

Joint Master in Global Economic Governance and Public Affairs

***Solidarity with Migrants as Freedom of
Expression: Protecting Private Actions in
Italy and France***

Supervised by Dr. Cristina Teleki

Elena Courbé-Varnitzky

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Statutory declaration

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26 June 2026, Elena Courbé-Varnitzky

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Abstract

The European Union presents itself as a legal order built on fundamental rights, yet migrants and, increasingly, those who act to defend them are treated as threats to be managed. In Italy and France, administrative and criminal measures that disrupt solidarity actors without necessarily securing convictions are commonly applied, while existing legal protections remain fragmented. This thesis asks whether private acts of solidarity with migrants can be characterized and protected as freedom of expression under Article 10 of the European Convention on Human Rights. Using a comparative legal and doctrinal methodology, the thesis shows that Italy and France have built distinct enforcement logics that nonetheless converge on a strategy of intentional dissuasion. As a reactive tool, the analysis finds that Article 10 ECHR reaches solidarity wherever it is intentionally communicative, such as monitoring or denouncing border practices, while silent material aid conveying no message falls outside its reach. The thesis identifies expressive solidarity as a distinct category, converging the political speaker, the civil-society watchdog, and the defender of others' rights, though acknowledging that the protection remains bounded by the right's derogable nature. Beyond courts, the thesis argues that reframing solidarity as expression prevents its depoliticization and allows for the repositioning solidarity actors as participants in public debate, crucial, because protecting them is inseparable from protecting migrants themselves.

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1 Introduction

1.1 Background and context

Across Europe, migration governance has increasingly come to rest on a logic of containment, expressed through external cooperation, returns prioritization, and heightened policing both at sea and along internal borders¹. Against this backdrop, private solidarity initiatives, encompassing search-and-rescue operations, monitoring and documentation activities, as well as the provision of food, water, shelter, transport, and accommodation², are facing growing legal pressure. Humanitarian action is increasingly treated with suspicion and, in many cases, sanctioned through legal means³ even as the European Union (here after, EU) presents itself as a legal order based on fundamental rights.

At the same time, constraints that make solidarity materially harder to sustain are increasingly deployed by EU member states. In Italy and France, this dynamic has been particularly visible along the Mediterranean route and at internal borders, where authorities resort to legal instruments capable of disrupting NGO operations and volunteer initiatives without necessarily resulting in definitive criminal convictions. Schengen loopholes⁴ have allowed anti-terrorism measures to be permanently incorporated into domestic law and repurposed to restrict the secondary movement of asylum seekers⁵. In reaction, the “*borderization*” of certain areas, characterized by thriving human patrols, material controls, and legal proceedings, has multiplied the number of (un)official organizations pursuing humanitarian, legal or activism aims⁶. The systemic targeting of solidarity practices has given rise to what may be described as a judicialization of struggles. Law, rights, and courts have become the terrain on which states seek to defend migration-control measures while solidarity actors, growing from human rights lawyers to civil society organizations, endeavor to assert the lawfulness and political legitimacy of their actions⁷.

¹ See: Section 5.2.

² See: Table 1, Section 2.1.

³ See: Section 5.3.

⁴ Checks at national borders are continuously reinstalled by Member states within the Schengen space, legally enabled by article 25 and article 26 of Regulation (EU) 2016/399, 2016, as modified by Regulation (EU) 2024/1717, 2024.

⁵ Such decisions are usually approved by domestic courts. See, for a recent case at the French borders: Conseil d’Etat, 7 mars 2025, n°499702.

⁶ For example, in the Roya Valley: Boudou, B. (2023) Repertoires of sanctuary: building a network of safety at the French–Italian border. *Journal of Ethnic and Migration Studies*, 49.

⁷ Çıdam Ç., Cortés L., Gündoğdu A., Moreno-Lax V. (2025) Solidarity as Legal Mobilization. *AJIL Unbound*. 119: pp. 21.

In this light, this study aims to ask whether solidarity can be understood, not only as humanitarian conduct, but also as manifestation of expression, falling under the scope of the right to freedom of expression as defined in Article 10 of the European Convention on Human Rights (here-after, ECHR).

This question arises at a troubled time for the European human rights system, which is facing mounting political pressure regarding migration. In a remarkable three-stage process, nine Council of Europe member states⁸, then twenty-seven⁹, and ultimately the institution of the Committee of Ministers itself¹⁰, have wished to influence the European Court of Human Rights' (here-after, ECtHR) interpretations. Twenty-seven states called for an interpretation and application of the Convention that they argued would better balance individual rights with security and migration management. In the latest declaration, state parties, including France and Germany that hadn't endorsed the two earlier initiatives, reiterate concerns regarding what they perceive to be an "*instrumentalisation*" of migration enabled by the conventional architecture¹¹. This framing signals a broader attempt to recast the ECtHR's migration jurisprudence as structurally imbalanced rather than principled. As one could have predicted, state parties placed particular emphasis on the principles of subsidiarity and on the need for a wider margin of appreciation for states, specifically in regard to the interpretation of Article 3 and Article 8 of the ECHR¹².

Together, these common statements reflect an institutional climate in which states are urging Strasbourg to show considerably greater deference in migration disputes, outstandingly this time through the executive body of the Council of Europe. While the common Declaration formally reaffirms that all migration measures remain subject to full compliance with Convention obligations and stops short of directly challenging the ECtHR's interpretive sovereignty¹³, the political pressure it encodes¹⁴ may nonetheless temper the Court's evolutive approach in migration case law. Originally enough, these three declarations rest on a remarkably narrow empirical foundation: between one and two percent of the ECtHR's case law relates to migration, and that only six percent of those migration-related cases have resulted in a finding of violation¹⁵.

⁸ Open letter of the Nine Governments, 22 May 2025.

⁹ Ministers of Justice of the Council of Europe, 10 December 2025. Joint Statement delivered to the Conference of Ministers of Justice of the Council of Europe.

¹⁰ Committee of Ministers of the Council of Europe. 15 May 2026, 135th Session. Chişinău Declaration.

¹¹ *Ibid*, §§37-40.

¹² *Ibid*, §§4-5, §§22-33.

¹³ *Ibid*, §18.

¹⁴ As illustrated, for instance, by the recurrence of the "shared responsibility" rhetoric: *Ibid*, §§7-9.

¹⁵ ECtHR, 2026. Document overviewing the Court's case-law on immigration matters.

Crucially, the established risk of a differentiated or weakened protection of individuals seen as migrants may extend beyond that category to encompass those who act in their defense¹⁶. Restrictions on solidarity actors may constitute a derivative form of the same logic, targeting those who contest the very conditions states seek to insulate from scrutiny.

The current context also challenges the evolutive interpretation technique that has historically underpinned the ECtHR's reasoning, namely the principle that the Convention it undersees must be read in light of present-day conditions¹⁷. States parties appear to argue that it is precisely the current migration situation that demands new interpretive approaches, expressly invoking the concept of a "*democracy capable of defending itself*" as a relevant justification¹⁸. They have further called on the ECtHR to accommodate recent state practices, including the processing of asylum claims in third countries, the establishment of return hubs, and cooperation arrangements with transit states¹⁹, namely measures that have been challenged under conventional standards²⁰.

In many EU countries, contestation turns on the authority of the judge²¹. In France, 2023 Interior Minister Gérald Darmanin expelled an Uzbek national in deliberate disregard of both an interim measure indicated by the ECtHR and a Conseil d'État order to suspend the removal²². This unprecedented defiance matched, in register, Italy's diplomatic campaign to loosen Strasbourg's grip. Indeed, Rome has positioned itself at the forefront of calls to rethink ECHR interpretation on migration, notably through the May 2025 letter initiative²³ that later catalyzed the following declarations. Italy has also expanded administrative constraints on maritime civil society: the Piantedosi and the Flussi decrees as well subsequent administrative measures have been criticized for enabling detentions of NGO vessels and escalating sanctions²⁴. In France, the latest immigration law

¹⁶ Agora Group, 2026. media release on the Chişinău Declaration.

¹⁷ Burgogue-Larsen, L. 2026. "Actualité de la convention européenne des droits de l'homme (septembre – décembre 2025)." *Actualité Juridique Droit Administratif (AJDA)*, no. 4/2026, pp. 198–199.

¹⁸ Committee of Ministers of the Council of Europe. 15 May 2026, 135th Session. Chişinău Declaration, §39.

¹⁹ *Ibid*, §45-47.

²⁰ See, in the context of the UK-Rwanda agreement: ECtHR, 14 June 2022. *N.S.K v. United-Kingdom*. No. 28774/22, United-Kingdom Supreme Court, 15 November 2023, *R (on the application of AAA and others) (Respondents/Cross Appellants) v. Secretary of State for the Home Department (Appellant/Cross Respondent)*, UKSC/2023/0093.

²¹ Growing institutional friction on migration issues is also visible in the UK, forefront thinker and leader for the ECHR. The British Conservative Party affirmed that it would withdraw from the ECHR and repeal the Human Rights Act if returned to government, citing these instruments as obstacles to key migration policies. See: As party leader Kemi Badenoch stated in October 2025, following the publication of the commissioned Wolfson Report, "ADVICE TO THE LEADER OF THE CONSERVATIVE PARTY RE ECHR".

²² *Le Monde*, 2023. Gérald Darmanin épinglé pour avoir expulsé un Ouzbek en violation d'une mesure prescrite par la CEDH.

²³ Open letter of the Nine Governments, 22nd of May 2025.

²⁴ Statewatch, 2025. Italy's "systematic obstruction" of civilian search and rescue missions must end.

drew a prominent review by the Conseil constitutionnel²⁵, which Interior Minister Bruno Retailleau publicly accused, in November 2024, of overstepping its role by setting constitutional limits on migration legislation²⁶. Similarly, after Italian magistrates refused to validate the Albanian detentions²⁷, Justice Minister Carlo Nordio called their ruling “*abnormal*” and warned that where judges exceed their powers, elected politics must intervene²⁸. Meanwhile, Prime minister Giorgia Meloni dismissed the decisions as “*prejudicial*”²⁹. Thus, across both states, a calculated discourse erodes the deference owed to supranational and constitutional judicial constraints, recasting courts that apply the law as political adversaries of the popular will³⁰.

It is precisely in this context that the question of alternative, supplementary, different legal frameworks becomes urgent. This research tests whether a framing through Article 10 ECHR could improve the protection of solidarity defenders in Italy and France. While sharing comparable exposure to Mediterranean migration pressures and European law constraints, the two countries have developed distinct regulatory and judicial responses to solidarity practices, at sea and at land borders. The thesis analyses how courts and litigants have framed these practices so far, and on that basis, assesses whether a freedom of expression framework could offer a more coherent and effective basis for the protection of solidarity actors.

1.2 Research Significance

This research is significant because it addresses a gap in the existing legal scholarship on criminalization of acts of solidarity with migrants. While a growing body of literature has documented how private actors assisting migrants are exposed to criminal investigations, prosecutions, administrative sanctions, and bureaucratic obstruction, they reckon that the legal protection available

²⁵ Loi n° 2024-42 du 26 janvier 2024 pour contrôler l'immigration, améliorer l'intégration following décision n° 2024-863 DC du 25 janvier 2024 of the Conseil constitutionnel, censuring a large number of provisions, mostly as legislative riders.

²⁶ As leader of a parliamentary group, Bruno Retailleau characterized the Conseil constitutionnel's censure of the immigration law as a denial of Parliament's power (dénégar le pouvoir du Parlement). As Interior Minister, he stated that the rule of law is neither intangible nor sacred (ni intangible, ni sacré) grounding it in popular sovereignty. As candidate for the 2027 Presidential elections, he stated: “*Je suis pour l'état de droit mais je ne pense pas que quelques magistrats nommés au conseil constitutionnel puissent réviser d'eux-mêmes la constitution, c'est-à-dire lui faire dire ce qu'elle ne dit pas*”.

²⁷ Tribunale di Roma, sez. XVIII civile (immigrazione), decreti 18 ottobre 2024, nn. 42251 e 42256 (non-validation of the detention of twelve Egyptian and Bangladeshi nationals, applying CJEU, Grand Chamber, October 4, 2024, C-406/22); Tribunale di Roma, sez. XVIII civile (immigrazione), ordinanza 11 novembre 2024 (non-validation of seven detainees and preliminary reference to the CJEU on the notion of “safe country”).

²⁸ See, press articles: L'Unione Sarda, 20 October 2024, CILD, 23 October 2024.

²⁹ Reported in the Courthouse News Service, in October 2024.

³⁰ Matching the critical rhetoric of the “*gouvernement des juges*” theorized by jurist Édouard Lambert.

to them remains fragmented and uneven. Existing approaches have relied on a range of rights and principles, including the right to life, freedom of conscience or religion, freedom of association, maritime duties of rescue, etc. Yet these protections often apply only to specific contexts while they do not always capture the political meaning of solidarity practices³¹.

The originality of this thesis lies in testing whether freedom of expression under Article 10 ECHR can offer a more coherent and fruitful framework of analysis. It asks whether some acts of solidarity should be understood not only as humanitarian assistance, but also as forms of political communication and political expression. In doing so, the thesis contributes to human rights law by extending debates on Article 10 ECHR beyond conventional speech, exploring the potential of a protection based on expression. It also contributes to migration scholarship by resisting the depoliticization of solidarity, as its actors can be treated as participants in democratic contestation over borders and freedom of movement. Overall, it treats law as a valuable tool to solidarity and to therefore “*bridge power differentials between those offering and those receiving support*”³².

1.3 Research question and core argument

Private initiatives that prevent harm and bear support to migrants are increasingly deterred through judicial and administrative measures. In Italy and in France, existing legal protections are fragmented and often framed under other rights depending on the person and the situation.

There is uncertainty about whether freedom of expression, especially when analyzed under Article 10 ECHR, could offer a coherent and effective shield against the “*criminalization of solidarity*”³³. Can the right to freedom of expression act a protective tool to reduce the existing lack of legal protection of solidarity actors?

