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# **Criminalisation will not save us**

## **Policy Brief**



Navigating citizenship through  
European landscapes of criminalisation

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Navigating citizenship through  
European landscapes of criminalisation

# Criminalisation will not save us

Policy brief based on qualitative research  
on European landscapes of criminalisation

This policy brief stems from a three-year research project called **CrimScapes: Navigating Citizenship through European Landscapes of Criminalisation** (2020–2024). The project aimed to explore the increasing mobilisation of criminal law, crime control measures, and perceptions of (il)legality as responses to, and generators of, the politics of threat and uncertainty prevailing across the European region. It sought to analytically understand the motivations behind, as well as the challenges and implications of, criminalisation for the various actors and practices that shape interconnected landscapes of criminalisation concerning **abortion (Poland), drug use (Poland), hate speech (Europe/Germany), infectious diseases (Finland), sea rescue (Mediterranean region, French Alps), sex work (Poland, women’s prisons (Germany), and imprisonment in default of payment (Germany)**. Research was also conducted on police reform and the punishment of poverty as well as in the broader field of legal anthropology.

The below conclusions and recommendations emerged from the following project activities:

- **In-depth ethnographic research** (including interviews, participant observations, and archival and policy research) conducted in the aforementioned areas by researchers from four countries—Germany, France, Finland, and Poland—within European landscapes of criminalisation.
- **Workshops titled “Criminalisation Will Not Save Us” and “Criminalisation, Citizenship, and Democratic Dilemmas”**, involving directly affected communities, held both in-person and online in November 2023 and January 2024.
- **Syntheses of existing policy recommendations** within the respective fields of criminalisation and across the European region.

We employed a qualitative and ethnographic approach to study diverse areas of criminalisation understood as a mode of governance and a tool for disciplining, monitoring, and controlling various communities, practices, and identities. We were interested in understanding how affected communities experience criminalisation and how these communities and individuals navigate, contest, and resist policing practices, surveillance, and control in their daily lives. Particularly significant were grassroots citizenship practices undertaken despite increasing criminalisation, such as self-organising, survival strategies, and building solidarity networks.

The “Criminalisation Will Not Save Us” workshop focused on gathering experiences from criminalised communities from different European regions and collectively formulating recommendations in four areas: the effects and implications of criminal law, the impact of criminalisation on healthcare and other public services, the expanding scope of criminalisation, and policing.

Many strands of our research explored the social life of criminal law: its widespread, unforeseen effects, not only individual stigmatisation, but also the ways it limits communities’ abilities to participate in democratic processes or seek social justice. Hence, the conclusions from our research analyses have been condensed into an accessible, concise form for this policy brief. We hope our insights from fieldwork and

policy recommendations can bring clarity and inspiration to further advance critical research, bring about a much-needed change in the employed policies, and, ultimately, strengthen social justice.

## **Expanding criminalisation**

Criminalisation represents an expanding **form of governance**, where an increasing array of identities, behaviours, communities, and aspects of daily life fall under the **purview of criminal law**, often at the expense of principles of social justice.

Social issues are increasingly viewed through the lens of criminalisation, framing them as **threats** rather than challenges to be addressed through social policies such as public health initiatives, access to rights, or support-oriented or educational interventions. For instance, the criminalisation of practices like HIV transmission or drug use shifts the focus from public health concerns to punitive measures.

This approach, which portrays social problems as imminent threats necessitating enhanced efforts to protect an alleged vulnerable society, can **fuel authoritarianism and populism** while limiting personal freedoms. By creating dichotomies of “good” versus “bad”, and attributing responsibility for structural issues to individuals or communities, criminalisation exacerbates **societal tensions** and **marginalises already disenfranchised** communities.

Moreover, the pervasive reach of criminal law into **everyday life** has worrying social implications. Instances where individuals hesitate to seek necessary assistance due to fear of legal repercussions, such as medical care for drug overdoses or protection and justice in the case of violence, illustrate the **chilling effect of criminalisation**. Similarly, **criminalising survival strategies** like migration or sex work further marginalises already vulnerabilised individuals and perpetuates inequalities.

Stigmatisation, social isolation, and barriers to organising or accessing essential ser-

vices are among the **detrimental effects of criminalisation**. Despite its purported aim to protect the most vulnerable, criminalisation often increases their susceptibility to harm and perpetuates cycles of disadvantage.

Furthermore, the wide-ranging and sometimes unforeseeable social consequences of criminalisation, such as homelessness or increased poverty, highlight the complexities and drawbacks of this approach.

## Recommendations:

- Tackle social issues through **comprehensive social policies**, including initiatives designed to enhance access to rights, healthcare, and education.
- Advocate for **decriminalisation** in areas such as abortion, HIV, sex work, drug use, and poverty-related crime, with practical examples demonstrating positive outcomes.
- **Safeguard the right of criminalised and disenfranchised communities to self-organise** and establish networks of support.
- Engage criminalised and disenfranchised communities in policy-making processes.
- Implement **harm reduction** strategies with proven effectiveness, illustrated by many successful case studies.

## Policing

For criminalisation to be used as a policy, it must be implemented by law enforce-

ment agencies, making **policing strategies a direct and often severe manifestation of criminalisation**. While policing permeates various fields, its intricate relationship

with criminalisation demands scrutiny, although it remains largely unexplored directly. Understanding policing, particularly in the context of criminalisation, presents a nuanced challenge, evident in the fieldwork conducted in the Crim-Scapes project. The association between law and law enforcement is not linear, but rather subject to interpretation, negotiation, and the improvisation/discretionary power of law enforcement agencies.

As defined by Hilary Moore (2022: 24), “policing is a social relationship made up of a set of practices that are empowered by the state to enforce law and social control through the use of force.” Notably, policing can extend **beyond traditional law enforcement** to encompass diverse actors such as social workers, border guards, and even medical personnel. However, recent trends suggest a blurring of boundaries and improvisation within law enforcement practices, resulting in novel convivialities, approaches, and attitudes.

