

N° PARQUET 1629300004

Facts

In October 2016, at dawn, the police carried out a traffic control operation close to *La Turbie* (Alpes Maritimes, France). The defendant was pulled over. He was transporting three Eritrean women (including a minor), who were irregular migrants. One of the migrants fled Eritrea, via the Sahara Desert. She went to Sudan and then Libya. From there, she left to Italy, by sea, with the assistance of migrant smugglers to whom she paid 3600 USD. She was attempting to reach Germany, where relatives of her resided. The other migrant declared to have paid 3500 USD to be smuggled from Libya to Italy. She was also attempting to reach Germany. The defendant took charge of the migrants in Saint-Dalmas-de-Tende (France). He was taking them to his residence with the purpose, the following day, of driving them to the station of Cagnes-Sur-Mer (France). There, they would take the train to Marseille (France) where they would be expected by doctors and other humanitarian workers. He was motivated by the extremely precarious and debilitating conditions he found the migrants in. They were tired, fearful and 'frozen'. They presented visible wounds and had bandages.

The defendant was placed under custody. His vehicle was confiscated, The Prosecution accused the defendant of facilitation of illegal transit and stay in France.

Elements of success

- Humanitarian exemption
- Teleological interpretation of law
- Electronic surveillance/Corroborating evidence

Challenges

- Assistance and support to smuggled migrants
- Prosecution's exclusive literal interpretation of law

Background

The defendant usually associated with members of humanitarian organisations, particularly those intending to supply food and accommodation to migrants in need. Two days before the events, he had noticed four young irregular migrants on the road, in inappropriate attire in view of the considerable low temperatures. Ultimately, the defendant took the young men to his residence and gave them food and accommodation for the night. The following day, he drove them to the station of Arcs (France) and paid for train tickets to the station of Carnoules (France).

On the day of the events, a friend had invited the defendant to assist, on humanitarian grounds, irregular migrants. He accompanied said friend to Saint-Dalmas-de-Tende, where he met the three Eritrean women.

Key issues

- ❖ Humanitarian exemption
- ❖ Financial or other material benefit
- ❖ Evidence
- ❖ Right to security

Investigation

In ascertaining the facts, authorities relied much on testimonial evidence as well as the outcome of search and seizure. Expert evidence was also considered.

A physician working with *Médecins du Monde* attested to the debilitating health conditions of the three Eritrean migrants. The expert further noted to be familiar with the squatter settlement in Saint-Dalmas-de-Tende, declaring it to be impossible to deny help, food, clothing and accommodation to the migrants living therein.

The Defence submitted an *affidavit* from the President of the *Ligue des Droits de l'Homme* (who was not heard in court due to time constraints), according to which the actions of the defendant were “*gestures of humanity and solidarity towards human beings in situation of total precariousness*”.

Two of the Eritrean migrants were heard by authorities. One initially stated the defendant had stopped when they were walking next to the road. The other declared she had signalled the defendant to stop and asked for help. The defendant would have kindly offered a ride, without asking anything in return. The defendant, in turn, contested the version given by the migrants, stating to have met the women in Saint-Dalmas-de-Tende, in an abandoned building

close to associations that aimed to provide humanitarian assistance to irregular migrants. One of the three Eritrean migrants was again heard, this time confirming the version of events reported by the defendant.

The defendant’s declarations were corroborated by the analysis of his phone records. On the one hand, many of the defendant’s contacts were individuals well known for their humanitarian work/involvement. On the other hand, a number of messages were illustrative of the defendant’s intent to help migrants in need, in the sense explained by him during questioning. They further supported the sequence of events reported by the defendant.

The search of the defendant’s vehicle did not reveal anything pertinent to the investigations. In the search to his residence were found three mattresses placed on the floor and, in the kitchen, nine glasses and bowls as well as a pot with food.

Reasoning

In essence, the Defence argued the defendant had acted upon solidarity motives and humanitarian concerns. He had perceived no financial or other material benefit. Any penalty would be disproportional vis-à-vis the higher ‘goods’ pursued by the defendant’s actions.

The Court noted that those facilitating the illegal stay of an irregular migrant in France are not subject to criminal prosecution if (i) no direct or indirect financial or other material benefit was received, and (ii) the facilitating act consisted of providing legal advice,

nourishment, accommodation or health care necessary to ensure migrants' physical integrity or dignifying living conditions. While no physician examined the three migrant women upon being caught in the defendant's car nor had the police taken any notes on their physical state, the physician from *Médecins du Monde* (expert witness) testified to the usual debilitating health conditions people in the squatter settlements faced. The building where the migrants were settling had no electricity, water, or heating (in a period of the year where temperatures in the region are very low), which alone attested for the unsafe and unsanitary conditions they endured. The women had been walking for several days through highly challenging paths. Furthermore, the extremely difficult life conditions in the migrants' home country were well known. The actions of the defendant were motivated by humanitarian and solidarity concerns, notably in view of the vulnerability of the women. He intended to provide accommodation and food that could meet dignifying human standards.

The exemption from prosecution based on humanitarian motives that applies to facilitation of illegal stay does not per se apply to facilitation of illegal transit. Yet, in order for the defendant to provide food and dignifying accommodation to the migrants in his residence (as he intended), he necessarily had to procure them transportation. The defendant's residence was located 70 Km away from the site where he met the irregular migrants. *In casu*, the facilitation of irregular transit was the *conditio sine qua non* for the facilitation of irregular stay on humanitarian grounds. Accordingly, the humanitarian

exemption also applied, in the circumstances of the case, to facilitation of illegal transit.

The facilitation of irregular transit in the instant case was a necessary means to ensure a safe night to the three Eritrean women, in line with the right to security as enshrined in Article 5 European Convention on Human Rights. Convicting the defendant of facilitation of irregular transit would be neither just nor proportional.

Verdict/Decision

The Court acquitted the defendant and ordered the return of his vehicle. The defendant's actions fell in its entirety under the scope of application of the exemption from prosecution ensured by law to those facilitating illegal stay on humanitarian grounds.

Opinion

This is an emblematic case of operation of the humanitarian exemption in respect of facilitation of illegal stay. The reasoning of the Court is noteworthy: in an exercise of teleological and systemic interpretation, the Court extended the scope of application of the humanitarian exemption to cover acts of facilitation of illegal transit where these are necessary in order to ensure humanitarian assistance. In this manner, critical principles of solidarity and human dignity were given effect to in practice.

Furthermore, it is worth noting the relevance played by electronic evidence generated from the phone of the defendant in corroborating the testimonial evidence.