studies, No. 61, pp 1-30.

Passeurs d'hospitalités (2015) *La Retour en Force Du Délit De Soildraité*, Blog post 28 January 2015, Available https://passeursdhospitalites.wordpress.com/2015/01/28/le-retour-en-force-du-delit-de-solidarite/ (Accessed: 18 February 2015)

PICUM (2002) *Ethical Guidelines for Assisting Undocumented Migrants*, October, pp. 1-6 Available: http://picum.org/en/resources/ethical-guidelines/ (Accessed: 20 February 2015)

PICUM (2003) *Book of Solidarity*, Volume 1, Available: http://picum.org/picum.org/uploads/publication/Book%20of%20Solidarity%20VOL%201_1.pdf (Accessed 26 September 2014), pp 1-103.

PICUM (2013) *Using Legal Strategies to Enforce Undocumented Migrants' Human Rights,* Workshop Report pp 1-41, Available: http://picum.org/picum.org/uploads/publication/Using%20Legal%20Strategies%20to%20Enforce%20Undocumented%20Migrants'Human%20Rights.pdf (Accessed: 20 March 2015)

PICUM (2014a) *Housing and Homelessness of Undocumented Migrants in Europe: Developing Strategies and Good Practices to Ensure Access to Housing and Shelter*, Report March, Available: http://picum.org/picum.org/uploads/publication/Annual%20Conference%202013%20%20report%20HOUSING_EN_FINAL.pdf (Accessed: 28 December 2014)

PICUM (2014b) *Terminology Leaflet: Why 'undocumented' or 'irregular'?* June, Available: http://picum.org/en/our-work/terminology/ (Accessed: 20 February 2015)

PICUM (2014c) *Access to Health Care for Undocumented Migrants in Europe: The Key Role of Local and Regional Authorities*, Policy Brief October, Available: http://picum.org/picum.org/uploads/publication/PolicyBrief_Local%20and%20Regional%20 Authorities_AccessHealthCare_UndocumentedMigrants_Oct.2014.pdf (Accessed 27 February 2015)

PICUM (2015) *About us*, Available: http://picum.org/en/about-us/ (Accessed 25 February 2015)

Prosser T. (2006) *Regulation and Social Solidarity*, Journal of Law and Society, Volume 33. no 3, pp 364-387.

Provera M. (2015) *The Criminalisation of Irregular Migration in the European Union*, Center for European Policy Studies, No. 80, Available: http://www.ceps.eu/book/criminalisation-irregular-migration-european-union (Accessed: 3 February 2015)

Reshaur K. (1992) *Concepts of Solidarity in the Political Theory of Hannah Arendt*, Canadian Journal of Political Science, Volume 25, No. 4, pp 723-736.

Residential Landlords Association (2013) *Tackling illegal immigration in privately rented accommodation*, pp 1-37, Available: http://news.rla.org.uk/wp-content/uploads/2013/08/ten.0813.rla_.tackling-illegal-immigration-in-privately-rented-accommodation-consultation-response.pdf (Accessed 3 April 2015)

Romero-Ortuno R. (2004) *Access to health care for illegal immigrants in the EU: should we be concerned?* European Journal of Health Law 11, pp 245-272.

Rorty R. (1989) *Contingency, Irony, and Solidarity*, Cambridge University Press, pp. 1-201

Ross M. (2007) *Promoting Solidarity: From public services to a European model of competition?*, Common Market Law Review 44.4, pp 1057-1080 (print version, pp 1-9).

Roy H. (2014) *Criminalising Solidarity,* Opinion 19 December 2014, Europolitics, Available: http://europolitics.info/internal-policies/criminalising-solidarity (Accessed: 18 February 2014)

Ryngbeck A. (2015a) *Catching the big fish or avoiding the elephant in the room?* Blog post for Social Platform 27 Mar, Available: http://www.socialplatform.org/blog/catching-big-fish-or-avoiding-the-elephant-in-the-room/ (Accessed: 27 March 2015)

Ryngbeck A. (2015b) *Politics of fear shapes laws on homelessness* Blog post for Social Platform 18 Jun, Available: http://www.socialplatform.org/blog/politics-of-fear-shapes-laws-on-homelessness/ (Accessed 18 July)