While police authority is traditionally perceived as a mechanism for enforcing the rule of law and order rather than addressing underlying social issues, there exists a societal expectation for police intervention in situations requiring **alternative solutions**, such as those within the welfare sector or education. Despite this, reliance on policing perpetuates existing patterns of **discrimination**, particularly affecting marginalised groups through profiling and discriminatory practices.

Research indicates that heightened criminalisation escalates **tensions between affected communities and law enforcement**, fostering a climate of mistrust exacerbated by instances of undercover policing and the violations of basic rights. This dynamic interaction between criminalisation and policing underscores the messy and improvised nature of law enforcement, blurring institutional boundaries and raising concerns about police accountability.

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## Recommendations:

- Ensure the **protection of basic human, civil, and labour rights** for individuals affected by policing at local, regional, and federal levels.
- Acknowledge that the **call for safety** does not necessarily equate to a **call for increased policing**, instead focusing on addressing underlying structural social issues.
- Reallocate resources towards **alternative approaches and actors for addressing social issues**, including cross-referencing with healthcare initiatives.
- Prioritise **public education** to reduce reliance on policing as a

Moore, H. (2022). *Beyond Policing: A Handbook for Community-led Solutions to the Violence of Policing in Western Europe*. Brussels: Rosa Luxemburg Stiftung

problem-solving mechanism.

- Implement **bans on undercover policing** in vulnerable communities.

## Healthcare

The project has shown that one of the most significant consequences of the criminalisation of practices and identities is a lack of adequate access to healthcare for criminalised groups. This study also considered how ideas like vulnerability and citizenship shape access to and treatment in healthcare.

The experiences of criminalised groups demonstrate that criminalisation negatively affects healthcare. Specifically:

1. **Access to healthcare is denied, diminished, or conditioned** on additional, unnecessary requirements.
2. Healthcare practices take on a punitive character (**punitive care**).
3. For some patients, healthcare is available only through punitive institutions, such as prisons—a phenomenon called **carceral care**.

As a result, public health suffers and criminalised groups are further stigmatised and marginalised. Our project documents a growing trend of **punitive care, which blurs the boundaries between care and punishment**, changing the definition of care into one based on control, order, and

subjugation, disregarding the rights and dignity of patients and their loved ones. Drug users, for example, have trouble accessing healthcare, as healthcare professionals often see their ailments as “their own fault”, deny care, or provide it in a way that is humiliating. The fusion of healthcare and punitive policies means that prisoners are now subjected to invasive “therapeutic” practices, in which they are forced to talk about past trauma as a condition to access resources. Under conditions of criminalisation, for instance, doctors refuse vital care to patients seeking abortions, or experiencing miscarriages or pregnancy complications, which leads to worse health outcomes or death.

When care systems interact with or permeate criminalisation, they produce **systemic harms** on several accounts.

- Some criminalised communities, including illegalised migrants or migrants working in informal economies, e.g. sex work, are **effectively excluded** from access to public healthcare services and risk deportation when seeking medical help.
- Criminalisation affects **resource allocation**: resources are allocated to groups deemed more **respectable**, not to those most in need/more **vulnerable**.

- Care can **drive criminalisation**: when medical opinions and expertise are put to use in prosecutions, doctors become tools of criminalisation, e.g. related to abortion or contagious diseases.
- Criminalisation affects professional healthcare **providers**, who often make **harmful and questionable decisions** for patients and their communities, focusing more on legal compliance than on providing assistance (e.g. drug use, abortion).
- Criminalisation fosters **discrimination and stigmatisation** in healthcare settings, driving those in need of care away from medical facilities.
- Criminalisation creates an atmosphere of fear and control, which hinders the inclusion of criminalised communities in the **development of care standards**, making it more difficult to tailor care to the specific needs of the group.
- In landscapes of criminalisation in which legislation protects professional ethics, it can serve as a cover for harmful practices and attitudes towards certain groups. An example of the **weaponisation of medical ethics** is doctors denying access to abortion on the basis of a “conscience clause”.
- Privatised insurance-based policies are less preferable than public healthcare, since they are driven by the **logics of profit** and productivity, rather than need or vulnerability (the capitalist logic deepens the moral plight of those who do not further its main aim of productivity).

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## Recommendations:

- Ensure **healthcare is accessible and voluntary** and free of unnecessary, stigmatising requirements.
- Ensure access to (health)care as a **basic human right**, relying on more accountability from nation states to deliver. Everyone, regardless of their legal and citizenship status as well as their economic and social means, should be granted access to healthcare services. Remove healthcare from profit-driven institutions to the public sector.
- Healthcare has an inalienable **social aspect**. It signifies not only the maintenance of health and striving for non-sickness by managerialism but also involves caring for somebody/something, empathy, and respecting patients’ humanity.



# The landscape of drug use criminalisation

Justyna Struzik, PhD, Jagiellonian University

Research conducted among opioid users in various cities across Poland, encompassing individuals from diverse age groups who obtained opioids from both legal and illegal sources, revealed that all participants faced the **risk of criminalisation and societal stigma**. In cases of criminalisation, individuals were at risk of being prosecuted not only for possession but also for debts and minor thefts (hence connecting the criminalisation of drug use with the **criminalisation of poverty**). Stigmatisation, manifested in societal drug-phobia and experienced predominantly in healthcare facilities, addiction therapy settings, encounters with law enforcement, and substitution programmes, was also prevalent.

The lived experiences of people who use opioids in Poland are significantly shaped by **stringent drug laws**, accompanied by **narcophobic public discourses** and **stigmatisation**.<sup>1</sup> Polish drug legislation has adopted a restrictive nature since the beginning of the 21st century—the possession of even small quantities of psychoactive substances may result in criminalisation.

This oppressive legal framework is coupled with **limited state support for drug users**: harm reduction programmes, though officially integrated into the country's healthcare policy, are implemented on a small scale with constrained budgets. In 2020 there were only 13 syringe exchange programmes operating in Poland.<sup>2</sup> It is estimated that just over 20% of people who use opioids have access to substitution treatment. A 2023 EMCDDA report showed that only 3,523 patients participated in opioid agonist treatment programmes in Poland,<sup>3</sup> while the total number of problematic opioid users in 2023 was estimated at about 14,664 (KBPN 2020). For decades, the predominant approach to addiction treatment has been based on **abstinence, a model which** fails to address the needs of the majority of drug users. Thus, people who use opioids experience a **chronic crisis** related to criminalisation, chronic difficulties in accessing healthcare services, and the stigmatisation of psychoactive substance use in Poland.

