

The criminalization of assistance to foreigners entering or residing illegally in Europe: what are the limits of punishment?

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Recently, a general wave of intimidation and criminalization of those who provide humanitarian assistance to migrants has been observed all around the world. Belgium was no exception. In November 2018, the Brussels Criminal Court held hearings for the so-called « trial of the hosts » that made headlines in Belgium's judicial news. In this case, four citizens who hosted, provided food, shelter and material assistance to illegal residents were prosecuted, alongside eight transit migrants. They were all charged with smuggling of migrants and participation to a criminal organization. Likewise, in France, citizens were also convicted of criminal offenses after having provided assistance to foreigners residing illegally. Among these citizens, Cedric Herrou, a farmer who hosted migrants, offered them shelter, food and basic medical assistance, and drove them across the border, was sentenced to prison. Nonetheless, the French Constitutional Council quashed the principle of sanctions for such behaviors because it would be inconsistent with the principle of fraternity. In a pioneering decision, the highest constitutional authority in France found Cedric Herrou not guilty because he acted under “the principle of fraternity”.

On building of the Belgian and French examples, this contribution will analyze the legal grounds behind the criminalization of assistance to illegal residents. Furthermore, we will explore the main principles of domestic legislations as well as international law restricting the action of judicial authorities in this area. In this respect, the decision of the French Constitutional Council is an interesting starting point.