Main question

To what extent and through which legal interpretations, can private acts of solidarity with migrants be characterized and protected as freedom of expression, particularly under Article 10 ECHR?

³¹ Smart, K. E, 2025. Countering the Criminalization of Solidarity: An Analysis of Legal Frameworks Proposed to Protect Humanitarian Aid for Migrants and Asylum Seekers. William & Mary Journal of Race, Gender, and Social Justice, 32(1).

³² Çıdam Ç, Cortés L, Gündoğdu A, Moreno-Lax V. Solidarity as Legal Mobilization. AJIL Unbound. 2025;119:19-24.

³³ As defined in: Carrera S, Allsopp J, Vosyliūtė L. Policing the Mobility Society: “The Effects of EU Anti-Migrant Smuggling Policies on Humanitarianism” International Journal of Migration and Border Studies 4, no. 3 (2018): 236–276.

Sub-questions

- How do Italy and France currently regulate and sanction solidarity practices at sea and at land borders through criminal and administrative law?
- Would the right to freedom of expression meaningfully strengthen protection in Italy and France, especially if undertaken under Article 10 ECHR ? Would it instead be constrained by domestic legal cultures and by migration discourse within the Article 10§2 test?

As solidarity with migrants is increasingly restricted in Italy and France, this thesis argues that at least a significant portion of actions can be protected as freedom of expression under Article 10 ECHR. Monitoring, documenting, and communicating information about border practices should fall within Article 10, given the ECtHR's protection of information gathering and "*public watchdog*" roles³⁴. The European judge of Human Rights repeatedly assessed that an NGO's effort to obtain information in the public's interest which is held by the State can fall within Article 10 ECHR. That supports the legal framing of border monitoring or migrant rights documentation as expression where the activity is about "*gathering and imparting information*"³⁵.

Some forms of assistance may also qualify as expressive conduct, which the ECtHR defines as acts or conduct which differ from traditional verbal speech and which communicate ideas and opinions and are protected under Article 10 of the Convention³⁶. Indeed, the Court has considered that ideas and opinions are capable of being communicated not just through traditional verbal expression, but equally through non-verbal expression or through a person's conduct³⁷. Based on the ECtHR's reasoning, such acts are more likely to be protected when intended to convey a message that contributes to a broader debate on a matter of public interest³⁸.

Even when Article 10 ECHR is in scope, the derogable nature of the right leaves room for state justifications of restrictions through public order and security aims. To do so, states may rely on administrative tools that appear legitimate and proportionate when compared to the subsequent interference³⁹.

³⁴ ECtHR, Grand Chamber, 2016. *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, §§157-170.

³⁵ ECtHR, 2024. *Obywatelska Watchdog Polska v. Poland*, no. 10103/20.

³⁶ Are excluded of the analysis "campaigns to express dissent and protests in the form of assemblies" that are "assembly as a form of expression" and are protected under the scope of article 11§1.

³⁷ ECtHR, 2020. *Ibrahimov and Mammadov v. Azerbaijan*, §165.

³⁸ ECtHR, 2018. *Stern Taulats and Roura Capellera v. Spain*, §§ 39-40.

³⁹ Committee of Ministers of the Council of Europe. 15 May 2026, 135th Session. Chişinău Declaration, §39.

On a judicial standpoint, the thesis therefore expects Article 10 ECHR to cover a larger range of actions than solely speech. It is however likely to be strongest when combined with other rights⁴⁰ and litigation strategies. On a political discourse standpoint, framing solidarity under freedom of expression may also be crucial. If solidarity is often tolerated only when it is presented as neutral, humanitarian, or purely charitable, it becomes far more vulnerable once it appears political or contestatory. An approach anchored in freedom of expression helps resist that depoliticization. It makes visible that many acts of solidarity do not simply provide assistance, but also communicate a position on border violence, state responsibility as well as the universal level of human dignity. In that sense, solidarity actors are not only helpers but also participants in public debate and should be protected through that lens for both political and social purposes.

⁴⁰ Such as national constitutional principles, right to life, freedom of conscience, human dignity considerations.

2 Conceptual framework

2.1 Defining solidarity with migrants

Throughout, the term “migrant” is used broadly, for any person who has left their country and whose mobility the receiving state treats as irregular or unwanted. This includes asylum seekers, recognized refugees, unaccompanied minors, undocumented travelers, and persons in transit alike. Behind it, lie countless distinct trajectories, motives and legal situations. This thesis and no single category can do justice to every story, every path, every specificity. Therefore, the label says more about how States classify mobility than about the people so classified. Where a particular status carries legal weight, such as asylum seeker or refugee, it is named precisely⁴¹. Elsewhere, “migrant” stands as shorthand for those whose presence the law renders precarious and whom solidarity actors choose to assist.

The widely criminalized boat drivers (*scafisti*) who often are migrants piloting under coercion, in an emergency, or as a condition of their own passage, remain outside of the scope of the present thesis. This act, though highly targeted in Italy, is a self-transport and survival act where the actor is not behaving primarily in solidarity with migrants⁴².

In this research, solidarity is understood as a set of private acts through which individuals or groups assist, accompany, rescue, document, or defend migrants in order to protect their dignity, safety, and rights. Said actions include a large range of behaviors, such as rescue, hosting, transport, food or water provision, accompaniment, monitoring, witnessing, and communicating (see Table 1).

Often, these acts do more than provide immediate help: they may express an ethical or political stance toward border violence and migration governance. This is why solidarity cannot be understood solely through a humanitarian lens. It also has a civic, political, and expressive dimension⁴³.

⁴¹ The distinction between “refugee”, “asylum seeker” and “migrant” is, in any case, less rigid than it appears. The Convention relating to the Status of Refugees (1951) uses the term “refugee” throughout its text irrespective of any official grant of status, because recognition is declaratory and not constitutive. Indeed, a person is a refugee from the moment the criteria of Article 1a(2) are satisfied, not from the moment a state so declares. Many of those here called “migrants” are therefore, in conventional law, already refugees, whether or not their status has yet been recognized.

⁴² The highly concerning situation of the migrant boat drivers in the Mediterranean is described in the following report: ARCI Porco Rosso e Alarm Phone, 2021. [Dal mare al carcere: la criminalizzazione dei cosiddetti scafisti](#).

⁴³ Ataç, I., Rygiel, K., Stierl, M. 2016. ‘The Contentious Politics of Refugee and Migrant Protest and Solidarity Movements: Remaking Citizenship from the Margins’, *Citizenship Studies*, 20(5), pp. 527-544.

Table 1 - Typology of solidarity practices

Solidarity form	Aim	Practices	Overlap
Material assistance & care	To meet migrants' immediate material and human needs. Protecting life, dignity and safety, in a way that can lean towards the " <i>Good Samaritan</i> " ⁴⁴ , providing it carries no political message.	Search-and-rescue, first aid, food & water, hosting & shelter, transport including at across borders, legal or social or medical or psychological accompaniment	Acquires a denunciatory dimension when publicly performed and intended as such, thus moving toward protest without ceasing to be assistance.
Civic oversight & information	To make State conduct and exercise of power at borders visible and public while raising awareness on the injustice migrants experience.	Monitoring, documenting violations, filming evictions, aerial observation, collecting testimony, publishing findings.	Inherently contestatory. May lean towards protest when staged to voice a stance rather than to inform.
Public denunciation	To contest the border regime and affirm support for migrants. The act's whole content is the position it conveys.	Solidarity marches, public campaigning, protests public denunciation of state practices, symbolic acts.	Where fused with material aid (i.e. a demonstrative distribution), the difference fades.

⁴⁴ See: Thürer, D. (2007) 'Dunant's pyramid: thoughts on the "humanitarian space"', International Review of the Red Cross, 89(865), pp. 47-61.

Who, then, are solidarity actors? The UN Declaration on Human Rights Defenders offers the widest lens: they are “*individuals or groups who act to promote, protect or strive for the protection and realization of human rights and fundamental freedoms through peaceful means*”⁴⁵.

This framework explicitly includes those who defend migrants and refugees when reacting to “*acts or omissions attributable to the State that result in violations of human rights*”⁴⁶. Seen this way, they are a constellation of professionalized non-governmental organizations as well as informal networks, religious and humanitarian groups, activists, journalists, lawyers, local residents, and migrants themselves⁴⁷.

2.2 Legal framework

The legal framework of this thesis is centered on the right to freedom of expression, as defined within Article 10 ECHR. The core question is whether freedom of expression can function as a protective tool against the criminalization of solidarity actors in France and Italy. Article 10 ECHR is particularly relevant in this context because the ECtHR case law protects not only speech in the narrow sense, but also the gathering of information, public-watchdog activity, and, in certain circumstances, expressive conduct. This is significant for the purposes of the present thesis, given that many solidarity practices extend beyond the mere provision of assistance and also serve to document abuses, bear witness to border violence, articulate criticism of migration governance.

The purpose of the research is not to deny the importance of other frameworks but to examine whether Article 10 ECHR can provide a valuable way to understand solidarity as participation in public debate, as criticism of migration policies, as expressive action. Even where Article 10 ECHR cannot efficiently replace other rights, it may still be politically, socially and legally important because it frames solidarity not as suspicious interference with migration control, but as a legitimate contribution to democratic contestation on a matter of profound public concern⁴⁸.

⁴⁵ UN Declaration on Human Rights Defenders, Res. 53/1441 (1998).

⁴⁶ Report of the Special Rapporteur on the situation of human rights defenders, 2022. A/77/178: Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers.

⁴⁷ *Ibid*, §32.

⁴⁸ Smart, K. E. (2025) ‘Countering the Criminalization of Solidarity’, William & Mary Journal of Race, Gender, and Social Justice, 32(1).

The legal analysis also integrates domestic sources of law in France and Italy, case law, legislative provisions, decrees and proposed bills, together with EU sources such as the Facilitators' Package⁴⁹.

2.3 Doctrinal framework

This thesis is situated at the intersection of migration law, human rights law and socio-legal studies on solidarity and border governance. Its starting point is that solidarity with migrants cannot be understood only as charitable assistance or as a marginal response to humanitarian need. Rather, it must be analyzed as a set of practices that can be humanitarian and political, while involving crucial individual rights.

First, the thesis uses the human rights defenders framework. The UN Declaration on Human Rights Defenders, along with the work of the UN Special Rapporteur, is relevant to help frame solidarity actors as people who protect the rights of migrants and promote the underlying principle of human rights universality. The declaration establishes the normative legitimacy of solidarity and highlights that its repression also affects civic space and defense rights more broadly. This thesis will consider solidarity actors as individuals and organizations matching those internationally recognized criteria, regardless of the position adopted by public authorities⁵⁰.

Second, it draws on human rights experimentalism as developed by Anagnostou. This approach is relevant here as it rejects that the Convention does not operate simply through judicial commands imposed by Strasbourg on reluctant states. It argues that the instrument is inherently based on strategic litigation, civil-society mobilization, and repeated interaction between Strasbourg, domestic courts, NGOs, and other actors. Human rights norms would therefore not only be carefully applied but also actively constructed. In this thesis, that perspective helps frame Article 10 ECHR not only as a doctrinal provision, but also as a potential tool of legal and political mobilization inherent to the functioning of the Strasbourg Court⁵¹. The wave of civil-society reactions to recent intergovernmental

⁴⁹ The package refers to the Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence & the Council framework Decision of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence (2002/946/JHA).

⁵⁰ UN Declaration on Human Rights Defenders, Res. 53/1441 (1998); Report of the Special Rapporteur on the situation of human rights defenders, A/77/178 (2022), Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers.

⁵¹ Anagnostou, D. 2022. The European Convention of Human Rights Regime: Reform of Immigration and Minority Policies from Afar, Routledge.

attempts to recast the ECtHR's migration jurisprudence offers a contemporary example of such mobilization⁵².

Third, the literature on contentious politics, especially Ataç, Rygiel, and Stierl, is central because it treats migrants and those acting in solidarity with them not simply as vulnerable subjects, but as political actors who challenge borders, exclusion, and dominant understandings of citizenship, alongside migrants. This helps explain why solidarity is often criminalized: not only because it provides assistance, but because it may contest pre-established and long-lasting governance practices themselves⁵³.

Fourth, the thesis uses Fassin's critique of humanitarian reason. The author demonstrates that humanitarianism tends to transform questions of injustice into questions of suffering, replacing political claims for rights and equality with moral appeals to compassion. This perspective is essential because it helps explain why solidarity is often tolerated when framed as charity but becomes suspect when it openly challenges border violence and state accountability. It can be viewed in supporting the thesis's interest in freedom of expression, since Article 10 ECHR may offer a way to protect the political and communicative dimensions of solidarity without depoliticizing them⁵⁴.

To nuance this claim, the thesis also engages with the classical understanding of humanitarian action as understood in Humanitarian Law and notably laid out by author Thürer. This model, associated with the Red Cross tradition, rests on neutrality, impartiality, and independence. It helps explain why some acts of solidarity are defended as neutral, aiming to save a human life without any adjacent political meaning or value. The thesis uses this theory as it reflects an important strand of legal and public justification for solidarity, while recognizing that neutrality is an action-enabling principle rather than a commitment to silence⁵⁵.

⁵² For a recent illustration of such bottom-up mobilization in the migration context, see: Agora Group, 2026. media release on the Chişinău Declaration.

⁵³ Ataç, I., Rygiel, K. & Stierl, M. 2016. 'The Contentious Politics of Refugee and Migrant Protest and Solidarity Movements: Remaking Citizenship from the Margins', *Citizenship Studies*, 20(5), pp. 527-544.

⁵⁴ Fassin, D. 2011. *Humanitarian Reason: A Moral History of the Present*, University of California Press.

⁵⁵ Thürer, D. 2007. 'Dunant's pyramid: thoughts on the "humanitarian space"', *International Review of the Red Cross*, 89(865), pp. 47-61. To the ICRC, neutrality is itself an action-enabling principle: it serves to build a humanitarian space in which delicate situations can be addressed and does not imply silence in the face of violations.