<sup>1</sup> Malinowska-Sempruch, K. (2016). **Shaping drug policy in Poland**. *International Journal of Drug Policy*, 31, 32–38. <https://doi.org/10.1016/j.drugpo.2016.02.018>

<sup>2</sup> Krajowe Biuro Do Spraw Przeciwdziałania Narkomanii [KBPN]. (2020) **Raport o stanie narkomanii w Polsce**. <https://bit.ly/3Sk8XFn> [27 February 2024]

<sup>3</sup> European Monitoring Centre for Drugs and Drug Addiction [EMCDDA] (2023). **European Drug Report 2023: Trends and Developments**. <https://bit.ly/3SdVUp1> [27 February 2024]

The study revealed institutional violence perpetrated by state institutions and state-supported entities across three key areas:

1. **Healthcare settings** (including emergency services): instances of discrimination and stigmatisation were prevalent in healthcare facilities. Medical professionals exhibited discriminatory behaviours, refused services, used derogatory language, and disregarded patient decisions. Such behaviours led to patient avoidance of public healthcare services, looking for medical aid in private facilities (if economically accessible) and attempts at self-treatment.
2. **Street-level police actions:** respondents reported daily harassment by the police, often accompanied by violence during searches and arrests. Stigmatising language and a disregard for the arrested person's rights exacerbated the situation, with individuals becoming easy targets for law enforcement. There were some reports of sexual violence and disrespectful behaviour regarding individuals' gender identity.
3. **Addiction treatment and harm reduction systems:** addiction treatment facilities were perceived as coercive, violating patient and human rights. People who use opioids often avoid these schemes, and while harm reduction programmes are viewed rather positively by users, their limited availability and scope are not adequate for user needs.

### From fieldwork:

Konrad is 41 years old and lives in a large city in Poland. He began using psychoactive substances as a teenager. He lives with schizophrenia and HIV. Since 2014, he has been enrolled in a methadone program. He is known to the police and is therefore frequently harassed by them on the streets of his city. However, all possession cases against him have not resulted in imprisonment— due to his long and documented history of addiction treatment and numerous health problems, he is spared punishment.

Sometimes, Konrad pauses taking his medication for schizophrenia. A few years ago, during one such pause, he experienced a psychotic

episode and took out a small short-term loan that did not require him to present personal documents at the time. He was unable to repay the loan. During the trial, which took place 8 years later and concerned his debt, it emerged that Konrad had used a false name and surname (he was not aware of this because he was in a state of psychosis). He is now facing imprisonment for using false data. This story illustrates how the criminalization of drug use and mental health intertwine: law enforcement agencies do not recognize the vulnerable conditions in which Konrad finds himself, and neither do the courts. The case is ongoing to this day.

“*Generally, with the police, I’ve had a few cases for possession, right? But it was more like done maliciously because it was known that I came out of the gate where drugs are sold, I came out, and the police just laid me on the ground, and simply took the goods out from between my buttocks at the gate. It’s just not okay, I feel like my rights were just violated, human rights. It’s just humiliating. I’m a free person and they just take out the damn drugs from between my buttocks at the gate. Is that okay? Am I harming anyone by taking drugs? I don’t kill anyone and I don’t rob anyone to get drugs. I consider that to be just wrong.*”

### **Recommendations:**

- **Support grassroots efforts:** back grassroots initiatives and self-organisation among drug users, even on a small scale.
- **Scale up harm reduction programmes:** expand and diversify harm reduction programmes beyond major cities, offer a wider range of services such as drop-in centres, safer injection rooms.
- **Ensure widespread distribution of naloxone:** implement “take-home naloxone” programmes to combat opioid overdoses.
- **Incorporate drug use education in medical curricula:** include modules on drug user situations and patient rights in medical education programmes.
- **Centre research and social actions on drug users:** prioritise research and social initiatives focusing on the rights and well-being of drug users.
- **Tailor harm reduction programmes for young opioid users.**

# The landscape of abortion criminalisation

Agata Chełstowska, PhD, Jagiellonian University

<sup>1</sup> Poland rules abortion due to foetal defects unconstitutional. *The Guardian* (2020) <https://bit.ly/4bSt8Bh>

<sup>2</sup> “Women\*” is a term used to encompass every person who could become an abortion seeker, regardless of their gender identity, including trans men and non-binary persons.

<sup>3</sup> Pamula, A., Strek, K. (2023) **6 Stories Show the Human Toll of Poland’s Strict Abortion Laws.** *Time* <https://bit.ly/4fh2bKz>

<sup>4</sup> <https://adt.pl/en/>

<sup>5</sup> Kennedy, N. (2023) **Polish court convicts rights activist for supplying pregnant woman with abortion pills.** *CNN* <https://cnn.it/3Shxk6w>

In 2020, amid the Covid pandemic, the Polish Constitutional Tribunal ruled that **foetal malformation no longer constituted grounds for access to legal abortion**,<sup>1</sup> leaving only two exceptions to the already existing abortion ban: pregnancy resulting from crime or endangering a woman’s health or life. As a result, the number of reported legal abortions dropped to almost zero. This development, met with mass social resistance, significantly exacerbated the “chilling effect” of the 1993 abortion ban in Poland.

Abortion criminalisation has numerous negative effects on the health and lives of women\*<sup>2</sup> and abortion seekers. Faced with the perspective of colliding with the law, abortion providers endanger patients’ lives, which leads to negative health outcomes, and even death. Between 2020 and 2023, **at least six pregnant women died in Poland**<sup>3</sup> as a result of medical staff **refusing to provide adequate care**. In all six cases, the women experienced complications with their pregnancies (waters breaking prematurely or the pregnancy becoming otherwise invi-

able) or miscarriage, and doctors refused or delayed treatment, resulting in sepsis and the death of all six women. The context of these failures was clear: **hospitals prioritised compliance with laws limiting access to abortion, even over-interpreting them, instead of prioritising patients’ health.**

The criminalisation of abortion creates new dangers for people on the **whole spectrum of reproductive experiences**: from contraception, to in vitro fertilisation, via miscarriage and pregnancy complications, to perinatal care.

