



Peace Institute

Institute for Contemporary Social and Political Studies



CINETS

Crimmigration Control

INTERNATIONAL NET OF STUDIES



**INTERNATIONAL LAW
ASSOCIATION**



INSTITUTE OF CRIMINOLOGY
at the Faculty of law Ljubljana

“UNDERSTANDING CAUSES AND CONSEQUENCES OF CRIMINALIZATION OF MIGRATION”

International Conference, 17-18 May 2018, City Hotel, Ljubljana, Slovenia

CONFERENCE PROGRAM



arrs

SLOVENIAN RESEARCH AGENCY

The conference is organized within the research project “Crimmigration between Human Rights and Surveillance” (J5-7121). The conference organizers acknowledge the project was financially supported by the Slovenian Research Agency.

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INTRODUCTION

BACKGROUND | The 2015-2016 'refugee crisis' and the on-going arrivals of people seeking protection and better life to the EU triggered a number of changes in the states' legislative and policy approaches to migration. A number of EU member states and EU candidate and prospective candidate countries, including those that have traditionally been more welcoming or less burdened with migration questions, introduced new legal restrictions and established new institutions aimed at surveillance, control and deterrence of the people on the move. 2016 was the year when the largest ever number of refugee statuses were granted by the European Union Member States. At the same time, the trend of attributing of factual or alleged responsibility for crimes to migrants and refugees is increasing. In the quest for interpretation of developments surrounding us the inability of the public to digest the vast amount of information leads to simplification and portrayal of migrants and refugees as dangerous. The welcome culture is increasingly seen as naïve, and assistance to migrants is more and more often subject to administrative or criminal punishment. At the same time, nondemocratic trends and practices against human rights and equality within the EU are gaining importance and strength, and phenomena such as racism, xenophobia and anti-Semitism are becoming more and more open and public. They are no longer reserved only to clandestine platforms but are increasingly mainstreamed into political programmes of parties that are entering both the member states and EU parliaments. Such transformations in European societies, governments and institutions seem to show an increasing amnesia about the lessons of the two European and world wars in the 20th century.

THE AIM OF THE CONFERENCE | The conference will address above all the question of the causes and the consequences of criminalisation of migration both in the EU and worldwide. We want to tackle the direct causes of these transformations as well as rethink the broader political and socio-historic framework of ongoing trends of criminalisation of migration. Particular interest is to address the relationship between criminalization of migration and equality, racism and xenophobia. The main questions are: How are these transformations taking place? What examples from law, politics and society confirm or refute these processes? Which theoretical frameworks enable their understanding? What can we expect in the future regarding criminalization of migration – is it going to strengthen or wind-down? What is the factual and possible role of the European integration (institutions, processes of enlargement, law and legislative harmonization) in criminalization of migration? These are the questions and themes that the conference addresses.

ORGANIZING COMMITTEE

Dr. Neža Kogovšek Šalamon, Director of the Peace Institute, Head of Organizing Committee

Mag. Mojca Frelih, Researcher at the Peace Institute

Dr. Vlasta Jalušič, Associate Professor of Political Science and Senior Researcher, Peace Institute

Dr. Aleš Završnik, Associate Professor of Criminology, Faculty of Law, University of Ljubljana

Dr. Maria João Guia, Researcher at the University of Coimbra Centre for Legal Research, Director of CINETS – Crimmigration Control – International Net of Studies

Dr. Vasilka Sancin, Associate Professor of International Law, Faculty of Law, University of Ljubljana

CONFERENCE PROGRAMME

Wednesday, May 16th (Atrij ZRC)

- 19:00-21:00 **Presentation of a Book “Violent Borders” (Nasilne meje)** written by Reece Jones
Discussants: Prof. César Cuauhtémoc García Hernández (University of Denver) and Prof. Mojca Pajnik (University of Ljubljana). Moderated by: Kristina Božič, journalist.
[Location: Atrij ZRC, Novi trg 2, 1000 Ljubljana](#)

Thursday, May 17th (City Hotel)