3 Literature review

3.1 Introduction to the Literature

This literature review examines how existing scholarship has approached the criminalization of solidarity with migrants and the legal frameworks that may protect those who act in solidarity. This research starts from the observation that measures targeting solidarity actors are no longer exceptional. Across Europe, private individuals and groups who assist migrants are increasingly exposed not only to criminal prosecution, but also to a wider range of administrative and practical obstacles that can deter or disrupt their actions. The literature shows that these measures affect a broad spectrum of practices⁵⁶. It is however deliberately limited in scope to both the French and Italian contexts and to the ECtHR's definition and understanding of freedom of expression. This research is specifically concerned with the potential of Article 10 ECHR, and the repercussions it could have in the two national legal orders of France and Italy.

The purpose of this review is therefore twofold. First, it maps how the existing literature defines solidarity and explains the legal and political mechanisms through which it is criminalized or otherwise constrained. Second, it identifies the legal frameworks that have been used to protect solidarity actors and assesses the potential of freedom of expression within that debate, as it is understood by the Court of Strasbourg. If the literature discusses a number of possible protections through other rights and frameworks, this research is particularly interested in whether freedom of expression can offer a specifically relevant way to address the fragmented protection currently available to solidarity actors.

3.2 Discussion of the Literature

Selecting the literature for this research meant choosing sources that help answer the following core questions: how solidarity is conceptualized, how its repression operates in practice, and what legal protections have been proposed or developed in response. The present literature therefore combines legal and doctrinal analysis, fueled by socio-legal studies, ethnographic papers and advocacy reports.

⁵⁶ Represented in Table 1, section 2.1.

This choice reflects the nature of the research question itself. Since solidarity with migrants is both a legal, a sociological and political practice, it cannot be understood through the sole juridical lens.

A first body of literature helps define solidarity and its actors, based on the work of the UN Special Rapporteur on Human Rights Defenders. It usefully situates those working with migrants within the category of human rights defenders, provided they act “*in a peaceful manner*” to protect human rights. It broadens the range of potential actors as the focus isn’t set on the identity of the actor, rather on the nature of their actions and the aims they pursue⁵⁷. It provides a normative vocabulary for understanding solidarity as the commitment to the protection of rights rather than as suspicious or marginal conduct directed towards individual gain, which is indispensable to the present thesis. It also reckons that such defenders are themselves entitled to the benefit of exercising their fundamental rights, including “*freedom of expression*”⁵⁸.

A second body of literature explains how the criminalization of solidarity is enabled by broader legal frameworks, especially EU anti-smuggling and anti-facilitation law. These studies had to be included as they demonstrate that the repression of solidarity does not occur in a legal vacuum. The Facilitation Directive and its proposed reform are central here, as several authors and reports emphasize the breadth of facilitation offenses and the weakness of effective humanitarian exemptions⁵⁹. This literature shows that solidarity actors can be framed as smugglers or facilitators even where their conduct is humanitarian, non-profit based, or politically motivated. It also shows that this is not simply a matter of legal error, but of legal design as broad categories allow states to blur the line between organized criminal activity and acts of support, care, or resistance⁶⁰. Advocacy and monitoring reports, such as PICUM or the French Observatoire des libertés associatives document how criminalization operates empirically across contexts. The literature increasingly points to a continuum of criminal and administrative measures, including police harassment, surveillance, fines, confiscations, immobilization of vessels, closure of spaces, planning restrictions, and delegitimizing rhetoric. This is a crucial insight for this research as it suggests that the legal vulnerability of solidarity actors cannot

⁵⁷ Report of the Special Rapporteur on the situation of human rights defenders, 2022. A/77/178: Refusing to turn away: human rights defenders working on the rights of refugees, migrants and asylum-seekers, pp.7, §30.

⁵⁸ *Ibid*, §31.

⁵⁹ PICUM, 2024. How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders.

⁶⁰ Augustova, K., Carrapico, H., & Obradović-Wochnik, J. (2023). Becoming a Smuggler: Migration and Violence at EU External Borders. *Geopolitics*, 28(2), pp. 619–640.

be measured only by convictions or by criminal statutes in the narrow sense. Repression often works through deterrence and attrition⁶¹.

In the context of the examined countries, socio legal as well as ethnographic literature can capture the concrete forms that solidarity takes at the border and the ways in which those practices are shaped by repression. Lendaro's work on the Franco-Italian border is particularly valuable because it shows that solidarity often combines immediate assistance with denunciation of state abuses, especially around asylum access and the treatment of minors⁶². Boudou's work on sanctuary in the Roya Valley is useful because it describes solidarity as the third element towards building a network of safety —along with fraternity and hospitality, but also as a form of resistance to abusive exercises of state power⁶³. Likewise, studies on Lampedusa and the Susa Valley exhibit that solidarity networks are heterogeneous and multifunctional: they provide hospitality, care, information, route support, monitoring, and advocacy⁶⁴. These inputs demonstrate that solidarity is not reducible to one legal category, nor is it detachable from a desire to contest state schemes. It is at once practical, relational, political.

Theoretical scholarship on the politics of solidarity is also drawn to explain how solidarity can often be tolerated only when framed as apolitical humanitarianism, which would be inherently preserved in the case of a freedom-of-expression framing. On the one hand, Thürer's classical humanitarian law logic implies that humanitarian action is based on impartiality and neutrality⁶⁵. On the other hand, Fassin's critique of humanitarian reason is especially important to this research, because it highlights how compassion can displace claims of justice and rights⁶⁶. The latter is directly relevant to this thesis' argument. If solidarity is accepted only when it appears neutral and charitable, then the moment it becomes visibly political or contestatory it becomes more vulnerable to repression. Other scholars reinforce this point by showing that migrants and those acting in solidarity with them are not merely vulnerable subjects but political actors who challenge borders and exclusion⁶⁷.

⁶¹ See, for example: Rogel, M., 2026, *Les mille visages du délit de solidarité*, *Plein droit*, no. 148, p. 18.

⁶² Lendaro, A., 2018. Disobeying in Favor of the Migrants. *Repertoire of Action at the Franco-Italian Border*. *Journal des anthropologues*, Volume 152-153, pp. 171-192.

⁶³ Boudou, B. (2023) *Repertoires of sanctuary: building a network of safety at the French–Italian border*. *Journal of Ethnic and Migration Studies*, 49.

⁶⁴ Davide, F., Giliberti, L. & Queirolo Palmas, L., 2021. From Lampedusa to the Susa Valley: Solidarity Networks in Two Border Battlegrounds. *Journal of Italian Studies*, 26(5), pp. 608-626.

⁶⁵ Thürer, D., 2007, 'Dunant's pyramid: thoughts on the "humanitarian space"', *International Review of the Red Cross*, 89(865), pp. 47–61.

⁶⁶ Fassin, D. 2011. *Humanitarian Reason: A Moral History of the Present*, University of California Press.

⁶⁷ C. Caprioglio, T. Montella and E. Rigo. 2022. *Solidarity With Migrants is not a Crime but a Necessary Political Struggle*.

The domestic legal materials form a key part of this review, to assess how solidarity is protected and limited within the national legal orders of France and Italy. In France, the constitutional principle of *fraternité* and the decision it originates from are essential as they have become central reference points in legal scholarship on assistance to migrants⁶⁸. In Italy, court decisions together with legislative developments are equally important because they show both the capacity of courts to restrain certain forms of criminalization and the persistence of administrative strategies designed to deter solidarity in practice⁶⁹. These domestic legal sources were selected because they expose the fragmented and unstable character of the current protective framework. Solidarity may be recognized through constitutional values, humanitarian exemptions, maritime obligations, or judicial interpretation, yet such protections remain incomplete and contingent, highly dependable on a court's will to recognize a breach of a fundamental right.

Finally, a main focus is set on the literature concerning freedom of expression under Article 10 ECHR, as it speaks most directly to the research question of this thesis. Hahn and Istrefi argue that some search-and-rescue activities can be protected under Article 10, both as information-gathering and as expressive conduct⁷⁰, which is a foundational premise for the analysis developed in the pages that follow. Strasbourg case law on access to information, public-watchdog functions, journalistic investigation, whistleblowing, boycott advocacy, and expressive conduct more broadly⁷¹ will be reviewed. This literature demonstrates that Article 10 ECHR is not confined to the protection of conventional speech but has undergone a gradual expansion of its scope over time, extending its reach to a broader range of expressive activities and conduct. This provides a promising doctrinal avenue for rethinking solidarity not only as assistance, but as expression. This research draws on scholarship that situates Article 10 within the broader functioning of the ECHR system. Anagnostou's work is particularly useful here because it shows that the Convention should not be understood as a purely top-down mechanism through which the ECtHR imposes standards on State parties. Rather, change often occurs through bottom-up mechanisms: strategic litigation, civil-society mobilization, and repeated interactions between the ECtHR, domestic actors, and NGOs have each and together proven influential in shaping the Court's case law. This perspective helps frame Article 10 ECHR not only as a doctrinal resource, but also as a potential tool of legal mobilization, thereby establishing its specific relevancy.

⁶⁸ See, in original court decision: Conseil Constitutionnel, 2018, Décision n° 2018-717/718 QPC, M. Cédric H. et autre [*Délit d'aide à l'entrée, à la circulation ou au séjour irréguliers d'un étranger*].

⁶⁹ Bisiaux, S.-A. and Tesson, J., 2026. Sauvetage civil en Méditerranée : dix ans de solidarité sous pression', *Plein droit*, no. 148, pp. 12-15.

⁷⁰ See: Hahn, C. & Istrefi, K., 2023. Uncharted Waters: Solidarity with Migrants at Sea and the Freedom of Expression.. *German Law Journal*, Volume 24, pp. 838-854.

⁷¹ Through the ECtHR guidelines: ECHR-KS, 2025. Key Theme – Article 10 Expressive Conduct.

3.3 Gaps in the Literature

Despite the richness of the existing literature, several gaps remain. Article 10 ECHR has been explored in relation to maritime monitoring and rescue, but not in relation to land-border solidarity practices such as hosting, transporting, informing, or accompanying migrants. This research therefore seeks to assess whether an expressive reading of a politicized solidarity can extend beyond the sea context. The literature has not fully examined administrative repression through the lens of freedom of expression, nor as it explored the potential of positive obligations that Article 10 ECHR entails. While many sources document fines, inspections, immobilizations, closures, and harassment, these measures are rarely analyzed as possible interferences within the right to freedom of expression. This represents a significant gap in the existing literature. Such measures are indeed capable of dissuading not only solidarity activities in the field, but also participation in public debate and the ability of solidarity actors to raise awareness on pressing societal issues, which naturally includes the treatment of migrants and the broader impact of migration on receiving societies.

A further gap concerns the absence of a systematic justification for when Article 10 ECHR might be preferred over other available fundamental prerogatives of the ECHR, such as freedom of conscience under Article 9 ECHR or freedom of association under Article 11 ECHR. While some authors invoke these provisions in passing, the literature does not engage in a sustained comparative analysis of their relative merits and limitations when applied to solidarity actors. This thesis seeks to address that gap directly, by examining whether freedom of expression specifically offers a more coherent and effective framework for protecting the political and communicative dimensions of solidarity. The argument is not that other frameworks are irrelevant, but that Article 10, given its broad scope, may provide a more structurally suited and analytically consistent basis for such protection.

4 Methodology

4.1 Research design

4.1.1 A comparative legal and doctrinal study

The thesis pursues, in the first place, a legal analysis. It identifies, interprets and systematizes the relevant legal norms, including Convention rights and Strasbourg case law, EU instruments, domestic statutes, decrees and judicial decisions. A doctrinal method is appropriate because the central question is interpretive. It asks how the existing right to freedom of expression, construed by the Court as a living instrument, can be extended to a category of conduct that the case law has not yet squarely addressed. The analysis therefore proceeds by reconstructing the architecture of Article 10 (ie. scope, interference, lawfulness, legitimate aim, necessity and proportionality) and by reasoning analogically from the Court's established lines of authority on access to information, public-watchdog activity and expressive conduct.

This research conducts a comparative legal study of France and Italy, understood functionally: it compares how two legal orders regulate, sanction and partially protect the same underlying phenomenon of private solidarity with migrants. The comparison serves two purposes. Descriptively, it maps the divergent regulatory and judicial responses that the two states have developed despite a shared border, a common migration route and comparable European and human rights legal constraints. Evaluatively, it assesses where an Article 10 framing would add protection in each system.

Because solidarity is not only a legal category but also a social and political practice, the thesis is also informed by socio-legal scholarship. Sole doctrine cannot capture how repression frequently operates through administrative pressure rather than through convictions, nor the communicative meaning that actors attach to their conduct. Socio-legal and ethnographic studies are therefore used to characterize the phenomenon and to support the claim that solidarity carries an expressive dimension. This claim is itself doctrinally relevant, since the protection of expressive conduct under Article 10 depends on the message conveyed and its contribution to public debate.

4.1.2 Case selection

The choice of jurisdictions is purposive rather than representative. France and Italy are selected because they combine comparability with diversity. They form a continuous migration corridor, they are subject to the same Convention and EU constraints and they possess comparable constitutional traditions of rights protection. Yet they have produced distinct regulatory and judicial responses. Crucially, the two contexts foreground different settings. Italy is the paradigmatic site of criminalization and administrative obstruction at sea whereas France is the typical example of solidarity at internal land borders, where assistance is shaped by policing and the legacy of the *délit de solidarité*. Studying the pair allows the analysis to follow solidarity across both maritime and terrestrial contexts while holding the regional human-rights regime constant. As arrivals by sea in Italy feed onward movement toward and across the Franco-Italian land border, solidarity practices in the two states are not merely comparable but rather materially connected⁷².

The choice of legal materials aims for doctrinal salience rather than exhaustively. In France, the analysis centers on the Conseil constitutionnel's 2018 decision on *fraternité* and subsequent land-border litigation and legislative reforms. In Italy, it is set on *Rackete*, *Agaish*, the *Iuventa* non-lieu before the Tribunale di Trapani, and the Corte costituzionale's 2025 ruling on the Piantedosi sanctions.