Criminalisation also negatively affects citizens **trying to help each other**: in 2023, Justyna Wydrzyńska, a Polish activist and member of the Abortion Dream Team,<sup>4</sup> was convicted for “illegally helping in abortion”<sup>5</sup> based on article 152 of the Criminal Code, for aiding a woman who needed access to abortion during the Covid epidemic. The increased criminalisation of abortion therefore affects not only abortion seekers, but also their **families, friends, and activists trying to**

help them, creating an environment of fear and **criminalising acts of solidarity**.

The curricula of Polish medical universities provide scarce, if any, information on abortion, one of the most basic medical services. The criminalisation of abortion therefore **negatively affects medical expertise**. The onus of criminality affects

the ability of the medical profession to transfer, teach and update accurate, scientific knowledge and practical skills needed for the competent provision of abortion. Up-to-date medical equipment is also uncommon in Polish hospitals, with doctors preferring curettage to more recent methods, such as suction or abortion pills.

### From fieldwork:

Izabela, a 30-year-old woman from the small Polish town of Pszczyna, died of sepsis in the local hospital in September 2021.<sup>6</sup> Izabela was 22-weeks pregnant and her water broke prematurely. She reported to the hospital, where she was told to wait. Izabela wrote in text messages to her mother: “The baby is 485 grams. For now, due to the anti-abortion law I have to lie here. They can’t do anything. [They] will wait for it [the foetus] to die or for something to start, and if not, I can expect sepsis. They can’t rush it”.<sup>7</sup>

Izabela died less than 24 hours after reporting to the hospital. She left behind a husband and a daughter. Her death was met by mass protests, with women carrying signs reading “Her heart was also beating”, referring to the doctors’ decision to wait for the end of the foetal heartbeat before beginning medical treatment for Izabela.

<sup>6</sup> Vandoorne, S., Bell, M. (2022) Poland has some of the strictest abortion laws in Europe. Izabela Sajbor’s family say those laws are responsible for her death. *CNN* <https://cnn.it/3zRReyS>

<sup>7</sup> Śmierć 30-letniej Izabeli z Pszczyny. Matka ujawniła wiadomości od córki: „Dzięki ustawie aborcyjnej muszę leżeć” *Gazeta Wyborcza* (2021) <https://bit.ly/3Y3Vs0j>

### Recommendations:

- **Remove regulations regarding abortion from criminal law.** The decriminalisation of abortion, the so-called “Canadian model”, allows abortion to exist primarily as part of healthcare, without producing a possible conflict with the law. Given the over-interpretation of the law by some doctors, it seems that only removing the onus of criminality from the issue may provide a solution.

- **Demedicalise abortion**—in accordance with World Health Organization recommendations, most cases of abortion do not require the involvement of a doctor. WHO recommends enabling **nurses, midwives, and skilled community health workers** to accompany women in acquiring and using abortion pills. Increase knowledge about and access to **Self-Managed Abortion: misoprostol and mifepristone** should be popularised and widely available to the public, affordable and over the counter. Along with correct and clear instructions for their use, this empowers abortion seekers to meet their own health needs, without relying on uneven or dangerous interactions with medical professionals.
- **Destigmatise abortion** by presenting it as a common experience, enabling women to share their experiences, ending the “moral hierarchy” of “necessary” and “unnecessary” abortions. Destigmatisation holds the potential to remove the negative effects of abortion stigmatisation from the whole spectrum of reproductive healthcare, increasing patients’ safety and providing a better environment for healthcare providers.
- Educate healthcare providers in the medical and social aspects of abortion. Provide medical students and medical professionals **with accurate, up-to-date information on various abortion techniques, as well as practical skills** for conducting abortions at every stage of pregnancy. Adjust healthcare services to the needs of diverse patients, regardless of gender identity, including **trans and non-binary** abortion seekers.
- **In all European countries: remove all obligatory waiting periods, consultations with psychologists as well as any other obligatory barriers to access to abortion. Decriminalise Self-Managed Abortions in every European country. Decriminalise abortion pill provision by non-medical staff in all member states. Make mifepristone and misoprostol available over the counter throughout the EU. Protect the freedom of movement needed for safe abortion migrations. Establishing an EU-based system of financial support for abortion seekers in need would reduce the economic burden of evading local abortion bans.**

# The landscape of HIV criminalisation

Juulia Kela, MA, University of Helsinki

Finland has a long and stark history of the criminalisation of HIV. Since the early 1990s, there have been an estimated 20 cases in which HIV has been criminalised under the Finnish criminal code, under categories of manslaughter, aggravated assault, imperilment, or resistance to a public official. The precise number of cases is not known to NGOs or legal scholars: trials may have been held confidentially, without public access; outcomes have been registered locally and under various charges.

These criminal cases have often perpetuated dramatically incorrect ideas about HIV transmission. For example, in 2019 a criminal case was brought in a Finnish district court over a prisoner spitting at the forehead of a prison officer and “verbally threatening” him with HIV, although a Finnish Supreme Court case from 1996 had already stated that HIV transmission is not possible through spitting or scratching.

Finnish HIV NGOs have articulated the widespread sense of criminality and

stigma that HIV criminalisation brings to those living with HIV. As elsewhere, the criminalisation of HIV in Finland has disproportionately affected people who are criminalised and marginalised in multiple ways, including sex workers, racialised migrants, and prisoners. It also fully places responsibility for safer sex on those living with HIV.

In 2021, the potential for more HIV criminalisation cases in Finland was alleviated by a Supreme Court decision ruling that an individual on medication, with an undetectable amount of the viral load in their blood, was not criminally liable to disclose their HIV status, because they could not transmit HIV.