Salvemos La Hospitalidad (2013a) *Orígenes de la campaña*, Campaign website, Available: http://salvemoslahospitalidad.org/index.php/origenes-de-la-campana (Accessed: 18 February 2015)

Salvemos La Hospitalidad (2013b) *SALVEMOS LA HOSPITALIDAD" felicita al Gobierno por rectificar e impedir que la hospitalidad y la solidaridad sean delito*, Campaign website, 25 September, Available: http://salvemoslahospitalidad.org/index.php/2-uncategorised/70-salvemos-la-hospitalidad-felicita-al-gobierno-por-rectificar-e-impedir-que-la-hospitalidad-y-la-solidaridad-sean-delito (Accessed: 18 February 2015)

Sánchez N. (2013) *¡Salvemos la hospitalidad!*, blogs Planeta Futuro: 3500 Millones, El País, 5 April, Available: http://blogs.elpais.com/3500-millones/2013/04/salvemos-la-hospitalidad.html (Accessed via English transl. http://picum.org/en/news/blog/39869/ Accessed: 18 February 2015)

Silverman, D. (2011) *Interpreting Qualitative Data: A Guide to the Principles of Qualitative Research*, Fourth edition, Cornwall: Sage.

Smith N. H. & Laitinen A. (2009) *Taylor on Solidarity*, Thesis Eleven, 99:48, pp 48-70

Social Platform (2015) *Criminalisation of Solidarity*, Online campaign, Available: http://www.socialplatform.org/what-we-do/over-arching-campaigns/criminalising-solidarity/ (Accessed: 20 March 2015)

Spinner-Halev J. (2008) *Democracy, Solidarity and Post-nationalism*, Political Studies, Volume 56, pp 604-628.

Staples K. (2011) *Statelessness, sentimentality and human rights: A critique of Rorty's liberal human rights culture*, Philosophy and Social Criticism 37(9), pp. 1011-1024.

Taylor C. (2010) *Solidarity in a Pluralist Age* , 27 September , Available: http://www.project-syndicate.org/commentary/solidarity-in-a-pluralist-age (Accessed: 28 April 2015)

The Local (2015) *Norway anti-begging law stopped after global fury*, Norway, 5 February, Available: http://www.thelocal.no/20150205/norway-is-trying-to-criminalise-policy-swedish-roma-tsar (Accessed: 18 February 2015)

Travis A. (2014) *Landlord migrant check scheme to be rolled out in West Midlands*, The Guardian home affairs editor, 3 September, Available: http://www.theguardian.com/uk-news/2014/sep/03/landlord-migrant-check-tenants-west-midlands (Accessed: 28 December 2014)

Treaty of Lisbon (2010) *Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union*, Available: http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2007:306:FULL&from=EN (Accessed: 10 March 2015)

UNODC - United Nations Office on Drugs and Crime (2015), *United Nations Convention against Transnational Organized Crime and the Protocols Thereto*, Available: http://www.unodc.org/unodc/treaties/CTOC/ (Accessed: 21 February 2015)

Vindy M. (2015) Dijon : soutien à un militant dénoncé pour une aide au séjour irrégulier, Dijon Ville, 28 January, Available: http://www.bienpublic.com/edition-dijon-ville/2015/01/28/dijon-soutien-a-un-militant-denonce-pour-une-aide-au-sejour-irregulier (Accessed: 18 February 2015)

Webber F. (2008) *Border wars and asylum crimes*, pp 1-37, Statewatch, Available: http://www.statewatch.org/analyses/border-wars-and-asylum-crimes.pdf (Accessed: 30 October 2014)

Wilde L. (2004) *A 'Radical Humanist' Approach to the Concept of Solidarity*, Political Studies, Volume 52, pp 162-178.

Wilde L. (2007) *The Concept of Solidarity: Emerging from the Theoretical Shadows?*, The British Journal of Politics & International Relations, Volume 9, pp 171-181.

Yin K. R. & Davis D. (2001) *Adding New Dimensions to Case Study Evaluation: The Case of Evaluating Comprehensive Reforms.*