On the Strasbourg side, the relevant Article 10 ECHR line is selected for its analogical value: decisions on access to information and the public interest of the asylum situation, and decisions delimiting expressive conduct. These leading judgments are chosen because they mark the doctrinal boundaries within which the hypothesis must operate.

4.1.3 Data and evidentiary weight of sources

Because the successive chapters operate on different evidentiary planes, it is useful to make explicit which body of data supports which part of the thesis. The contextual analysis (Chapter 1) draws on institutional and political materials, namely the three intergovernmental statements on Convention interpretation⁷³, together with the Court's own statistical overview of its migration case law and the

⁷² Where, for example, an analysis of Spain, would instead juxtapose two systems situated on different routes, namely the Western Mediterranean and Atlantic corridors, with their distinctive enclave dynamics at Ceuta and Melilla.

⁷³ The May 2025 Open letter of nine governments, the December 2025 Joint Statement, and the 2026 Chişinău Declaration.

surrounding national political discourse. These materials establish the climate in which the legal question arises rather than its legal substance⁷⁴. The review of how solidarity is undermined (Chapter 5) rests on three types of data: European binding instruments, domestic statutes and decrees of the two relevant countries, domestic case law evidencing national reception and resistance, and empirical documentation of enforcement patterns drawn from monitoring reports and socio-legal studies, which capture invisible deterrence in conviction data⁷⁵. The interpretive analysis (Chapter 6) operates principally on ECtHR case law under Article 10 together with the Court's thematic guidelines and secondary doctrinal commentary. This is where the central hypothesis is tested as a matter of Convention interpretation. The synthesis (Chapter 7) then recombines these layers, drawing conclusions on the relevancy of an Article 10 ECHR framing in each jurisdiction.

Each material is weighted according to its evidential role, which guards against bias. Binding sources (the Convention, EU law, domestic legislation) are authoritative and define the analytical constraints while political statements are treated as contextual data, not as legal authority. Case law carries interpretive authority, with domestic decisions also evidencing national reception. Meanwhile, soft law supplies guidance, no obligation. Doctrinal scholarship offers contestable readings rather than settled law while socio-legal and ethnographic studies give situated, descriptive evidence used to characterize the phenomenon. Finally, advocacy reports, produced by interested parties, are read critically for the empirical patterns they document.

4.2 Scope limits

The inherent limits to the following conclusions imply they are offered as of the date of writing, as a doctrinal and strategic possibility rather than as a prediction of how court and judicial orders will in fact decide and evolve.

The thesis foregrounds freedom of expression rather than other rights and principles through which the criminalization of solidarity might be challenged. Depending on the facts, solidarity actors may invoke freedom of association and assembly, freedom of conscience, the right to life, the prohibition

⁷⁴Open Letter of the Nine Governments (22 May 2025); Joint Statement of the Ministers of Justice of the Council of Europe (10 December 2025); Committee of Ministers, Chişinău Declaration (15 May 2026); ECtHR (2026), overview of the Court's case-law on immigration matters.

⁷⁵Council Directive 2002/90/EC; Proposal for a Directive replacing the Facilitators' Package, COM(2023) 755; PICUM (2024), How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders.

of inhuman or degrading treatment, the right to family life or the duty to rescue at sea. Each captures an important dimension of solidarity, yet each remains fragmented: limited to specific actors, such as organized groups, or to particular settings, such as rescue at sea. Freedom of expression, by contrast, is not confined to verbal speech but can also cover a range of behaviors, including protest conduct, as the French criminal courts have themselves acknowledged when activists invoked Article 10 to contest convictions for acts of political protest⁷⁶. Recognizing solidarity as expression could capture its inherently political dimension and resist that depoliticization.

This analytical choice also reflects a substantive concern that runs through the thesis. Even in the absence of final convictions, which is the outcome in the majority of cases⁷⁷, the criminalization of solidarity can itself function as punishment. Prolonged investigations and litigation entail considerable financial, institutional and emotional costs, and may discourage actors from continuing their activities⁷⁸. The value of framing solidarity under freedom of expression therefore lies not only in its possible use before a court, but also in its potential preventive effect, making certain charges harder to initiate or sustain at an earlier stage.

Geographically and thematically, the study is confined to France and Italy and to the ECtHR's understanding of Freedom of expression. It does not examine the internal dynamics within other state parties or to look at the case law of other international or regional bodies, such as the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, or UN treaty bodies, as the inquiry is specifically concerned with the potential of Article 10 ECHR and its repercussions in the French and Italian legal orders. Nor does it attempt a broader comparative survey of criminalization across Europe. Although similar, and sometimes harsher, patterns can be observed elsewhere, extending the analysis would risk rendering it too broad and descriptive. Concentrating on one regional human-rights regime and two domestic systems keeps the research coherent and closely tied to its central question.

⁷⁶ For French criminal court decisions recognizing that protest conduct may engage freedom of expression as understood by Article 10 and that a conviction must therefore pass a proportionality assessment, see Cass. crim., 26 February 2020, no. 19-81.827 (a Femen activist's bare-chested protest) and Cass. crim., 22 September 2021, no. 20-80.489 and 20-85.434 (the "décrocheurs" who removed official portraits of the President of the Republic from town halls to denounce climate inaction). The courts followed the ECtHR logic laid out in *Bouton v. France* (See section 6.2.3).

⁷⁷ For example, over the year 2025: PICUM and WING, 2026. *Criminalisation of Solidarity with Migrants in the EU: 2025 Report*, pp. 11-14.

⁷⁸ See, as illustration, the experiences of *Pilotes Volontaires* and *Collective Aid* documented in: Gisti (2026), 'Résister aux frontières', *Plein droit*, no. 148.

5 Solidarity undermined in Italy and in France

5.1 Solidarity in practice: assistance and denunciation in unison

Solidarity in France and Italy is rarely a neutral relief. The same hands that draw people from the water or shelter them in an Alpine refuge often also record what they witness, testify to it, and denounce it. Assistance and contestation appear somewhat inseparable in practice. Immediate help routinely shades into the denunciation of state abuses, specifically around access to asylum or the treatment of unaccompanied minors⁷⁹. Actors, therefore, defend and promote human rights⁸⁰.

At sea, the dual character of solidarity is striking. The ships of the Mediterranean rescue NGOs, including SOS Méditerranée's *Aquarius*, Sea-Watch, Médecins Sans Frontières, Jugend Rettet's *Iuventa*, Mediterranea Saving Humans, save lives, while spotter aircraft such as those of Pilotes Volontaires monitor the water from above⁸¹. Rescue and witness belong to the same operation: the act that recovers a person in distress also produces a record of how power is exercised at the border. Several of those NGOs now act in concert through the Justice Fleet, which severs contact with the Libyan coastguard even at the cost of fines, immobilization, or seizure of their vessels⁸². On land, the same impulse animates the networks of the Roya Valley and the Alpine passes around Briançon and Menton. There, farmers, teachers and retirees and organizations such as Tous Migrants offer food, shelter, first aid, transport and information, and bear witness to the conduct of border patrol. This way, they are building and pursuing a “*network of safety*”⁸³.

Finally, the range of actors extends to migrants and former migrants who have made the crossing before them and assist those travelling after them, blurring the line between migrant and helper⁸⁴.

⁷⁹ Lendaro, A., 2018. Disobeying in Favor of the Migrants. Repertoire of Action at the Franco Italian Border. *Journal des anthropologues*, Volume 152-153, pp. 171-192.

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⁸¹ Bisiaux, S.-A. and Tesson, J., 2026. Sauvetage civil en Méditerranée : dix ans de solidarité sous pression', *Plein droit*, no. 148, pp. 12-15.

⁸² The materialization of the alliance *Justice Fleet* is accessible online at: <https://justice-fleet.org/>

⁸³ Boudou, B. (2023) Repertoires of sanctuary: building a network of safety at the French-Italian border. *Journal of Ethnic and Migration Studies*, 49:14, p. 3577.

⁸⁴ For intra-community example of solidarity, see the Agaish case, where members of the Ethiopian diaspora helped *primo-arrivants*: Cass. pen. sez. I, sentenza 777/2020.

These practices resist a single description. Read one way, they are humanitarian: neutral, life-saving gestures owed to any person in distress. Read another, they are political, depending on the intention behind the actor's conduct: a refusal of border violence and a claim about who belongs, a protest against migration policies. Legally, they are unstable: the same act, a lift across a valley, a meal, a bed for the night, a hand pulling someone from the sea, may count as protected solidarity. They are increasingly tolerated where it can be cast as nonpartisan charity, as suspect grows where its denunciatory dimension becomes visible⁸⁵. This way, an act may equally amount to the "*facilitation*" of irregular entry or stay⁸⁶, depending on how the law is read (strictly or broadly) and on who is reading it (first-instance, appellate, or cassation judges⁸⁷).

5.2 Migration governance: the targeting of solidarity

Over the past years, European governance in migration has reorganized itself around a logic of dissuasion, containment, externalization and intensified border policing. It has first done so legislatively. The European Pact on Migration and Asylum of 2024 now in force⁸⁸ entrenches the containment of asylum seekers "*at the border*"⁸⁹. The Return Regulation adopted by the European Parliament in June, 2026, prioritizes raising return rates at the expense of fundamental-rights safeguards, notably through the build and use of "*return hubs*" in third countries. The Commission's 2023 proposal to recast the Facilitators' Package, would widen the offenses through which assistance can be punished. Jurisdictionally, the same logic animates the mounting political pressure on the European Court of Human Rights, as states have urged Strasbourg toward greater deference on migration and seek to insulate containment measures from judicial scrutiny. Governance thus advances by narrowing both the legal pathways open to migrants and the judicial check on the measures taken

⁸⁵ Fassin, D. 2011. *Humanitarian Reason: A Moral History of the Present*, University of California Press. As the author describes, claims of rights are displaced by compassion.

⁸⁶ As defined in Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, Article 1.2.

⁸⁷ As convictions of first instance courts are often overturned by superior courts. See: Border Violence Monitoring Network, 2025. *Annual Criminalization Report: 2024*.

⁸⁸ The Pact is officially applicable in Member States since June 12, 2026.

⁸⁹ Regulation (EU) 2024/1356 of the European Parliament and of the Council of 14 May 2024 introducing the screening of third-country nationals at the external borders.

against them. Meanwhile, civil society organizes to encompass the logic of contentious politics and creates projects aimed at “*EmpoWerING actors in civic space protection*”⁹⁰.

What concerns this chapter is how this securitizing turn has come to encompass those who assist migrants along with migrants themselves. Solidarity is increasingly read through the same - highly questionable - security lens as migration. NGOs and volunteers are accused of proximity or of creating an “*appel d’air*” to smugglers⁹¹, a rhetoric born on the far right and since diffused into mainstream political and administrative language. Even the European Parliament itself has been described as institutionalizing suspicion toward civil society⁹². Because the pressure exerted on Strasbourg aims to weaken the judicial protection of migrants, it could also, derivatively, thin the protection available to those who act in their defense⁹³. The pressure on solidarity actors thus appears not as an anomaly but as a structural feature of border governance. Criminalization, understood here as the process by which solidarity is cast as suspect across criminal, administrative and discursive registers, has become a governance trend rather than an exception, increasingly systematic even as it grows less visible⁹⁴.

5.3 The European legal background: trafficking, smuggling, facilitation

The criminalization of solidarity rests on a European legal architecture, spanning the Council of Europe and the EU. It is important to note that the two orders are not formally fused, as the Union isn’t a party to the Convention. Although Article 6§2 of the Treaty on EU (here-after, TEU) makes accession a legal obligation, the CJEU previously held that the draft accession agreement was incompatible with the autonomy and the specificity of the EU’s judicial order, abruptly halting the process⁹⁵. Years later, the accession process is moving again, making the EU a future probable signatory of the Convention⁹⁶. However, even without accession, under Article 6§3 TEU, the ECHR rights are relevant as they form

⁹⁰ See, for example: the WING* project, transnational initiative responding to the growing criminalisation of solidarity and shrinking civic spaces in Europe, accessible at: <https://solidarityfocus.eu/>.

⁹¹ Observatoire des libertés associatives, 2024, *Au mépris des droits : Enquête sur la répression de la solidarité avec les personnes exilées aux frontières*.

⁹² Bisiaux, S.-A. and Tesson, J., 2026. *Sauvetage civil en Méditerranée : dix ans de solidarité sous pression*, *Plein droit*, no. 148, pp. 12-15.

⁹³ See, for example, in the Committee of Ministers of the Council of Europe’ 2026 Chişinău Declaration: the mention of a “*hostile other actor*” than a State, that would instrumentalize migration and against whom democracy should be able to “*defend itself*” in §39.

⁹⁴ PICUM, 2025. *Criminalisation of migration and solidarity in the EU: 2024 Report*, pp. 6.

⁹⁵ CJEU, Opinion 2/13, December 18, 2014

⁹⁶ A revised draft accession agreement was concluded in March 2023, resolving all but one of the issues identified in Opinion 2/13 —namely, the judicial scrutiny of the EU decisions in matters of Common Foreign and Security Policy. Meanwhile, on 21 November 2025 the Commission requested a fresh opinion from the Court of Justice on that draft agreement on the accession of the EU to the ECHR.

part of the “*general principles*” of EU law. In addition, article 52§3 of the Charter of Fundamental rights provides that Charter rights correspond to Convention rights as they carry the same meaning and scope.

The relevance for this study is therefore unaffected by the accession gap: the contested measures are applied by France and Italy, each directly bound by the Convention and EU law which must in any event be read consistently with the Charter and, through it, with Article 10 ECHR.