Despite this landmark legal decision, however, many “grey areas” remain around the legal responsibilities of people living with HIV. Technically, a criminal report can still be made to the police even in cases where HIV has not been and/or could not be transmitted, and the police can still begin to investigate cases of HIV transmission, exposure, or non-disclosure.

### From fieldwork:

“*The Supreme Court decision* is long-awaited—and it’s good that we’re finally getting some clarity on the matter, because so far it’s all been very unclear. There are a few factors in this case that are of interest to us—that the ejaculation was onto a sheet, that there was intercourse only once—but what about if there had been more than one time, or what if the situation was somehow different?

And then there’s still the question of an HIV-positive individual who is not on medication or has, for some reason, stopped taking it. There are a few rare cases where the viral load does not drop to undetectable levels despite medication—we can’t let it be assumed that they are somehow criminal.

But still, this doesn’t stop anyone from going to make a report to the police. The fact is that the transmission and exposure of HIV is under criminal law—and how we interpret this law is not explicit in criminal law itself. This also means we don’t have a specific part of the law to change. So, to an extent, we’re still having to work with people’s images and perceptions.”

– Sini Pasanen, Executive Director of Positiiviset ry,  
has worked on HIV advocacy at Nordic and European levels.

### Recommendations:

- (State) funding is needed for the recommendations already made by the Finnish HIV strategy group policy paper 2018–2020. This includes training about HIV transmission for public prosecutors, police, and healthcare workers across the healthcare sector. It also means re-funding HIV NGO work in Finland.
- In addition, training on the stigma of HIV and the negative impact of HIV criminalisation to relevant groups should be funded and implemented with the aim of committing to the end of criminal investigations on HIV transmission, exposure, and non-disclosure. **This training must speak to how HIV criminalisation needs to be**



viewed beyond medical or legal frameworks.

- **Clarification is needed from the national prosecution authority** over potential criminal responsibility in rare situations in which medication does not work to sufficiently lower an individual's viral load. **Clarification is needed from investigative authorities regarding situations in which HIV transmission, exposure, and non-disclosure could potentially be criminalised and why.**

# The landscape of sex work criminalisation

Agata Dziuban, PhD, Jagiellonian University

**Criminal law is the main instrument regulating sex work** in Poland. The Penal Code of 1997 criminalises the incitement/procurement, pimping, and facilitation of sex work for financial gain. These measures criminalise non-coercive labour relations and all third-party activities, including owning or managing sex work venues, hiring a sex worker, and providing sex workers with any kind of services, including transportation, advertising, or facilitating contact with clients.

**The criminalisation of all third-party activities** and labour relations situates sex work within the realm of illegality, hence forcing sex workers underground. Working in an **informal labour market** and criminalised settings deprives sex workers of the protections associated with legally recognised employment, including any benefits provided within the Polish Labour Code. **Lacking access to labour law and welfare protections**, sex workers are particularly vulnerable to exploitative and unfair workplace practices. Their dependence on the third parties who manage and benefit from their work can translate

into precarious, unstable and intermittent labour arrangements, and uncertainty with respect to the expected workload, continuity of employment, stability of income, and overall job security. Legal measures targeting third parties also **criminalise any mutual support and cooperative work arrangements between sex workers**.

The Penal Code does not directly criminalise sex workers or the provision of sexual services. However, the Code of Petty Offences of 1971 imposes the penalty of arrest, restriction of liberty, or a fine to any person “offering an indecent act for financial gain” in a way that can be seen as ostentatious, persistent or disruptive to public order. This legal measure is used to **target and police sex workers working outdoors**. Furthermore, outdoor sex workers are also targeted by laws punishing loitering, or alcohol consumption in public spaces, public indecency and violations of public order.

The criminalisation of sex work workplaces and labour arrangements, as well as the penalisation of active soliciting, exposes

sex workers and sex work venues in Poland to **intense surveillance and policing**. Police raids on venues can lead to closures of brothels, leaving sex workers without a job, source of income, and—for those living on the premises—a home. Police presence in sex work spaces often involves ID checks, searches, abuse, and intimidation, the confiscation of income, prosecutions or even arbitrary arrests for sex workers. Fearing exposure, re-victimisation, or further surveillance, many sex workers do not file complaints or otherwise demand accountability from the police.

According to the Polish Personal Income Tax Act (1991), *prostitution* is exempt from taxation on moral grounds: as an activity that violates the “rules of social coexistence”, it cannot be the subject of a legal contract. Due to this exemption, **sex work is not legally recognised as legitimate income-generating activity** or as legal grounds for (self)employment. As a result of this exemption, sex workers cannot pay taxes or claim health insurance as well as sick, holiday or maternity leave, and are deprived of access to pension benefits.

The landscapes of sex work governance in Poland are also shaped by **stringent migration policies and border controls** that target migrant sex workers. Since sex work is not recognised as work and grounds for legal employment, migrant sex workers cannot regularise their entry and stay based on their occupation and are forced to resort to other regularisation strategies (e.g. tourist visas, short-term visa-free travel arrangements, facilitation procedures, marriage). This makes migrant sex workers particularly vulnerable to policing and bordering strategies in sex work venues, and exposes them to surveillance, prosecution or deportations. Despite the number of victims of forced labour trafficking far exceeding those trafficked for sexual exploitation, with the numbers of the latter having remained relatively low over the past decade, the Polish trafficking policy is primarily focused on sexual labour and deployed to police the sex industry and migrant sex workers: sex work venues, as presumed trafficking focal points, are systematically subjected to law enforcement interventions by police and border guards.

### **From fieldwork:**

In emergency cases, sex workers are **reluctant to call the police**, as doing so might adversely affect them, their colleagues, and their workplaces:

“*We don't call the police to the premises if there's a problem. What for? You'd have to admit that you work here, you see. [...] They know that I work here, of course, but I'd have to say it myself, and then you are exposed. [...] And who will be held responsible? The bosses, they'd go to jail. [...] And they'd shut down the whole workplace. Everyone is afraid of that. What would I do then? Where am I supposed to go? Into some unfamiliar venue, a place I don't know.*”

– Diana

These justified fears mean that sex workers rarely ask the police for help or do so only in extreme circumstances. Hence, violent clients hardly ever face negative consequences for their actions, which creates a **sense of impunity for the perpetrators** and turns sex workers into “easy targets” of abuse. In addition, the **stigmatisation** and **re-victimisation** that sex workers report experiencing in the criminal justice system severely **limits their access to justice** when victimised or hurt.

