



PROTECTING HUMANITARIAN AID: EU PROHIBITS CRIMINALISATION OF ASYLUM-SEEKER ASSISTANCE

The sanctions that are usually used to criminalise NGOs and volunteers have to do with the legislation that punishes the smuggling of migrants. At an international level, the illegal transportation of migrants is regulated by the *United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air*. The EU, which acceded to that Protocol has also developed a legal framework to tackle this phenomenon. It is the case of the *Council Directive 2002/90/EC* and of the *Council Framework Decision 2002/946* implementing it, collectively known as the Facilitators Package. By the end of 2021, the EUCJ in its judgment C-821/19, ruled on an action for failure to fulfill obligations brought by the Commission against the adopted Hungarian legislation known as "Stop Soros". The introduction of Paragraph 353/A in the Hungarian Criminal Code criminalises the activity of an organisation aimed at allowing the opening of an international protection procedure for asylum seekers. Hungary justifies the adoption of this regulation on the grounds that its enactment is related with the transposition of *Directive 2002/90/EC*. According to the CJEU, a third-country national or stateless person who simply applies for international protection cannot be deemed to have violated the Facilitators Package concerning irregular entry and residence in the territory of the relevant Member State. As a result, individuals or organisations that only assist such individuals in submitting an asylum application with the appropriate national authorities, even if they are aware that the application is unlikely to succeed cannot be considered in breach of the *Directive 2002/90/EC*.