The disputed legal framework rests on three legally distinct concepts: trafficking, smuggling, and facilitation. Trafficking, as defined by the Council of Europe Convention on Action against Trafficking in Human Beings⁹⁷, requires both coercive means (force, deception or the abuse of a position of vulnerability) and a purpose of exploitation. Under this phenomenon, the migrant is a victim, not a consenting party. Smuggling, under the reference instrument for European states that is the UN Protocol against the Smuggling of Migrants, requires a financial or material benefit. By definition, non-profit assistance should fall outside of the concept⁹⁸. There, the migrant consents, and the hallmark of the offense is the profit motive.

Neither qualification, on its own terms, reaches the volunteer or the rescuer. Yet, the discourse of enforcement routinely borrows their gravest vocabulary, invoking the fight against trafficking networks to justify ever-broader measures. Facilitation, as the EU defines it, casts a far wider net. Directive 2002/90/EC criminalizes the facilitation of unauthorized entry, transit and residence. It does include a humanitarian exemption, yet only as an optional norm that Member States “*may*” adopt⁹⁹ and not as a binding safeguard. By dropping the financial-benefit requirement that defines smuggling and leaving the humanitarian carve-out to national discretion, EU law transposes the Palermo Protocol imperfectly¹⁰⁰ and creates a category broad enough to absorb acts of solidarity. It lets states collapse the distinction between profit-driven smuggling and non-profit support, recasting assistance as facilitation in a manner that has less to do with protecting migrants than with protecting borders. It is this elasticity that let an Italian prosecutor treat a donation received by a rescue NGO after a transfer at sea as a profit-making “*commercial agreement*”¹⁰¹ while a French parquet framed an exiled family’s

⁹⁷ Convention on Action against Trafficking in Human Beings of 2005, CETS No. 197, Article 4.

⁹⁸ UN Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2241 UNTS 507, Nov. 2000, Article 3.

⁹⁹ Council Directive 2002/90/EC of 2002 defining the facilitation of unauthorised entry, transit and residence, Article 1.2

¹⁰⁰ UN Protocol against the Smuggling of Migrants by Land, Sea and Air, Nov. 2000.

¹⁰¹ Under Article 12 of Legislative Decree No. 286/1998, the Ragusa public prosecutor characterized the 125,000€ donation to the company operating Mediterranean’s vessel Mare Jonio as “consideration under a commercial agreement”, thereby grounding the existence of profit. Six members of Mediterranean Saving Humans were indicted on May 28, 2025, and the trial opened before the Tribunale di Ragusa on October 21, 2025.

share of the household chores as an indirect counterpart stripping their hosts of the humanitarian immunity¹⁰². Behind the whole Package lies a misdiagnosis: smuggling and facilitation are treated as the cause of irregular migration, when irregular migration is largely a consequence of the absence of legal pathways¹⁰³. The Commission's 2023 proposal to recast the Package would not resolve this tension¹⁰⁴. While it re-centers the offense on financial or material benefit, it adds an unspecified qualification covering conduct “*highly likely to cause serious harm to the third-country nationals [...] even though there is no financial or material benefit or no promise of such benefit*”¹⁰⁵, enlarging the number of prosecutable behaviors. In article 3 of the proposal, the new offense of “*public instigation*” to irregularly enter, transit or even “*stay*”¹⁰⁶ raises fresh questions for freedom of expression and the potential risks of disseminating information to the targeted public. Meanwhile, it still does not plan to establish an effective, binding humanitarian exemption. These concerns of compliance with international law and fundamental rights have been outlined by the European Parliament itself¹⁰⁷.

EU law does impose some limits. The CJEU has held that criminalizing assistance, specifically threat of imprisonment, to those seeking asylum breached Union law¹⁰⁸. In 2025, the EU Court ruled, based on the right to private life and best interests of the child, that a person who irregularly brings into the territory of a Member State third-country national minors, over whom they exercise actual care, does not fall within the scope of the general offence of facilitation of unauthorized entry¹⁰⁹. But such control remains rare and limited to exceptional situation. The result is a shared European background and oversee that France and Italy then implement and enforce in distinct ways.

5.4 Criminalization without conviction: a converging logic of deterrence

See: “Aid Workers Who Support Migrants on Trial in Italy and Tunisia” by InfoMigrants, October 23, 2025.

¹⁰² Under Article L. 622-4 of the Code de l'entrée et du séjour des étrangers et du droit d'asile, see: Tribunal correctionnel de Perpignan, July 2015, reported in *Plein droit* no. 115 (December 2017), « Le focus juridique ».

¹⁰³ PICUM, 2024. How the New EU Facilitation Directive Furthers the Criminalisation of Migrants and Human Rights Defenders, p. 4.

¹⁰⁴ Currently, it is still under the Parliamentary Committee Civil Liberties, Justice and Home Affairs (LIBE).

¹⁰⁵ Proposal COM(2023) 755 - Recital 6 of the Preamble, transposed into Article 3.1.b.

¹⁰⁶ Proposal COM(2023) 755 - Article 3.2.

¹⁰⁷ Violeta Moreno-Lax, Marc2025. *Commission Proposal for a Revised Facilitation Directive: Targeted Substitute Impact Assessment*, PE 765.787 (Brussels: European Parliamentary Research Service, March 2025), pp. 6-21.

¹⁰⁸ CJEU, 2021, C-821/19, *Commission v Hungary* (Criminalisation of assistance to asylum seekers) where the Court ruled that the 2018 “Stop Soros” Hungarian bill was in breach of EU Law.

¹⁰⁹ CJEU, Grand Chamber, 2025, C-460/23, *Kinsa* – based on Article 1(1)(a) of Directive 2002/90, read in the light of Articles 7 and 24 and Article 52(1) of the Charter of Fundamental Rights.

Overseen by the European background, both France and Italy repress solidarity through the criminal law of facilitation and a parallel apparatus of administrative regulation. Neither of them depends on a conviction to take effect, since acquittals, suspended sentences and administrative measures alike deter. Criminal proceedings usually take several years¹¹⁰ meanwhile fines can be issued¹¹¹ and public subsidies or accreditations taken away¹¹². The two countries inflect this common logic differently: France at land, where it collides with the constitutional principle of *fraternité*, Italy at sea, where administrative regulation does the work the criminal courts decline to do.

5.4.1 France, swaying between *fraternité* and the persistent *délit de solidarité*

France's best-known criminal instrument is the *délit de solidarité*¹¹³, namely the offense of facilitating the irregular entry, movement or residence of a foreign national¹¹⁴. Long used against those assisting migrants, it was softened by the law of 31 December 2012, which exempted humanitarian assistance to residence (*séjour*)¹¹⁵. It was then decisively limited in 2018, when the Conseil constitutionnel, ruling in the cases of the Roya Valley farmer Cédric Herrou, who had openly avowed his assistance as a political act, and Pierre-Alain Mannoni, recognized *fraternité* as a principle of constitutional value. According to the constitutional judge, it derived from it a freedom to assist others for humanitarian ends, irrespective of migration status, and extending the immunity to aid to movement. Crucially, however, it held that this immunity need not extend to aid to irregular entry, which, unlike aid to movement or residence, creates an unlawful situation¹¹⁶. The protection thus stops at the border: assistance at the moment of crossing remains criminalizable, leaving land-border solidarity exposed. Precisely, defendant Mannoni was initially taken to court for driving injured Eritrean women inland after they had crossed from Italy, which qualified as aid to movement. If helping them meant crossing a border and thus aid to entry, this action would remain prosecutable today.

¹¹⁰ On average, documented proceedings lasted on average 2–3 years, with several exceeding 6–7 years. See : PICUM and WING, 2026. Criminalisation of Solidarity with Migrants in the EU: 2025 Report, pp. 11.

¹¹¹ SOS Méditerranée reported that 26 sanctions in 2023 and 2024 produced 535 days of vessel detention, 737 extra navigation days, and over €1.3 million in additional costs for the Ocean Viking vessel alone.

¹¹² The association Montagne Limousine was refused OACAS accreditation (Emmaüs) after a negative prefecture opinion, on the basis that its mobilisation against a deportation went against “republican values”.

¹¹³ Rogel, M., 2026, Les mille visages du délit de solidarité, *Plein droit*, no. 148, pp. 16–19.

¹¹⁴ Under article L622-1 of the Code de l'entrée et du séjour des étrangers et du droit d'asile.

¹¹⁵ Loi n° 2012-1560 relative à la retenue pour vérification du droit au séjour et modifiant le délit d'aide au séjour irrégulier pour en exclure les actions humanitaires et désintéressées.

¹¹⁶ Conseil constitutionnel, n° 2018-717/718 QPC, §§12–13.

As the criminal route narrowed, deterrence took administrative forms. Reports show a continuum beyond the *délit de solidarité*, going from delegitimizing rhetoric to sustained police harassment. Meanwhile, the French state increasingly uses material obstacles such as fines, confiscations, anti-distribution orders, administrative closures, and an urbanisme anti-association turning planning rules into tools of obstruction, of which the boulders and hostile design deployed at Calais are emblematic¹¹⁷. The freedom to host is a particular flashpoint: groups such as Collective Aid face the denial of premises where to shelter and assist¹¹⁸.

Partial constitutional decriminalization did not eliminate repressive practices. In the militarized passes of the Roya Valley and around Briançon and Menton, solidarity now persists within a para-legal environment of controls and surveillance that fosters self-censorship. Push-backs are regularly undertaken by the French police, including of unaccompanied children¹¹⁹, while Schengen rules are instrumentalized to diminish asylum law obligations. In this context, solidarity thus oscillates between the discreet humanitarian help that still draws prosecution and the open political defiance avowed by figures such as Herrou or organizations such as the Refuge solidaire.

5.4.2 Italy, administratively striking but judicially protective

Italy's main criminal instrument lies in Article 12 of the Immigration Act¹²⁰, which punishes the facilitation of irregular entry. Financial profit figures only as an aggravating circumstance rather than a constitutive element, so humanitarian conduct falls within reach. Although the rescue clause, the duty to render assistance at sea, and the state-of-necessity argument exonerate defenders from punishment, they do not bar prosecution¹²¹. The result is a recurring pattern of long investigations that collapse without conviction yet produce a heavy toll along the way¹²². The Corte di cassazione and the Corte costituzionale have repeatedly affirmed the primacy of the duty to rescue, making criminal convictions remain the exception. Some cases have become emblematic. The *Iuventa* crew, was prosecuted for years in Trapani before the case collapsed for want of evidence¹²³. Yet the framework reaches furthest, and bites hardest, where the defender is also a migrant. In the *Agaish* case, four Eritrean refugees were

¹¹⁷ See: Border Violence Monitoring Network, 2025. Annual Criminalization Report: 2024; Observatoire des libertés associatives, 2024. Au mépris des droits : Enquête sur la répression de la solidarité avec les personnes exilées aux frontières

¹¹⁸ Rogel, M., 2026, Les mille visages du délit de solidarité, *Plein droit*, no. 148, pp. 16-19.

¹¹⁹ Human Rights Watch, 2019, The Treatment of Unaccompanied Migrant Children in the French Hautes-Alpes.

¹²⁰ Legislative Decree 286/1998.

¹²¹ Article 54 of the Italian Criminal Code.

¹²² PICUM and WING, 2026. Criminalisation of Solidarity with Migrants in the EU: 2025 Report.

¹²³ Tribunale di Trapani, 19 April 2024, sentenza 126/2024 (non luogo a procedere).

prosecuted for buying food, clothes and bus tickets and sheltering relatives, and acquitted only seven years of proceedings and three appeals¹²⁴.

Where the criminal route falters, administrative regulation succeeds. Italy has progressively built an apparatus capable of disabling rescue without a single conviction. In 2017, a code of conduct first institutionalized suspicion of NGO vessels, then the “*closed ports*” law of 2019 armed the executive with entry bans, fines reaching one million euros, and vessel confiscation¹²⁵. The Piantedosi and Flussi decrees extended the logic, assigning distant ports of disembarkation, requiring vessels to make for port after a single rescue, and escalating financial and disciplinary sanctions including the administrative detention of ships¹²⁶. Last August, Italian authorities used the Flussi decree to detain the *Seabird 1*, a civilian monitoring aircraft operated by Sea-Watch and the Humanitarian Pilots Initiative, for 20 days, on the ground that it failed to notify them of its activities¹²⁷. Such measures are technical, framed as maritime safety and traffic regulation, yet their cumulative effect is to keep rescue assets ashore and away from the waters where they are needed.

Litigation has begun to push back. Last year, the Court of Trapani suspended the detention of a ship of *Mediterranea Saving Humans* and censured the level of the penalty applied by the Minister of Interior¹²⁸. Meanwhile, the Corte costituzionale assessed the conformity of the Piantedosi sanctions with international law and stressed the predominance of the duty to save lives¹²⁹. However, the administrative machinery has proved a more durable constraint on solidarity than the criminal law ever was. Italy thus shows how a state can neutralize solidarity through administrative regulation even where criminal convictions never materialize.

5.4.3 Convergence of methods

In both Italy and France, solidarity actors are constrained not chiefly through criminal convictions, which remain rare, but through a wider repertoire of enforcement: investigations, prosecutions,

¹²⁴ Cass. pen. sez. I, sentenza 777/2020.

¹²⁵ Based on Law Decree 53/2019 and Law 77/2019 of which consequences are documented in Amnesty International report (EUR 01/1828/2020).

¹²⁶ Decreto-Legge 1/2023 (*Piantedosi*) and Decreto-Legge 145/2024 (*Flussi*).

¹²⁷ See: Sea-Watch, August 14, 2025. Press release, “We demand the immediate release of Sea Bird 1”.

¹²⁸ See: *Mediterranea Saving Humans*, October 2025. Press release, “The court of Trapani rules in favour of *Mediterranea*: detention of the ship suspended”.

¹²⁹ Corte costituzionale, sentenza 101/2025 —where the Court considered that any order conflicting with the fundamental duty to save lives is not legally binding, and refusing to comply cannot be punished.

inspections, seizures, authorization requirements, fines, vessel detention, and administrative obstruction. Criminal and administrative law operate together as a single environment of control, each reinforcing the other to disrupt solidarity in practice. The decisive effect is therefore not punishment in the strict sense but deterrence. Even where cases end in acquittal or dismissal, the cumulative burden of legal uncertainty, financial cost, delay, reputational harm and operational disruption can discourage, and potentially reduce the numbers of those assisting migrants. A protective framing adequate to this reality must address not only the sanction but the wider deterrence of solidarity, which is precisely what an Article 10 ECHR reading promises to capture.