## Recommendations:

- **Decriminalise sex work and recognise sex work as work.** Only full sex work decriminalisation can guarantee sex workers' access to their human, civil, and labour rights and protect sex worker communities from rights violations, exploitation, and violence.
- **Policing strategies** should not single out marginalised communities, including migrant and outdoor sex workers, and ought not to be enacted in an arbitrary, discriminatory, and disproportionate manner. Police using unjustified and illegitimate violence based on profiling and prejudice should be held accountable and adequately prosecuted. Police violence should be recognised as a structural issue and addressed by the state.
- **Sex worker-led groups and organisations providing direct services to sex workers** should be involved in the planning, development, implementation, and evaluation of policies that affect sex worker communities.

# The landscape of the criminalisation of civilian search and rescue missions

Jérémy Geeraert, PhD, Université Paris Saclay

Since 2015, European migration policies have resulted in the **deaths** of tens of thousands of migrants in the Mediterranean Sea. On average, approximately 2,800 migrants have died annually from 2014 to 2024 while trying to cross the sea. This has mobilised activists and NGOs to start independent search and rescue missions in the Mediterranean, during which they go to sea to search for endangered migrant boats and save the occupants from drowning. Between 2014 and 2017 they assisted 110,000 people (Cusumano and Villa, 2021). These numbers dropped drastically after the criminalisation campaign started.

**environment” for migrants** by preventing them from getting any form of support. Research has shown that the deterrent policy does not prevent migrants from crossing and that the activities of NGOs are not a pull factor for irregular migration (Cusumano and Villa, 2021).

Criminalisation and repression come from a multitude of institutional actors and take a wide variety of forms: from port authorities carrying out repeated controls on the NGOs’ rescue vessels, to prosecutors launching investigations against NGO members for aiding illegal entry, to transport ministers changing the regulations on the boats used by these NGOs.

**Civilian search and rescue capabilities have been severely curtailed** by these repeated attacks, whose aim is not to improve practices, but to prevent any search and rescue activities by civil society.

Cusumano, E., & Villa, M. (2021). From “Angels” to “Vice Smugglers”: The Criminalization of Sea Rescue NGOs in Italy. *European Journal on Criminal Policy and Research*, 27(1), 23–40. <https://bit.ly/3Wh-h46U>

Since 2017, search and rescue activism has been increasingly criminalised and hindered through various legal means and by different actors. The main motivation for the criminalisation and repression of helping migrants is to deter irregular migration. Authorities aim to create a “hostile

The criminalisation and repression of civilian search and rescue **prevent the civil society actors involved from saving lives**. They therefore prevent a reduction in mortality in the Mediterranean Sea and actively contribute to the humanitarian crisis in this region.

The criminalisation and repression of civilian search and rescue call into question fundamental European democratic values (solidarity, fraternity) and basic human rights (in particular, the right to life). They therefore raise questions over the EU's normative role as a defender of democracy and fundamental human rights. They also place into doubt the very existence

of checks and balances stemming from civil society and the principle of accountability of public authorities. In so doing, they undermine European democracies and reinforce an authoritarian form of government.

Repression and criminalisation have the effect of wasting money collected by NGOs during donation campaigns: legal costs and additional costs incurred by the repression of public authorities (blocking boats at sea, allocation of remote ports). Several million euros of donations are wasted.

### From fieldwork:

In the early summer of 2018, after coming back from a rescue mission in the Mediterranean Sea, the captain, crew, and more than 220 rescued guests were not allowed to disembark and had to wait for several days off the Italian coast before finally being given permission to disembark in Malta. On arrival in Malta, the ship's captain was arrested and the boat was confiscated. The captain was accused of not having the necessary sailing papers for himself and the ship. After more than two years of trial, during which the boat was blocked in Malta, the captain was acquitted.

Below are excerpts from interviews explaining the effects of criminalisation on the sea rescue work carried out by civil society:

“—*How would you say the mission would have gone if the work hadn't been criminalised?*”  
—“We would have unloaded the people here, refitted the ship and set off again.”

—“How long would that have taken?”

—“Three or four days, maybe.”

– Interview with a crew member,  
September 2019

“*It was definitely* a strategy to seize the ship for a long time so that it wouldn't sail out again and cause trouble out there in the eyes of Malta and save people. In the meantime, there were court hearings all the time; I think 12, 13, and 14 hearings were scheduled over one and a half, almost two years, where they had to go to court again and again. This captain had to go there too; he was the one who sailed this last mission, where it came to confiscation, where they had to spend many days with over 200 people out at sea [...]. And then Malta [...] came up with the idea that we were incorrectly registered, that our flag was incorrect, and that was the reason they used to confiscate our ship. [...] So that was partly because this captain always had to be there for these hearings because it was about him. I think his shortest time was two minutes in the courtroom, and then the court decided to adjourn it. So you could easily say that they wanted to break us down, of course.”

– Interview with an employee of a search  
and rescue NGO, July 2021

“*Whether it* [the criminalisation of sea rescue] is morally right is not always the question, or whether it will ultimately stand up in court is also not the question, but the question is how much it takes away from the person who is involved, who did it before, how much it screws them and they no longer do the work. That is the only goal of repression.”

– Lawyer of a German S&R NGO,  
March 2022

## Recommendations:

- Increase legal protection for humanitarian action, particularly strengthening the humanitarian exception in laws criminalising aid for illegal entry.
- Above all, because criminalisation and repression mainly take place through indirect means, political decision makers and all those

involved should condemn criminalisation and repression (in all their forms) by word and deed in the public arena and in the media. We recommend promoting the importance of **defending migrants' fundamental rights** (in particular the duty to assist, the right to life, the right to seek asylum, the right to a fair trial, etc.). We recommend condemnation at every conceivable political level (in word and deed) of actions by public authorities that seek to hinder and criminalise the work of humanitarian organisations aiming to protect the lives of people in danger.

