

The Paradox of 'Crimmigration' in EU Law

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This critical analysis examines the article '*The National Police dismantles an international criminal organisation dedicated to facilitating the illegal regularization of migrants*', which details a joint operation by Spanish and French authorities, in collaboration with Europol. The operation dismantled a smuggling network in Zaragoza, Spain¹ that exposed a complex web of exploitation and legal ambiguity. The network charged migrants €15,000 for fraudulent documentation to regularise their status after arriving by boat from Algeria. Investigators discovered migrants housed in cramped 9-square-meter rooms,² highlighting the exploitative nature of the operation.

This case illuminates a fundamental tension between criminal justice and migration law. The United Nations Protocol against the Smuggling of Migrants by Land, Sea, and Air, signed by over 100 countries, criminalises the facilitation of irregular migration.³ However, smuggling often involves exploitative practices—including deception, negligent risk exposure, and various forms of abuse⁴—raising questions about the nuanced reality of migration pathways and whether individuals, facing limited legal options, are compelled to rely on irregular means.⁵

The current EU framework, Directive 2002/90/EC⁶ (the "Facilitators Package"), broadly criminalises anyone assisting *irregular* border crossings for profit. This approach is mirrored by Spanish law, particularly Article 318 bis of the Criminal Code, which explicitly penalises facilitators of *illegal* or *clandestine* immigration. Nonetheless, using terms like "illegal migration" in some legal texts (*supra*), problematically frames migration as inherently criminal, ignoring the structural factors driving irregular pathways. This paper avoids terminology that dehumanises migrants that sometimes oversimplify complex socio-legal realities. Moreover, this criminalisation is reflected in the sanctions structure, which escalates where financial gain is involved, though it's not required for culpability under Art. 318 bis(1). Although humanitarian assistance is not exempted, the Zaragoza facilitators' profit-driven fraud falls within the law's scope, as it targeted

¹ Ministerio del Interior, 'La Policía Nacional desarticula una organización criminal internacional dedicada a facilitar la regularización ilícita de migrantes' (2025) <<https://www.interior.gob.es/opencms/es/detalle/articulo/La-Policia-Nacional-desarticula-una-organizacion-criminal-internacional-dedicada-a-facilitar-la-regularizacion-ilicita-de-migrantes/>> accessed 8 April 2025.

² *ibid.*

³ Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime' (adopted 15 November 2000, entered into force 28 January 2004) Signatories: 112, Parties: 153

⁴ Javier Hidalgo, 'The Ethics of People Smuggling' (2016) 12 Journal of Global Ethics 311 <<https://www.tandfonline.com/doi/full/10.1080/17449626.2016.1245676>> accessed 8 April 2025.

⁵ Rachel Cooper, 'Legal Pathways' Effects on Irregular Migration' (The Institute of Development Studies and Partner Organisations 2019) report <https://opendocs.ids.ac.uk/articles/report/Legal_Pathways_Effects_on_Irregular_Migration/26432056/1> accessed 8 April 2025.

⁶ Council Directive 2002/90/EC of 28 November 2002 on defining the facilitation of unauthorised entry, transit and residence [2002] L 328/17.

those who intentionally enabled non-EU nationals to reside in Spain contrary to immigration law for profit.⁷ However, this punitive approach risks overlooking migrant agencies within controlled internal and external borders (such as the Schengen area).

The EU facilitators package similarly criminalises profit-driven assistance, and its 2023 revisions⁸ advocate for intensified penalties and an expanded scope of liability, reinforcing a hardline approach. Critics argue this is a blunt instrument, failing to address contextual factors and assuming smuggling is solely profit-driven rather than a symptom of restricted legal pathways.^{9,10} Therefore, the proposed 2023 revision risks entrenching a “crimmigration” approach—merging criminal and immigration law—leading to disproportionate punishment and blurring lines between procedural violations and major criminal offenses.