- 8:30-9:00 Registration
- 9:00-9:30h **Welcome and Keynote Speech 1:** Neža Kogovšek Šalamon (Conference Chair): *Global Crimmigration Trends*
- 9:30-11:00h **Panel 1** (Moderator: Neža Kogovšek Šalamon)
Christelle Macq: *Removal and Expulsion on Grounds of Public Policy or Public Security: What are the Limits of Punishment?*
Izabella Majcher: *The Effectiveness of the EU Return Policy at All Costs: The Coercive Use of Administrative Pre-removal Detention*
Aleš Završnik and Mojca M. Plesničar: *Large EU-IT Systems in the Areas of Borders, Visa and Asylum: Implications for Human Rights in Slovenia*
- 11:00-11:30h *Coffee Break*
- 11:30-13:00h **Panel 2** (Moderator: Veronika Bajt)
Vasja Badalič: *Tunisia and the EU External Migration Policy: Crimmigration Law, Illegal Practices and Their Impact on the Rights of Migrants*
Neža Kogovšek Šalamon: *The Influence of EU Membership Conditionality on Crimmigration in the Western Balkans*
Maddalena Avon, Emina Bužinkić and Lea Horvat: *Crimmigration Trends in the Balkans*
- 13:00-14:30h *Lunch Break and Coffee*
- 14:30-15:00h **Keynote Speech 2:** César Cuauhtémoc García Hernández: *Criminalizing Migration and Impeding Migrants’ Rights in the United States*
- 15:00-16:30h **Panel 3** (Moderator: Mojca M. Plesničar)
Vasilka Sancin: *The (In)Surmountable Challenges in Reconciling States’ Human Rights Obligations and Crimmigration*
Cristiano d’Orsi: *Why are Migrants Threatening Security and Democracy in Africa? Reflections from South Africa*

Peter Billings: *Crimmigration Control in Australia: 'Regulating Crimmigrants through the 'Character Test'' – A Case of Double Punishment?*

16:30-17:00h **General Discussion and Conclusion of the First Day**

Friday, May 18th (City Hotel)

9:00-9:30 **Welcome and Keynote Speech 3:** Maria João Guia: *The Emergence of a State of Exception over Foreign-Nationals in the European Union after the Returns Directive and the Mediterranean Crisis*

9:30-11:00 **Panel 4** (Moderator: Vasja Badalič)

Yewa Holiday: *Refugees and the Misuse of the Criminal Law*

Didem Dogar: *Criminalisation of Migration: No Equal Protection for Asylum Seekers Suspected of Criminality*

Dušan Nolimal: *Lessons from the Wars on Drugs, Terror and Immigration: The Case of Europe-Afghanistan Relations*

11:00-11:30 **Coffee Break**

11:30-13:00 **Panel 5** (Moderator: Mojca Pajnik)

Ana Kalin: *Criminalising the Other: Identity Creation, Othering and Crimmigration*

Veronika Bajt and Mojca Frelih: *Crimmigration and Nationalism*

Jože Vogrinc and Rok Smrdelj: *Objectification of Migrants in TV News Discourse*

Tjaša Učakar: *The Rhetoric of European Migration Policy and its Role in Criminalization of Migration*

13:00-14:30 **Lunch Break and Coffee**

14:30-15:00 **Keynote Speech 4:** Vlasta Jalušič: *Crimmigration "Law" and the Creation of "Dual" State*

15:00-16:30 **Panel 6** (Moderator: Vlasta Jalušič)

Jernej Kaluža and Pia Brezavšček: *Familialism as a Source for the Criminalisation of Migration*

Nicoletta Policek: *The Hint Half Guessed: The Criminalization of Stateless Children in Italy*

Davide Pittioni and Tomaž Gregorc: *"Time Bandits": Time as a Factor of "Criminalization of Legality" of Asylum Seekers. An Example from Trieste (Italy)*