6 Solidarity as expression

6.1 In scope of Article 10 ECHR: interpreting the Convention as a living instrument

Freedom of expression occupies a foundational place in the Convention system, indispensable to individual self-fulfillment and moreover, to a democratic society¹³⁰. Whether the practices of solidarity can claim its protection turns first on a threshold question, logically prior to any inquiry into justification: do they fall within the scope of Article 10 ECHR at all? The Convention is a “*living instrument*”, to be read “*in the light of present-day conditions*”¹³¹. This evolutive approach has gradually carried the right beyond speech in the narrow sense¹³², as it now reaches not only words but the gathering of information and, in certain circumstances, conduct that conveys a message¹³³.

6.1.1 Information gathering and monitoring: performing watchdog functions

The most secure into Article 10 ECHR affords to the gathering and receipt of information. The Grand Chamber previously recognized a qualified right of access to information held by the State, notably depending on the applicant’s function in the democratic society¹³⁴. The ECtHR has consistently treated non-governmental organizations, like the press, as “*public watchdogs*” whose collection and dissemination of information on matters of public concern attracts heightened protection¹³⁵. Crucially, the protection extends not only to publication but to the preparatory stage: the gathering of information

¹³⁰ ECtHR, 1976, *Handyside v. United-Kingdom*, no. 5493/72, §49.

¹³¹ ECtHR, 1978, *Tyrer v. United-Kingdom*, no. 5856/72, §31.

¹³² ECHR, Article 10 : “1. *Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.* 2. *The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*”

¹³³ Following the logic laid out in Hahn, C. & Istrefi, K., 2023. *Uncharted Waters: Solidarity with Migrants at Sea and the Freedom of Expression*. *German Law Journal*, Volume 24, pp. 838-854.

¹³⁴ ECtHR, Grand chamber, 2016, *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11, §§157-170.

¹³⁵ The “vital” role of “those working in the media or related fields” as public watchdogs had been long established by the Court. See, for example: ECtHR, 2009, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05, §38.

is an essential step in and inseparable from the freedom to impart it. Therefore, it covers first-hand observation and documentation¹³⁶ as much as a request for existing records.

Much of what human rights defenders do when acting in solidarity naturally falls within this frame. Observing and recording border practices, collecting testimony, documenting violations, and publishing the findings are, in substance, watchdog functions, as it is about producing information on how state power is exercised at the border, and contributing to public debate on border management and the respect of fundamental rights of migrants. In the migration context, the ECtHR has precisely held that a journalist's access to a reception center to report on the living conditions of asylum seekers was protected, since their situation was a matter of "*considerable public interest*"¹³⁷.

Therefore, where solidarity activities serve the documentation of migrant rights and the monitoring of borders rather than the actor's private interest, they engage Article 10 on the same footing as investigative journalism. Pilotes Volontaires' aerial observation of the central Mediterranean or the rescue NGOs' systematic documentation and publication of what they witness at sea¹³⁸ perform watchdog functions in exactly this sense: they gather and impart information about how power is exercised at the border¹³⁹. On land, volunteers of the Human Rights Observers project in Calais and Grande-Synthe turn routine border practices into a matter of public record, by filming and recording police evictions, the seizure of migrants' tents and belongings and later publishing what they observe¹⁴⁰.

6.1.2 Expressive conduct: communicating a political claim through action

Article 10 ECHR is not confined to the spoken or written word. The ECtHR has long accepted that opinions may be conveyed through conduct and has proceeded to explain when an act, rather than a statement, falls within the protection of the right. This relies on two conditions:

¹³⁶ ECtHR, 2009, *Társaság a Szabadságjogokért v. Hungary*, no. 37374/05.

¹³⁷ ECtHR, 2019, *Szurovecz v. Hungary*, no. 15428/16, §76.

¹³⁸ For examples of structured initiatives that monitor and measure the gravity of the situation in the Mediterranean, see: Watch the Med, Alarm Phone, SOS Méditerranée, Mediterranean saving humans, ARCI Porco Rosso, Border Violence Monitoring Network, etc.

¹³⁹ Bisiaux, S.-A. and Tesson, J., 2026. *Sauvetage civil en Méditerranée : dix ans de solidarité sous pression*, *Plein droit*, no. 148, pp. 12-15.

¹⁴⁰ Human Rights Observers. 2025. *Annual Report 2024*.

- First, whether the act, viewed objectively, possessed an expressive character meaning its capability of conveying ideas or opinions and,
- Second, whether the person performing the act intended to communicate such a message.

Where both conditions are met, the conduct engages Article 10 ECHR¹⁴¹.

The scope of actions amounting to expression is particularly broad. Wearing political symbols is a way of expressing political views and falls within Article 10¹⁴² while a boycott, as action-driven advocacy, constitutes protected political expression¹⁴³. The act of tearing a ribbon from a wreath laid by the President was viewed as expressive because carried out before others with the aim of conveying ideas to them¹⁴⁴. Conduct can also be expressive when engaging in a broader debate on a matter of public interest¹⁴⁵. When facing the case of a protest on reproductive rights, the Court of Strasbourg perceived a vessel as an expressive medium and held that, the form in which information is conveyed, not only its content, is protected by Article 10 ECHR¹⁴⁶.

This test transposes to various solidarity actions. As Hahn and Istrefi argue, certain acts of assistance may themselves qualify as expressive conduct where they are intended to communicate opposition to border violence, to bear witness, or to intervene in democratic debate. A publicly organized rescue or accompaniment, conceived as denunciation, satisfies both limbs of the test: objectively, it has a communicative character, and it is carried out with the avowed purpose of conveying a stance. A rescue vessel entering a closed port in open defiance of a ministerial ban, before the assembled press, expressively communicates an intentional denunciation¹⁴⁷. In this case, the *Sea-Watch 3* at Lampedusa in 2019 denounced the “*closed ports*” policy and the forced returns to Libya¹⁴⁸. A solidarity march across the Franco-Italian border¹⁴⁹, mounted in answer to a far-right anti-migrant operation, is an act of public protest recognized as political even by those who prosecuted it¹⁵⁰. This what the “7 de

¹⁴¹ ECtHR, 2014, Murat Vural v. Turkey, no. 9540/07, §54.

¹⁴² ECtHR, 2008, Vajnai v. Hungary, no. 33629/06.

¹⁴³ ECtHR, Baldassi and others v. France, no. 15271/16.

¹⁴⁴ ECtHR, 2014, Shvydka v. Ukraine, no. 17888/12, §§ 37-38.

¹⁴⁵ ECtHR, 2018, Stern Taulats and Roura Capellera v. Spain, nos 51168/15 et 51186/15, §39 such as the debate over the institution of the monarchy.

¹⁴⁶ ECtHR, 2009, Women On Waves and Others v. Portugal, no 31276/05, §§29-30.

¹⁴⁷ *Ibid.*

¹⁴⁸ See: Cass. pen. sez. III, 16 Jan 2020 (Rackete), Agrigento GIP order of 2 July 2019

¹⁴⁹ When examining and interpreting Article 10, the Court can also consider Article 11 of the Convention where appropriate or choose to only refer to Article 10. See, for reference: ECtHR, 2011, Schwabe and M.G. v. Germany, nos. 8080/08 and 8577/08, §101.

¹⁵⁰ On the choice of Article 10 rather than Article 11, see Information Note on the Court’s case-law No. 116, relating to the Women On Waves and Others v. Portugal case: “*Taking into account the specific circumstances of the case, and particularly the fact that the applicant associations’ complaints mainly concerned the alleged interference by the*

Briançon” case demonstrated¹⁵¹, strongly exhibiting the use of contentious politics by citizens. Individual conduct can qualify just as squarely. Cédric Herrou did not merely shelter and drive people across the Roya Valley but openly framed those acts, on camera and before the courts, as a political refusal of France’s border regime. His assistance was performed in full view, intended as contestation, and understood as such by press, public and prosecutors alike¹⁵². Article 10 ECHR applies if intent is manifest but thins as the act shades into purely material aid. A resident of the Roya Valley who quietly gives a meal and a bed for the night to someone who has just crossed, without press, without proclamation, and with no intention of addressing an audience, performs an act materially close to Herrou’s, yet expressively silent. As the help is the whole of the action and nothing is communicated, such conduct could be better carried by freedom of conscience than by the right to expression.

Two limits therefore emerge from this test. First, not every act of assistance enters the scope of Article 10 as the conduct must be objectively (namely, publicly) expressive and intervene in the debate of public interest that migration represents, with a manifest intention to communicate it. Second, and crucially, falling within the scope of Article 10 is only a threshold. Even where solidarity qualifies as expression, the right remains subject to derogation, the State may still seek to justify its interference, the ECtHR might not establish the occurrence of a violation.

6.2 Applying Article 10 ECHR: the inherent limits of a right subject to restrictions

As freedom of expression is considered a “*basic*” condition of the progress of a democratic society¹⁵³, its importance is matched by the breadth and the specificity of the obligations it imposes on the State. Article 10 ECHR necessarily requires that the State party abstains from interfering with the exercise of the right (6.2.1, 6.2.2., 6.2.3). But it demands more than restraint as the ECtHR has drawn a positive duty to protect expression, including against the acts of private parties.

authorities with their right to inform the public of their position on abortion and on women’s rights in general, it was easier to examine the matter under Article 10 alone, so there was no need to consider it separately under Article 11”.

¹⁵¹ Tribunal correctionnel de Gap, December 12 2018 ruling, post public hearing of November 8 2018.

¹⁵² See, on Herrou’s proceedings following the Conseil Constitutionnel decision: Cass, crim, May 9, 2018 (QPC referral in Herrou) and Cour d’appel de Lyon, May 13, 2020. See, on Herrou’s personal views of freedom: Documentary Libre, (Paris: Jour2Fête, 2018).

¹⁵³ ECtHR, Grand Chamber, 2015, *Perinçek v. Switzerland*, no. 27510/08, §196.

6.2.1 The lawfulness of the interference

Where there is interference of the State, it must be “*prescribed by law*”¹⁵⁴ and only then will arbitrary power be contained. The impugned measure targeting solidarity must have a basis in domestic law, be adequately accessible and foreseeable, meaning formulated with sufficient precision to allow those concerned to regulate their conduct and to reasonably anticipate the consequences a given act may entail¹⁵⁵. The ECtHR reads law in its material sense, as it embraces not only parliamentary statute but also subordinate legislation, administrative regulation, and the case law that construes them¹⁵⁶.

The lawfulness question becomes genuinely live where the interference is administrative rather than criminal¹⁵⁷. Where the discretion conferred on an administrative authority such as the police is so wide and its exercise so unconfined by ascertainable criteria that a human right defender cannot expect when a lawful gesture of assistance will attract a sanction, the foreseeability requirement is placed under strain. Where discretion is unaccompanied by effective safeguards against arbitrary use, the measure may fail the quality-of-law standard altogether, as the Court has held of broadly framed and inadequately supervised police powers in other contexts¹⁵⁸.

Still, lawfulness is a low threshold as well as an easily cured one: a State that initially restricts solidarity on an uncertain footing can immunize its interference simply by codifying it. This is exactly the trajectory Italy has followed. It gradually conferred an explicit statutory basis on administrative detention of vessels and imposed the obligation to proceed without delay to an assigned port after each rescue¹⁵⁹. The requirement may only offer solidarity actors a narrow and contingent line of defense. It may however be stronger against the diffuse, discretionary harassment characteristic of the French land border whose administrative framework and police powers can lack of foreseeability¹⁶⁰. Therefore, the analytical weight of the Article 10§2 test rather falls on the conditions that follow.

¹⁵⁴ ECtHR, Grand chamber, 2016, Magyar Helsinki Bizottság v. Hungary, no. 18030/11, §182.

¹⁵⁵ ECtHR, 1979, The Sunday Times v. United Kingdom, no. 6538/74, §49.

¹⁵⁶ *Ibid*, §47.

¹⁵⁷ As criminal law, in democratic society, is, in general, strictly framed and entails many more explicit protections and guarantees, due to its interference in one’s liberty.

¹⁵⁸ ECtHR, 2010, Gillan and Quinton v. United Kingdom, no. 4158/05, §§76-87. In this case, “authorizations” permitted any uniformed police officer within a defined geographical area to stop and search pedestrians and vehicles and their occupants, which the Court deemed to be a violation of Article 8, as the measure was not “in accordance with the law”.

¹⁵⁹ Through materially legal instruments such as an official “closed ports” bill in August 2019, of the Piantedosi decree in 2022, or the Flussi decree in 2025.

¹⁶⁰ As depicted in by reports of PICMUN, Observatoire des libertés associatives or Human Rights Observers.

6.2.2 The legitimate aim(s) pursued by the interference

Article 10§2 permits restrictions only where they pursue one of the aims it exhaustively enumerates¹⁶¹. Most often, a State seeking to justify the repression of solidarity will reach for the prevention of disorder or crime, and, depending on the setting, for public safety, national security, or territorial integrity. The list is as telling for what it omits: border control and migration management appear nowhere among the permissible aims. A State cannot, therefore, invoke immigration control as such. It must repackage that objective within an enumerated heading, recasting the deterrence of assistance as the prevention of the offense of facilitation, or the policing of a stretch of sea or a mountain pass as a matter of public safety or territorial integrity¹⁶².