- Activities should be promoted in word and deed aiming at **holding public authorities accountable for their duty to respect the fundamental values on which the European Union is founded**, notably the Geneva Convention and the European Convention on Human Rights.
- It is necessary to refocus political priorities on the **protection of democratic, human and solidarity-based values and standards**, even if this is at the expense of other policy objectives. Respect for the hierarchy of norms and equality before the law, the fundamental pillars of the rule of law, are at stake.



# The landscape of the criminalisation of online hate

Todd Sekuler, PhD, Humboldt University of Berlin

In countries across the European region, including at the European Union level, there has been a push towards introducing, mandating, or enhancing the **criminalisation of online hate**, most often through the language of “hate speech” or the “incitement to hatred”. Large internet platforms, such as Meta, X, TikTok, and Telegram, are especially implicated in these initiatives. This is because these companies capitalise from their expansive reach, made possible through high user numbers, making them into contexts where the spreading of hate is thought to have a unique and exceptional impact. Because **private companies** become responsible for the removal of hatred under these policies, there is a danger that the logics driving their work come to determine what is removed or can remain in circulation, rather than democratic processes or elected officials.

Even where laws or judiciary decisions provide guidance about the local mean-

ing of criminal hate, legally or judicially prescribed definitions vary considerably, and have increasingly become points of tension and dispute across the region and beyond. The severity and moral-laden tenor of criminalisation contributes to rendering the boundaries of criminal hate more than a debate about the boundaries of censorship and free speech as it has historically been conceived. Indeed, the **lived consequences of this criminalising turn**, and the varied contexts that have produced it, **include but extend beyond punishment** by the criminal justice system, including instances of job loss—generally absent systematic and transparent decision-making processes—but also **digital vigilantism**, hate mail and, in extreme cases, threats of violence or murder.

More than this, there is an underbelly to the criminalisation of online hate that does not get much popular attention. Firstly, scholars and activists have warned that a criminalising approach

to the harms of digital communication risks further pushing those who harbour group-specific hate into parts of the internet that are closed off to dialogue or the possibility of being confronted with alternative views and perspectives. These particularly include parts of the so-called dark web, such as private databases and password-protected sites. Even less addressed, however, are the **socio-politics and working conditions of the content**

**moderators** employed directly or indirectly by major online platforms to remove content in violation of laws or platform guidelines. Content moderators' work includes steps designed to inform and enhance the functioning of AI technologies, intended to reduce their workload in the long term even as it entails an excess of work in the short term—and with no end in sight.

### From fieldwork:

It is on this last point that much research from the Crimscares project has focused. Most Germany-based content moderators regulate content for foreign markets, and are hence **mainly migrants**, many of whom have some sort of vocational training but have little chance of employment in their profession due to limited German language skills or the non-recognition of their foreign qualifications. **Underpaid and with minimal legal protection or psychological support**, they are compelled to live in **conditions of economic and legal precarity**, and the constant confrontation with hatred and violence can lead them to further destabilisation due to **mental and emotional harm** or trauma resulting from their professional work. The mandatory signing of a confidentiality agreement and the implementation of techniques designed to prevent them from violating that agreement, such as a ban on mobile phones at work and conversations with journalists or researchers, put **threats, fear and top-down surveillance to work** to reduce the possibility of any **sense of collectivisation, transparency and accountability**. Exemplary of this dynamic: after speaking of these working conditions before the German Bundestag's Digital Council, the content moderator Cengiz Haksöz was placed on leave from his position, provoking an outcry<sup>1</sup> from other content moderators, activists, politicians, and scholars.

<sup>1</sup> Stoppt das Union-Busting gegen Facebook Content Moderator\*innen – Solidarität mit Cengiz!, *openPetition.de* (2023) <https://bit.ly/4d9vOvt>

## Recommendations:

- **Content Moderator Manifesto:** despite such constraints, content moderators develop individual and collective strategies to navigate and enhance their working conditions, and it is to them that we should turn in seeking recommendations for responding to the unintended casualties they face as a result of a criminalising approach to online hate. A first Content Moderators Summit took place in Berlin on 9 and 10 March 2023, bringing together moderators working for companies based throughout Germany and beyond. This first meeting culminated in the ratification and publication of a Content Moderator Manifesto,<sup>2</sup> presenting concrete demands to help to make their workplaces safe and fair.
- **Focus on systemic injustices and community-led initiatives:** Even beyond content moderators' work, measures exist for responding to the spread of online hate and violence that do not rely on the moral and penal framework of crime and punishment, instead emphasising the difficult task of confronting and engaging with the social and political challenges of the current moment. For example, **online hate is symptomatic of broader social inequalities and power imbalances**, which redirects our attention from the visibility or erasure of hate to systemic injustices, including equitable access to resources, opportunities, and representation. Rather than or in addition to the criminal justice system, politicians and funding organisations would do well to **support community-led initiatives** that help to empower marginalised groups to reclaim the digital sphere and produce counter-narratives that challenge stereotypes and create online spaces of belonging.
- **Interdisciplinary collaborations:** Our modes of responding to online hate would also benefit from interdisciplinary collaborations, involving input from social science and humanities scholars as well as from content moderators and other groups of impacted actors, to develop comprehensive strategies for addressing online hate and its lived repercussions.

<sup>2</sup> Kloiber, J. (2023)  
Social Media Content  
Moderators in Ger-  
many | Our Manifesto  
<https://bit.ly/3WAPFy4>

# The landscape of the criminalisation of poverty

Carmen Grimm, MA, Humboldt University of Berlin

<sup>1</sup> For example, the Bündnis zur Abschaffung der Ersatzfreiheitsstrafe brought together a wide range of initiatives, groups and individuals to sign their calls to abolish imprisonment in default of a fine in Germany. [www.ersatzfreiheitsstrafe.de](http://www.ersatzfreiheitsstrafe.de)

<sup>2</sup> Deutscher Bundestag: Drucksache 20/5913, Gesetzesentwurf der Bundesregierung: Entwurf eines Gesetzes zur Überarbeitung des Sanktionenrechts—Ersatzfreiheitsstrafe, Strafzumessung, Auflagen und Weisungen sowie Unterbringung in einer Entziehungsanstalt. <https://bit.ly/46zcE01>

Across the European region, one can witness a longstanding, yet worsening structural criminalisation of poverty via fine systems and in the form of “debtors’ prisons”.