16:30-17:00 **General Discussion and Conclusion of the Second Day**

PANELLISTS

Maddalena Avon



Maddalena Avon (30/04/1992) was born in Trieste and currently lives in Zagreb, Croatia. She attended the International Master of Research and Studies on Eastern Europe at the University of Bologna, in cooperation with the partner Universities Vytautas Magnus University of Kaunas, Corvinus University of Budapest, Saint-Petersburg State University. She graduated in September 2016 with a master thesis entitled "The European Union External Border Management: Frontex and securitization of migration", also produced thanks to the research work conducted at the Center for Peace Studies in Zagreb (Centar za mirovne studije) and field studies on the Slovenian-Austrian, Croatian-Slovenian, Greek-Macedonian borders. She previously studied at the University of Trento, where he obtained a three-year degree in Sociology. Maddalena currently works at Center for Peace Studies, focusing on direct work for and with migrants and refugees in Croatia, as well as on active monitoring of push-backs and border violence.

Vasja Badalič



Vasja Badalič is a research fellow at the Institute of Criminology at the Faculty of Law in Ljubljana, Slovenia. His primary field of research is contemporary imperialism and its impact on civilian populations. He combines theory with frequent field-work in Afghanistan and Pakistan. He is the author of three single-authored monographs, including *The Terror of 'Enduring Freedom': War in Afghanistan and Pakistan*, Krtina Publishing house, Ljubljana 2013 (in Slovenian only), and *For 100 Euros a Month: The Production System of Global Capitalism*, Krtina Publishing House, Ljubljana 2010 (in Slovenian only).

Veronika Bajt



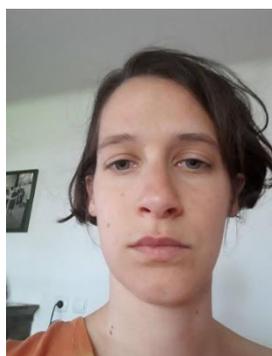
Dr. Veronika Bajt has a degree in sociology from the University of Ljubljana (Slovenia), an MA from Central European University (Poland) and a PhD from the University of Bristol (UK). She was a lecturer at the Masaryk University in Brno (CZ) and at the International University Institute for European Studies (Italy). She is a scientific councillor at the Peace Institute – Institute for Contemporary Social and Political Studies in Ljubljana, Slovenia, where she works as a senior researcher and project coordinator. She has published internationally on topics of migration, nationalism, discrimination, national identity construction and practices of nationalist Othering in media discourse.

Peter Billings



Dr Peter Billings is an Associate Professor at the TC Beirne School of Law, The University of Queensland, Brisbane. He has published over thirty papers as book chapters or articles in leading national and international journals in Australia, the United Kingdom, Netherlands and the United States of America, in the areas of immigration and refugee law, administrative law and justice, social welfare law and legal education. He has taught Public Law and Immigration and Refugee Law in several Universities, over twenty years, in England and in Australia.

Pia Brezavšček



Pia Brezavšček is a PhD student of philosophy, Faculty of Arts Ljubljana, Slovenia. She is selfemployed cultural worker.

Emina Bužinkić



Emina Bužinkić is a political activist exploring alternatives in political landscapes concerning political and socio-economic emancipation of migrants as well as the notion of the social imagination that carries higher political literacy and consciousness. Her work has been focusing around state violence against refugees especially violence related to the border control and the so-called pushbacks. She is involved with the Centre for Peace Studies [Centar za mirovne studije], the Welcome Initiative [Inicijativa Dobrodošli] and the Taste of Home [Okus doma]. She is currently obtaining her PhD in critical studies in education and human rights at the University of Minnesota in the United States.

Didem Dogar



Didem Doğar pursues a doctoral degree at McGill University Faculty of Law. Her research focuses on the criminalization of migration. She received her LL.M. from McGill University with a thesis titled “The Purpose of the Exclusion Clause and the Role of the UNHCR: Protection or Impunity?” Before embarking on her studies, Didem was working as a refugee status determination assistant at the United Nations High Commissioner for Refugees in Turkey where she specialized in Article 1F cases. Didem graduated from Bilkent University and is a lawyer before the Istanbul Bar. She has worked as a business lawyer and at the Council of Europe’s Venice Commission.