As with lawfulness, the ECtHR will ordinarily accept the aim advanced without searching scrutiny before passing to the question of necessity. Its case law supplies concrete illustrations of border measures being tied to an enumerated aim. For instance, the expulsion of a member of the European Parliament from French Polynesia, together with a ban on her return, was treated as an interference with Article 10 found to pursue both prevention of disorder and upholding of territorial integrity¹⁶³. Still, the very need to frame migration control as crime prevention or national security opens a gap between the aim formally invoked and the objective in fact pursued. Where the genuine purpose is to deter advocacy or to silence criticism of border governance, that gap becomes the hinge of a misuse-of-power under Article 18 ECHR, if such an ulterior purpose was predominant¹⁶⁴.

The legitimate aim appears less as an independent filter than that as the reference point against which proportionality is measured and the breadth of the margin of appreciation calibrated.

6.2.3 The necessity of the interference in a democratic society

Then, the ECtHR asks whether an interference can be reconciled with the demands of a democratic society. To be “*necessary*” a restriction must answer a “*pressing social need*”¹⁶⁵. The proportionality

¹⁶¹ Article 10§2 enumerates the following legitimate aims that the State can pursue while conditioning or restricting the exercise of freedom of expression: “national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary”.

¹⁶² As shown by the rhetoric developed by State Parties in the precited 2026 Chişinău Declaration.

¹⁶³ ECtHR, 1995, *Piermont v. France*, nos. 15773/89 and 15774/89, §§77-85.

¹⁶⁴ See, for a example of a recognition of mise-use of power by the State: ECtHR, Grand Chamber, 2017, *Merabishvili v. Georgia*, no. 72508/13, §§292-308.

¹⁶⁵ ECtHR, Grand Chamber, 2012, *Mouvement raëlien suisse v. Switzerland*, no. 16354/06, §48.

test conducted by the Court varies and can take different criteria in consideration¹⁶⁶. Always, however, must exceptions enabled by Article 10§2 be construed strictly and restriction established convincingly. Without substituting itself to the national authorities, the ECtHR reviews the interference in the light of the case as a whole, whether it was proportionate to the legitimate aim pursued and whether the reasons given for it were “*relevant and sufficient*”¹⁶⁷. These principles can be layed out as such:

6.2.3.1 *The depth of the national margin of appreciation*

The breadth of the State’s margin mainly turns on the following variables: the presence or absence of a European consensus¹⁶⁸, the nature of the expression at stake¹⁶⁹, the reasoning behind the State’s chosen balance¹⁷⁰. When looking at expressive solidarity with migrants, this bundle of indicators points in different directions.

There is no uniform European standard governing the treatment of solidarity with migrants, which would imply a broad margin of appreciation. Facilitation of entry, transit and residence is criminalized on divergent terms, and they differ more sharply still over whether, and how far, humanitarian assistance is spared. Indeed, as it was previously mentioned, the Facilitators’ Package requires Member States to penalize facilitation but leaves the humanitarian exemption optional. It permits rather than forces to abstain to sanction conduct aimed at providing humanitarian assistance, and then only as regards entry and transit, not residence¹⁷¹. In consequence, a variety of measures are used by States party to the ECHR to prevent irregular movement of individuals¹⁷². That being said, the absence of consensus isn’t static. In the past, the ECtHR has used the evolutive interpretation technique even on striking topics of dissensus, while stressing the “*crucial importance*” of doing so¹⁷³.

¹⁶⁶ See: Herr, Robin E., *The Right to Receive Information Under Article 10 of the ECHR: An Investigation from a Copyright Perspective*, Juridiska Föreningen i Finland, JFT / no. 2 (2011), pp. 193-211.

¹⁶⁷ *Ibid.*

¹⁶⁸ ECtHR, Grand Chamber, 2013, *Animal Defenders International v. the United Kingdom*, no. 48876/08, §123.

¹⁶⁹ ECtHR, Grand Chamber, 2007, *Stoll v. Switzerland*, no. 69698/01, §106.

¹⁷⁰ ECtHR, Grand Chamber, 2012, *Aksu v. Turkey*, nos. 4149/04 and 41029/04, §67.

¹⁷¹ Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence, Article 1(2).

¹⁷² See, monthly and yearly reports by the Border Violence Monitoring Network.

¹⁷³ ECtHR, Grand Chamber, 2002, *Christine Goodwin*, §74 : “*However, since the Convention is first and foremost a system for the protection of human rights, the Court must have regard to the changing conditions within the respondent State and within Contracting States generally and respond, for example, to any evolving convergence as to the standards to be. It is of crucial importance that the Convention is interpreted and applied in a manner which renders its rights practical and effective, not theoretical and illusory. A failure by the Court to maintain a dynamic and evolutive approach would indeed risk rendering it a bar to reform or improvement*”.

The margin of appreciation appears however slimmer when looking at the nature of the expression at stake, whether it is the activity of public watchdog and monitoring, or an expressive conduct. There is indeed “*little scope for restrictions on political speech or debate on questions of public interest*”¹⁷⁴. Solidarity, as the preceding analysis has shown, can be political speech (denunciation, advocacy, policy suggestions) on a matter of public interest (migration, freedom of movement, equality beyond citizenship). It is precisely for such speech that the margin is narrowest and the State’s justificatory burden heaviest, pending on the role of the expressive actor.

The ECtHR has long held that NGOs and civil-society actors who call attention to matters of public interest discharge a “*public watchdog*” function of an importance comparable to that of the press and so warrant a comparable level of protection—which is to say, both the closest scrutiny and the narrowest of margins¹⁷⁵. What brings a migrant-rights defender within this category, however, is not the act of assistance but the function performed: the gathering, documenting, and public communication of information about border management. Where a State’s interference is directed at monitors, witnesses, reporters and advocates, then, its latitude is most constrained, compounding the value the Convention attaches to defending the dignity and rights of others. This convergence bears directly on the migrant-defender who unites the high-value political speaker, the watchdog of civil society, and the defender of others’ rights in a single figure.

6.2.3.2 *The subsequent proportionality of the interference*

Within this potentially narrowed margin, the proportionality assessment asks whether the interference met a pressing social need by means no more restrictive than the aim demanded, and whether the reasons advanced were relevant and sufficient.

Whether any pressing social need to control migration flows at the EU’s internal or external borders or to regulate solidarity practices as such truly exists is open to debate¹⁷⁶. One could argue that the pressing social need is to receive those arriving in Europe and to let them travel onward to the country of their freely exercised choice.

¹⁷⁴ ECtHR, Grand Chamber, 2007, *Stoll v. Switzerland*, no. 69698/01, §106.

¹⁷⁵ ECtHR, Grand chamber, 2016, *Magyar Helsinki Bizottság v. Hungary*, no. 18030/11.

¹⁷⁶ The existence of a “pressing social need” is subject to the Court’s supervision and must be convincingly established by the respondent State: ECtHR, Grand Chamber, 2012, *Mouvement raëlien suisse v. Switzerland*, no. 16354/06, §48.

The exclusivity or least-restrictive character of the measure is also of key importance. The ECtHR does not oblige the State to choose the single least intrusive option, but the availability of gentler alternatives weighs heavily against an interference bearing on public-interest expression. Prosecuting those who rescue, shelter or feed migrants is rarely the only way to secure border control or public order, especially as the impact leading to alleged public disorder must be established by the State. Where a lighter regulatory measure, or no measure at all, would achieve the same aim, resorting to the criminal law shows that it was not necessary. This bears crucially on the severity of the sanction. A conviction, worsened by a prison sentence, for aid to migrants in danger would be presumptively disproportionate¹⁷⁷, while domestic courts would have to control the conventionality of the measure and motivate their decision carefully¹⁷⁸.

Even then, the necessity of the measure must be weighed against its dissuasion capacity on solidarity, as it may extend far beyond the individual actually convicted. Associations, volunteers and rescuers could be discouraged from acting at all, impoverishing the very debate Article 10 exists to protect. Such deterrence of public-interest engagement is an aggravated interference, demanding stronger justification. A democratic society, based on pluralism, tolerance, broadmindedness, refuses the ECHR's liberties to those who would wield them to destroy the liberties of others¹⁷⁹ but it equally forbids the State to turn that logic, in bad faith, against those who defend rather than threaten the rights of others¹⁸⁰. Where the reasons given are not the real ones, where prevention of crime masks the suppression of dissent, their "*relevance and sufficiency*" fades¹⁸¹.

These contours are visible in a line of cases on provocative public-interest protest, extendable to solidarity cases. Following the ECtHR¹⁸², the French Cour de cassation likewise held that criminalizing an act may itself interfere disproportionately with expression, requiring a proportionality review where the conduct is linked to a debate of general interest. Then, if the law must pause before punishing a topless protest¹⁸³ or a removed portrait¹⁸⁴, shouldn't it pause longer before punishing the rescue of a

¹⁷⁷ In the case *Bouton v. France*, the Court of Strasbourg ruled that a suspended prison sentence imposed on a Femen activist for a bare-chested protest in a church violated Article 10, the domestic courts having severed the nudity from the protest's meaning and overlooked that imprisonment for political expression is reserved for hatred or violence. See: ECtHR, 2022, *Bouton v. France*, no. 22636/19, §§47-66.

¹⁷⁸ For an example where the Court attached great importance to the reasoning of the domestic courts, in the presence of "décrocheurs de tableaux": ECtHR, 2025. *Ludes and Others v. France*, nos 40899/22, 41621/22 and 42956/22 §§100-118.

¹⁷⁹ Through Article 17 ECHR.

¹⁸⁰ Through Article 18 ECHR.

¹⁸¹ ECtHR, Grand Chamber, 2012, *Mouvement raëlien suisse v. Switzerland*, no. 16354/06, §48.

¹⁸² ECtHR, 2022. *Bouton v. France*, no 22636/19.

¹⁸³ Cass. crim., 26 February 2020, no. 19-81.827.

¹⁸⁴ Cass. crim., 22 September 2021, nos 20-80.489 and 20-85.434.

person in distress at sea or land? The proportionality that shields the provocateur shouldn't be denied to the well-conscious Samaritan.

This being said, in practice, the Court's recognition of an Article 10 violation highly relies on the nature of the measure taken by the State (legal grounds, seriousness of the sanction) and on its reasoning to justify said measure (motivation, good faith).

6.2.4 Beyond interference: the positive obligation to preserve a favorable environment

Still, the justification test set out above presupposes an identifiable interference against which the three conditions can be measured, which is not always the case. The repression of solidarity often operates through an accumulation of inspections, authorization requirements, financial exposure, legal uncertainty and a general climate of opinion that discourages expressive solidarity activities. Where officials cast those who act in solidarity with migrants as accomplices of smuggling or as threats to public order, they help generate the hostile climate that deters expression, the antithesis of the conditions the State is bound to foster¹⁸⁵. Where public institutions fail to stress the need to respect and to protect those who compensate of their absence¹⁸⁶, it undermines the capacity to express one's support and solidarity with migrants without retaliation. The Court's lends this concern growing support, as it has, in the past, awarded specific attention to the situation of human-rights defenders and to measures designed to harass or silence them¹⁸⁷.

In this regard, a positive obligation to protect expression against the acts of private parties, even in relations between individuals has been derived from Article 10 ECHR¹⁸⁸. In *Dink v. Turkey*, it recognized a duty to foster an environment favorable to participation in public debate without fear of expressing personal opinions and ideas, as well as to guard against the chilling effects capable of suppressing it¹⁸⁹. Such an obligation is engaged not by an act but by a failure to protect, or to maintain the conditions in which expression can take place. It can therefore capture a harm the interference analysis examined above may structurally leave in the shadows. Within internal borders, solidarity

¹⁸⁵ Especially true under Giorgia Meloni. See, on her discourse justifying anti-immigration policies: Lasio D., Girei E., De Oliviera J-M., Piras L., Serri F., 2025. Employing women's rights as a racist weapon: The case of Giorgia Meloni in Italy's radical right, *Women's Studies International Forum*, vol.11, pp. 1-8.

¹⁸⁶ Striking when the Tribunale di Palermo acquitted Matteo Salvini of kidnapping and refusal to perform official duties (*il fatto non sussiste*), decision which has definitively upheld by the Corte di Cassazione in 2025. See: Tribunale di Palermo, 20 December 2024 (*Open Arms*), Corte di Cassazione, 17 December 2025.

¹⁸⁷ See, *mutatis mutandis*: ECtHR, 2016, Rasul Jafarov v. Azerbaijan, no. 69981/14.

¹⁸⁸ ECtHR, 2000, Özgür Gündem v. Turkey, no. 23144/93.

¹⁸⁹ ECtHR, 2010, *Dink v. Turkey*, nos. 2668/07 et al., §137.

actors have faced organized hostility and obstruction from far-right groups and political movements¹⁹⁰. Where such groups harass or obstruct those who monitor or assist, and the authorities decline to act, the State's passivity may itself engage Article 10 ECHR, as it possesses a horizontal reach¹⁹¹.

Positive obligations aren't advanced here as the principal basis of protection, but as the means of reaching inaction of state enabling for the ultimate deterrence of solidarity as expression which negative obligations cannot reach. Both applications remain complementary and subsidiary, as obligations under Article 10 attract a wide margin and have been declined elsewhere, notably when they would result in imposing an excessive burden on the authorities¹⁹².

¹⁹⁰ As when such formations staged operations to obstruct Alpine crossings by Génération Identitaire and Defend Europe, the very episode that prompted the Briançon march and the following prosecution of the "7 de Briançon".

¹⁹¹ ECtHR, 2011, Palomo Sánchez and Others v. Spain, nos. 28955/06, 28957/06, 28959/06 and 28964/06.

¹⁹² See, for example: ECtHR, Appleby and Others v. United Kingdom, no. 44306/98, §40 : *"In determining whether or not a positive obligation exists, regard must be had to the fair balance that has to be struck between the general interest of the community and the interests of the individual, the search for which is inherent throughout the Convention. The scope of this obligation will inevitably vary, having regard to the diversity of situations obtaining in Contracting States and the choices which must be made in terms of priorities and resources. Nor must such an obligation be interpreted in such a way as to impose an impossible or disproportionate burden on the authorities"*.