In the Zaragoza case, the facilitators' fraudulent practices clearly align with the criminal network model. Yet the €15,000 paid by migrants complicates the narrative: Are they solely victims, or active participants making choices within a constrained system?

From a human rights perspective, criminalising migrants for using facilitators raises serious concerns. International law, via Art.13 of the Universal Declaration of Human Rights, enshrines the right to leave one's country.¹¹ While the right to seek asylum in other countries is explicitly stated in Art.14, the denial of safe and legal entry options in countries¹² can *de facto* restrict the right to leave, particularly those fleeing persecution, violence or extreme poverty, that often have no choice but to resort to irregular means. These individuals may possess an implicit moral claim to migrate in search of safety and dignity. Yet, when states impose rigid barriers, they leave individuals like those in Zaragoza with no viable option but to pay exorbitant sums to secure even the most basic promise of protection. Their confinement in cramped 9-square-meter rooms reveals the exploitation they faced, but labelling solely as victims diminished their agency. These

⁷Art. 318 bis (2) Ley Orgánica 10/1995.

⁸ European Commission, 'Proposal for a Directive of the European Parliament and of the Council laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, and replacing Council Directive 2002/90/EC and Council Framework Decision 2002/946 JHA' COM(2023) 755 final

⁹ Michele LeVoy, 'On Migrant Smuggling, Europe Must Make a U-Turn' (7 April 2025)

<<https://www.ips-journal.eu/topics/democracy-and-society/on-migrant-smuggling-europe-must-make-a-u-turn-8209/>> accessed 9 April 2025.

¹⁰ Hein De Haas, 'Smuggling Is a Reaction to Border Controls, Not the Cause of Migration' (*Oxford Martin School*)

<<https://www.oxfordmartin.ox.ac.uk/blog/smuggling-is-a-reaction-to-border-controls-not-the-cause-of-migration>> accessed 9 April 2025.

¹¹ Universal Declaration of Human Rights' (adopted 10 December 1948) art 13

¹² Anita Orav and Nefeli Barlaoura, 'Legal Fiction of Non-Entry in EU Asylum Policy' [2024] European Parliamentary Research Service.

migrants acted within a system offering no viable alternatives. Spanish law, while targeting facilitators under Art. 318 bis, leaves migrants in a legal gray area, underscoring legal frameworks unprepared for such complexities.

Criminalising these choices doesn't eliminate smuggling; it deters migrants from reporting abuse, fearing prosecution, thus shielding networks and perpetuating vulnerability.¹³ Current criminalisation inadvertently strengthens these networks by raising migration risks and costs, creating more profitable exploitation opportunities. From a migration and humanitarian perspective, it calls for expanding safe, legal pathways to balance protection and mobility. A more effective approach would reconceptualise migration governance by distinguishing exploitative smuggling from other facilitation, expanding legal migration pathways for labor and humanitarian needs (including resettlement, humanitarian visas, work permits, family reunification, etc).¹⁴ Additionally, establishing mechanisms for migrants to report abuse without criminalisation fears, and addressing root causes through development and conflict resolution, would help in facing smuggling. Without this, focusing narrowly on punishment, as current policies do, undermines the goal of protecting vulnerable migrants, rendering the Facilitators Package's protective intent superficial and exacerbating the very issues it aims to solve.

¹³ European Union Agency for Fundamental Rights, 'Fundamental-Rights-of-Migrants-in-an-Irregular-Situation-in-the-European-Union' <<https://primarysources.brillonline.com/browse/human-rights-documents-online/fundamental-rights-of-migrants-in-an-irregular-situation-in-the-european-union:hrdhrd99920015>> accessed 9 April 2025.

¹⁴ Leïla Bodeux, 'Regular Pathways Needed to Counter Smuggling' (www.caritas.eu, 18 May 2021) <<https://www.caritas.eu/regular-pathways-needed-to-counter-smugglings/>> accessed 9 April 2025.

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