Mojca Frelj



Mojca Frelj obtained her masters in sociological science at the Faculty of Social Sciences, University of Ljubljana, Slovenia. Since 2003 she had been involved in several research projects (conducted over 310 interviews, involved in focus groups, lead several workshops, organized several events). She is a trained field worker with background in community-based conflict resolution. Her research fields are: reconciliation of public and private life, fatherhood, care work, media and gender (in)equality, migration, (anti)discrimination. She is (co)author of several articles. She is a representative of the Republic of Slovenia in the international group (advisory body) Experts' Forum of EIGE (December 2015 – November 2018).

Tomaž Gregorc



Tomaž Gregorc was born in Koper in 1981. In the late nineties till 2007 he worked as a salesman in a supermarket, warehouse employee and receptionist. With this grew his interest in different social topics as precarisation, neoliberalisation of life and migration. After he concluded his studies of anthropology and had been employed at the university for four years, he started to work on different projects involving migrant workers and asylum seekers in creation of positive practices of addressing different problems/situations of marginalized groups. This brought him - in 2013 - to Trieste (Italy) where he works as a social operator of welcoming of asylum seekers. His passions – in addition to his work – are noise music, occult practices and comic books.

Maria João Guia



PhD - Law, Justice and Citizenship in the XXI Century, Master in Sociology; Master in Translation, Coimbra's University, Criminologist (Lisbon Univ. Lusófona). Assistant Professor - European Studies (Coimbra's University), Expert: European Migration Network. Former external expert - European Commission, area of Security, Freedom and Justice (2014); Alternate member: Group of European Union Experts on Human Trafficking, until 2011. Researcher: Centre for Legal Research and Associate Researcher - IGC / Centre for Human Rights - Faculty of Law, Coimbra's University. Researcher: Ratio Legis, Law Department, Lisbon University Autónoma. Founder / Director: CINETS network (www.crimmigrationcontrol.com). Co-coordinator: "Immigration, Crime and Citizenship" group – European Society of Criminology.

César Cuauhtémoc García Hernández



César Cuauhtémoc García Hernández is an associate professor of law at the University of Denver, a Fulbright scholar affiliated with the Institute of Criminology at the University of Ljubljana, and publisher of crimmigration.com. He has published op-eds in The New York Times, The Guardian, and elsewhere, and he is currently writing his second book, *Migrating to Prison: Immigration in the Era of Mass Incarceration* (The New Press 2019).

Vlasta Jalušič



Vlasta Jalušič is a political scientist, Senior Research Fellow and Associated Professor at the Peace Institute (Institute for Contemporary Social and Political Studies), Ljubljana (Slovenia). She has written books, articles and chapters on citizenship and feminism, gender and other inequalities, Eastern European politics and transition, war, (collective) violence and Hannah Arendt. Her major book “The Evil of Thoughtlessness. Arendtian Exercises in Understanding the Posttotalitarian Age and Collective Crime” was published in 2009.

Yewa Holiday



Yewa Holiday PhD (QMUL), LL.M (distinction) (Sussex), LL.M (first class) (Cantab) is a Lecturer in Criminal Justice at the Law School and Institute of Policing, University of Chester; and a Post Doctoral Research Associate researching the Court of Appeal’s approach to the prosecution of refugees with Professors Elspeth Guild and Valsamis Mitsilegas, Queen Mary University of London, and the Criminal Cases Review Commission. Yewa’s doctorate examined the criminalisation of refugees in England and Wales in the context of article 31(1) of the 1951 Refugee Convention. Her research interests include the criminalisation of migration, international refugee law, international human rights law and criminal law theory.

Lea Horvat



Lea Horvat has gained a bachelor degree in Social Pedagogy at Faculty of Education and Rehabilitation Sciences at the University of Zagreb. She became actively involved with working with refugees in 2014/2015 and afterwards she started cooperating with Welcome Initiative and Center for Peace Studies, contributing to their work. The focus of her work is mainly on integration, volunteer coordination and direct work and support to refugees. She's also actively involved in documenting and reporting about violent push backs from Croatia in cooperation with activists along the Balkan corridor as and writing weekly reports about the current situation of refugees in Croatia and the EU.