Originally introduced to decrease the number of short-term prison sentences, the fine systems have the opposite effect today: against the backdrop of increasing poverty, policing, and criminalisation, one can observe mass fining which ultimately *creates and enforces* specific forms of imprisonment in ways that discriminate against people already experiencing poverty and other challenges.

Mostly unknown to the general public, tens of thousands of people per year who do not pay their fines are jailed—without further inquiry into why they did not pay or whether they simply cannot afford to. This mechanism, so-called imprisonment in default of payment, has been widely criticised across countries and politi-

cal views as discriminating against poor and racialised communities.<sup>1</sup> However, recent reforms **continue to uphold this practice**, as shown in the latest and most telling example from Germany in 2023.<sup>2</sup> There, the latest reform only adjusted the conversion rate of day fines into days in prison. Now, two-day fines are replaced by one day in prison.

Although this mechanism is not confined to Germany, the numbers in this country are exceptionally high. In Germany today, more than 55,000 people are jailed per year for not paying their fines,<sup>3</sup> with imprisonment in default of a fine (*Ersatzfreiheitsstrafe*) being the most common reason for imprisonment. The mechanism stems from age-old penal practices such as debt towers and could be found in the Prussian code of law as early as 1871. Yet it became relevant only after penal reforms in the 1960s and 1970s introduced the fine system as we know it today. From then on, the net income

<sup>3</sup> These are the figures from 2003, after which prison statistics no longer included data on people imprisoned for defaulting on a fine.

<sup>4</sup> Term employed by the abolitionist Mariame Kaba, see <https://bit.ly/4fhZVTi> and more in Opitz-Welke and Konrad (2022).

Bögelein, N., Glaubitz, C., Neumann, M., & Kamieth, J. (2019). *Bestandsaufnahme der Ersatzfreiheitsstrafe in Mecklenburg-Vorpommern. Monatsschrift für Kriminologie und Strafrechtsreform*, 102, 282-296.

Bögelein, N., Graaff, A., & Geisler, M. (2021). Wenn das Kind schon in den Brunnen gefallen ist. Verkürzung von Ersatzfreiheitsstrafen in der Justizvollzugsanstalt Köln, *Forum Strafvollzug*, 2, 59-64.

Opitz-Welke, A., & Konrad, N. (2022). Suizide im deutschen Strafvollzug: Häufigkeit, Risikofaktoren und Prävention, *Bundesgesundheitsbl*, 65, 18-24.

per day was used to determine daily rates. Today, in around 90% of cases of fines, this net income is estimated at high speed and without precise calculations in so-called summary proceedings (*Strafbefehlsverfahren*) in which people are fined via post and without court hearings.

The consequences are clear and serious: against the backdrop of increasing poverty and other developments since the 1980s, more and more people have been unable to pay their fines and have consequently been jailed. Within the past 40 years, the numbers of such prison sentences have doubled, affecting those who live under conditions of poverty, face homelessness and acute crisis, and are jailed for low-level offences. For these reasons, the legal options to circumvent incarceration and cover the fine—such as payment plans and community work—have proven almost completely ineffective.

The findings can be summed up as follows: fines and imprisonment in default of payment punish poor, racialised communities for offenses related to poverty. Prison sentencing for individuals unable to pay fines makes them pay for the flaws of the penal system. It builds on and increases the precarity of their living standards and the economic and social disparities in society.

Today's fine system does not work as an alternative to carceral measures, but creates and enforces its own forms of imprisonment, which is a major concern: research has shown that even a few days in prison are harmful. Building on the observation that prisons are “death-making institutions”<sup>4</sup> and that 15% of those serving substitute prison sentences are at risk of suicide, this mechanism can be seen as a measure that ultimately endangers the integrity of life.

### From fieldwork:

A young woman was caught several times riding public transportation without a valid ticket—then considered a criminal offence in Germany. The transportation company reported her. She did not have a fixed postal address and therefore never received the letters informing her of the fine. As a result, one day she was picked up by police and taken to prison, without any time to adjust. The sudden isolation remains one of her darkest memories: “All of a sudden, I was locked up, without any time to adjust. Doors were awful for me. I had chosen a life without doors, and around me now were countless—closed—doors. [...] This punishment creates confinement and isolation. If we continue like this, we'll lose people.

If we continue like this, we'll be harmed as a society," she said in an interview conducted for this project.

(RE)Claim/MCDS, Justice Collective, and Hungarian Helsinki Committee (2023). Joint Report of the Special Rapporteur on the right to adequate housing and of the Special Rapporteur on extreme poverty and human rights on the decriminalization of homelessness and extreme poverty, <https://bit.ly/4cTkt2Q>

### **Recommendations:**

- Recognise and address **poverty** and its intersections with other challenges as a growing, structural problem in society in general, and its impacts on the criminal justice system in particular.
- **End abusive and discriminatory fining practices** by banning discriminatory policing practices, refraining from the net income principle, and decriminalising all low-level offenses related to economic, immigration, or residential status.
- **Fully abolish debtors' prisons** across Europe and introduce amnesty for those currently affected.

**Criminalisation will not save us**  
**Policy Brief**

**Editors:** Justyna Struzik, Agata Chelstowska, Agata Dziuban

**Authors:** Beate Binder, Agata Chelstowska, Agata Dziuban, Jérémy Geeraert, Carmen Grimm, Juulia Kela, Klara Nagel, Todd Sekuler, Justyna Struzik, Tiia Sudenkaarne

**In collaboration with:** Friederike Faust, Salla Sariola, Mathilde Darley

**Proof-reading:** Ben Koschalka

**Layout:** Kaja Kochnowicz

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