7 Conclusion, perspectives, recommendations

7.1 Findings

The main question of this thesis asked to what extent, and through which interpretations, private acts of solidarity with migrants can be characterized and thus protected as freedom of expression under Article 10 ECHR. The present analysis answers affirmatively. Article 10 ECHR reaches solidarity wherever the assistance is intentionally communicative. Qualifies any situation where the actor gathers, documents, monitors or imparts information about how power is exercised at the border, or where the altruist conduct itself is intended to convey a message of contestation of migration policies. Its protective force is therefore strongest for the watchdog and denunciatory dimensions of solidarity. It narrows as conduct recedes into silent material aid that conveys no objective message (see Table 2).

Table 2 - Classification of solidarity practices in relation to Article 10 ECHR

Behavior	Forms of behavior	Typical actors	Relevancy of Art. 10 ECHR
Civic oversight & information	Border monitoring, documenting violations, filming evictions, aerial observation, collecting testimony, publishing findings	- Monitoring projects - NGOs - Reporters - Activists	<u>Strong: watchdog</u> Potentially entitled to a right to receive & impart information while preparatory gathering is also protected
Public denunciation	Solidarity marches, protests, public campaigning against State practices and/or in support of migrants	- Individuals acting openly - Activists - NGOs	<u>Strong: expressive conduct</u> Conduct objectively expressive & intent to communicate it
Material assistance & care	Search-and-rescue, first aid, food, water, hosting, shelter, transport, accompaniment	- Residents - NGOs - Migrants - Legal professionals	<u>Limited: only if expressive conduct</u> Engaged only where the act is publicly performed and intentionally communicated as an act of denunciation

Addressing the first sub-question meant diagnosing how France and Italy regulate and sanction the same cross-border phenomenon through divergent means.

In France, criminal exposure under Article L622-1 CESEDA has been softened by the constitutional recognition of *fraternité* but not erased. The constitutional protection leaves entry-stage assistance criminalizable. It does not protect genuinely contestatory actions, nor does it directly shield from administrative retaliation and police harassment.

In Italy, criminal repression rests on Article 12 of Legislative Decree No. 286/1998. Yet,, currently, the diminishing of solidarity operates most swiftly through administrative measures taken against rescue NGOs, considerably stalling their activities and range of actions though the judicial power remains attached to the duty to rescue.

The EU facilitation background is thus inflected into two distinct enforcement logics, with the at land French penal-and-policing pressure on the one side, and at sea Italian administrative neutralization. They stand united by a common capacity to intimidate, pursue and ultimately discourage, without convictions.

The second sub-question stresses how solidarity has been framed so far and whether an Article 10 reading would meaningfully strengthen that protection.

Measured against the existing kaleidoscope of rights, Article 10 adds real but bounded protection. The two States parties would benefit asymmetrically from this framing. In France, Article 10 supplements an existing constitutional protection, earning its keep on the expressive and denunciatory layer where *fraternité* is weakest or even absent. In Italy, it pierces administrative neutralization, the supremacy of international conventions giving it traction against ostensibly technical measures that would otherwise escape rights scrutiny. That asymmetry is precisely what justifies a single conventional level of framing across two systems that look different on the surface. In both States, the broad scope of the right allows it to reach any state measure that interferes with protected expression with little regard for how domestic law formally classifies it.

This protection remains nonetheless bounded. At its threshold, the expressive reading does not reach every act. Material aid given discreetly, communicating no claim and displaying no visible critical dimension, falls outside of the right's protective reach. Internally, even where Article 10 ECHR is applicable, its derogable nature and the margin of appreciation under Article 10§2 leave room for public-order and security justifications, carried through by careful national court reasonings and balanced sanctions. Finally, looking through a discursive lens, treating solidarity as protected expression may still be weakened by hostile migration discourse and by domestic legal and political

cultures reluctant to recognize solidarity as expression at all. Naming an act political can raise the stakes in both directions, strengthening its claim to high-value protection while also exposing it to sharper contestation. These limits qualify the argument without defeating it. In the end, protecting aid workers is inseparable from protecting migrants themselves, because the ability to deliver aid often determines whether migrants can access even the most basic rights in practice¹⁹³.

7.2 Theoretical contribution to Human Rights Law

Doctrinally, the thesis carves expressive solidarity as a category of its own. The analysis has shown that the migrant-rights defender does not fit neatly into a single line of the ECtHR's Article 10 case law. Instead, it sits at the convergence of three figures the Convention already protects most strongly: the political speaker contributing to debate on a matter of public interest, the civil-society watchdog who gathers and imparts information about how power is exercised at the border, and the defender of the fundamental rights of others. Treating these as a single figure rather than three loosely overlapping roles clarifies why expressive solidarity could attract a slim margin of appreciation and a heavy justificatory burden on the State. In doing so, solidarity becomes a test case for how far the right reaches into conduct. It also evaluates how far that reach is secured through the State's negative duty to refrain from interference as well through its positive obligation to preserve an environment in which solidarity as expression can be exercised at all¹⁹⁴.

Methodologically, the thesis also reads Article 10 ECHR as a site of legal mobilization. Following the Human Rights Experimentalism doctrine¹⁹⁵, the meaning of the Convention is not handed down from Strasbourg through top-down command alone but co-produced from the bottom up. Its evolutive interpretation is indeed forged through strategic litigation, civil-society mobilization, follow-on implementation and repeated interaction between the Court, domestic actors, and NGOs. On this account, appellants are not passive beneficiaries of Convention standards but constitutive participants in how those standards develop. That perspective reframes the very actors this thesis concerns: in

¹⁹³ Smart, K. E., 2025. Countering the Criminalization of Solidarity: An Analysis of Legal Frameworks Proposed to Protect Humanitarian Aid for Migrants and Asylum Seekers. *William & Mary Journal of Race, Gender, and Social Justice*, 32(1).

¹⁹⁴ Thus, extending the claims developed by Hahn and Istrefi further than the mere "search and rescue" and "watchdog activities" on the basis of a State party's negative obligation.

¹⁹⁵ Developed in : Anagnostou, D. 2022. The European Convention of Human Rights regime : reform of immigration and minority policies from afar, Abingdon, Oxon ; New York : Routledge.

litigating their own protection under Article 10, solidarity defenders do not simply claim a pre-existing right but help to construct it, contributing to the evolutive development of the Convention they invoke. The argument advanced here follows that same spirit. Freedom of expression stands as a doctrinal possibility whose force depends on the mobilization that would carry it into the courts rather than on an initiative undertaken by the ECtHR or by a state party.

7.3 From shield to claim: reclaiming law as a positive tool for solidarity

Finally, it appears necessary to shift in how solidarity actors relate to law itself. If law is the instrument through which states criminalize assistance, it is also an instrument that solidarity actors can reclaim and turn back on the state¹⁹⁶. Rather than invoking rights only defensively, once charged, they increasingly wield constitutional and international law offensively. This way, they argue *a priori* that it is the state, not the rescuer, that acts unlawfully. Search-and-rescue organizations in particular respond to repression by insisting that their conduct is required by existing legal frameworks, and that restrictive border measures themselves breach the State's constitutional and international obligations.

When Carola Rackete entered the port of Lampedusa against orders on the Sea-Watch 3, the act was reframed not as defiance of the law but as compliance with a higher legal duty, namely the obligation under the law of the sea to disembark rescued persons in a place of safety. The breach, on this argument, lies with the authorities who obstructed disembarkation, not with the rescuer. The same posture runs through the French litigation around Cédric Herrou. There, the defense of *fraternité* did not merely excuse assistance but led the Conseil constitutionnel to recognize fraternity as a constitutional principle and to narrow the *délit de solidarité*. Law is thereby reclaimed not only as argument but as durable doctrine thanks to the bottom-up fashion described above. The collapse of the Iuventa prosecution in Italy followed the same path, as rescuers sought not merely acquittal but recognition that they had acted lawfully throughout.

Read in this light, Article 10 ECHR specifically is not only a defense raised in court after the fact but forms part of a wider repertoire through which movements actively contest the legality of the border regime itself¹⁹⁷.

¹⁹⁶ Çidam Ç, Cortés L, Gündoğdu A, Moreno-Lax V, 2025. Solidarity as Legal Mobilization. *AJIL Unbound*; 119, pp. 21.

¹⁹⁷ Contrarily, when the defense of the prosecutes revolves around the absence of breach of the invoked law rather than on the legitimacy of that breach based on other superior norms, it can undermine the expressive and intended dimension of

Framing solidarity as freedom of expression politicizes the struggle. To name an act as expression is to place it within democratic debate. An interference becomes harder to legitimize once what it suppresses is recognized as high-value political speech, denouncing injustices¹⁹⁸. The framing also recasts the actors. It presents those who assist migrants not as clueless helpers, still less as suspected offenders, but as participants in public deliberation, speakers contributing to a debate of evident public interest rather than individuals to be managed at the margins of criminal law.

Reclaiming law in this way also carries a deep relational value. The organizations at issue increasingly break with a conventional humanitarianism that divides the world into providers and beneficiaries of aid. Adopting a more “*egalitarian*” understanding, they strive to act shoulder to shoulder with, rather than in the name of, the people they support¹⁹⁹. By claiming rights alongside migrants, these actors use legal argument to bridge the power differential between those who offer and those who receive support, opening a space of mutual recognition in which both appear as bearers of rights rather than as helper and helped²⁰⁰. The turn from shield to claim is therefore not only strategic but expressive of the equality that solidarity, at its most ambitious, seeks to enact.

7.4 Litigation and policy recommendations

For the EU, the recommendation bears on the forthcoming revision of the Facilitators’ Package. The revised text should integrate a clearly defined and mandatory humanitarian exception, preventing the discretion that currently allows Member States to criminalize assistance. The EU should not introduce the proposed offence of “*publicly instigating*” third-country nationals to enter, transit or remain irregularly. In its existing form²⁰¹, the offence would criminalize discourse aimed at migrants as such,

solidarity. For example, see regrets of the “Stansted 15” amidst acquittal proceedings, accessible at: <https://novaramedia.com/2021/02/04/the-stansted-15-have-won-what-can-we-learn-from-their-four-year-legal-battle/>.

The activists who aimed to stop a deportation flight at Stansted airport admittedly regretted their defensive takes which ended up normalizing and arguing around the “terror legislation”, rather than against.

¹⁹⁸ Rather than framing it as compassion, a representation of the world that Fassin critiques. As he puts it, without proper recasting, “*inequality is replaced by exclusion, domination is transformed into misfortune, injustice is articulated as suffering, violence is expressed in terms of trauma*”. See, Fassin, D. (2011) *Humanitarian Reason: A Moral History of the Present*, University of California Press, *Introduction: A Humanitarian Government*, pp. 6/7.

¹⁹⁹ Çıdam Ç, Cortés L, Gündoğdu A, Moreno-Lax V, 2025. Solidarity as Legal Mobilization. *AJIL Unbound*; 119, pp. 23

²⁰⁰ Following the underlying idea of contentious politics, where citizens challenge the limits of the citizenship as framed by the State regarding “*marginal*” groups who can become citizens through their actions. See: Ataç, I., Rygiel, K. & Stierl, M. 2016. ‘The Contentious Politics of Refugee and Migrant Protest and Solidarity Movements: Remaking Citizenship from the Margins’, *Citizenship Studies*, 20(5), pp. 532.

²⁰¹ Aid laid out in Article 3.2 of Proposal COM(2023) 755.

in an unclear and arbitrary way, detrimental for, precisely, freedom of expression. It risks exposing humanitarian action, advocacy and information sharing further to prosecution²⁰².

For States, the first recommendation is to cease illegitimate interference against actors who attempt to fill a striking gap in public action and care. In Italy, this means dismantling the administrative machinery of neutralization through which sea rescue is obstructed without recourse to the criminal courts, namely the port denials, vessel detentions and conduct codes. In France, this implies ending the police harassment and administrative pressure exerted at the Alpine and Calais borders and stop prosecutions under the *délit de solidarité* where no financial profit is obtained. Second, States bear a positive duty to foster an environment in which solidarity as expression can be exercised (see Section 6.4). This entails, at a minimum, refraining from the stigmatizing official discourse that delegitimizes those who assist migrants and corrodes the space in which Article 10 ECHR is meant to operate in a pluralist democratic society.

For litigants under Italian and French jurisdictions, the central recommendation is a selective rights strategy keyed to actor and act. Litigants should plead Article 10 where the conduct documents, monitors or (in)directly denounces border practice, while continuing to anchor purely material or instrumental assistance in the rights better suited to it (the right to life, the duty to rescue, etc.). As previously shown, it is precisely their defense that can shape, through a bottom-up approach, the future interpretations of basic individual freedoms.

As for domestic courts, they should prioritize substance over form when reviewing diverse types of criminalization measures, to uphold international and human rights law. Italian and French benches are invited to a measure of judicial creativity, treating the development of Convention standards as a task in which domestic courts participate actively rather than receive passively.

Lastly, because the protection ensured by Article 10 ECHR is strongest where conduct is communicative and communicated, civil society, citizens, residents have a personal interest in making the expressive dimension of their work visible. Recording what they observe at the border, articulating it as a contribution to public debate, and publishing their findings rather than letting assistance pass unregistered are valuable contributions. Communicating solidarity allows, in this sense, to protect it.

²⁰² Violeta Moreno-Lax, 2025. *Commission Proposal for a Revised Facilitation Directive: Targeted Substitute Impact Assessment*, PE 765.787 (Brussels: European Parliamentary Research Service).

More importantly, the communication has a collective interest, at it supports migrants themselves. Producing public information about how State power is used at the border at the expense of migrants' fundamental rights performs the watchdog function the ECtHR protects. They expose practices that would otherwise remain invisible and sustains the accountability on which migrants' effective access to their rights depends²⁰³. It is time, therefore, to recognize in the volunteer at the border, a speaker the ECHR meant to protect. If a democracy society is judged by what it permits to be said at its margins, then protecting solidarity as expression is less a favor to those who help than a test the law sets for itself.

²⁰³ Protecting those who assist is, as this thesis has argued, inseparable from protecting the assisted.

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