Ana Kalin



Ana Kalin is a researcher and policy maker at Forum for Equitable Development (Ljubljana, Slovenia). Her research interests extend across a number of fields including migration, identity and belonging, gender equality, equitable development and development cooperation. She is currently working on a project in Uganda, focusing on building livelihood opportunities for urban refugees, with a strong gender component.

Jernej Kaluža



Jernej Kaluža holds PhD in Philosophy, at Faculty of Arts, Ljubljana, Slovenia. He was a researcher at Nova Revija's Institute and an editor in Chief of Ljubljana's Radio Študent.

Neža Kogovšek Šalamon



Neža Kogovšek Šalamon, LL.M. (University of Notre Dame, Indiana, USA) and PhD in law (University of Ljubljana), is a researcher and a director of the Peace Institute in Ljubljana. In 2014–2016 she conducted a postdoctoral research project funded by the Slovenian Research Agency. Currently, she leads a basic research project “Crimmigration between Human Rights and Surveillance (2016–2018, funded by the Slovenian Research Agency). In spring 2016 she was a visiting researcher at the University of Palermo. She is the author of, among others, Migration Law in Slovenia (Kluwer Law International, 2011; 2018;) and Asylum Systems in the Western Balkans: Current Issues (International Migration, 2016). She is also co-editor and contributor to Razor-Wired. Reflections on Migration Movements through Slovenia in 2015 (Peace Institute, 2016).

Christelle Macq



Christelle Macq earned a Master's degree in law from the Université catholique de Louvain (UCL) (2009). After her graduation, she worked as a lawyer at the Brussels bar for 7 years in the VERGAUWEN lawyer's office. Her main area of practice was criminal law and immigration law. Since 2016, she is full-time research assistant in criminal law and criminal procedure at UCL. She teaches criminal law and criminal procedure and she is preparing a PhD thesis. Her PhD work focuses on the convergence between criminal law and immigration law.

Izabella Majcher



Izabella Majcher is a researcher in international human rights and refugee law, with expertise in EU immigration and asylum policy. Izabella is a researcher at the Global Detention Project and a volunteer visitor to immigration detainees with the Ligue Suisse des Droits de l'Homme. She holds a PhD in international law from the Graduate Institute of International and Development Studies (IHEID) in Geneva.

Dušan Nolimal



Dušan Nolimal graduated from medical school at University of Ljubljana School of Medicine and earned a Master's in Science of Public Health at University of Zagreb School of Medicine. He sub-specialised in addiction medicine at Colorado University Health Science Centre, Addiction Research and Treatment Services, Denver, Colorado, USA and at National Institute on Drug Abuse (NIDA), Addiction Research Centre, Baltimore, Maryland, USA in 1986 – 1990. He works at the National Institute of Public Health (NIJZ). His current work has spanned a diverse range of topics, including alcohol and other drugs, mental health, vulnerable populations, public health ethics, human rights, patients' rights, social responsibility and migrations. He is author and/or co-author of more than 450 scientific articles, books, editor or co-editor of different publications in the field of public health (social medicine) in Slovenia and abroad.

Cristiano d'Orsi



Dr Cristiano d'Orsi is a Research Fellow and Lecturer at the South African Research Chair in International Law (SARCIL), Faculty of Law, University of Johannesburg. He holds a Laurea (BA (Hon) equivalent, International Relations, Università degli Studi di Perugia, Perugia); a Master's Degree (Diplomatic Studies, Italian Society for International Organization (SIOI), Rome); a two-year Diplôme d'Etudes Approfondies (Master of Advanced Studies equivalent, International Relations (International Law), Graduate Institute for International and Development Studies, Geneva); and a Ph.D. in International Relations (International Law) from the same institution. His research interests mainly focus on the legal protection of asylum-seekers, refugees, migrants and IDPs in Africa, on African Human Rights Law, and, more broadly, on the development of Public International Law in Africa.

Davide Pittioni



Davide Pittioni was born in Udine in the year 1990. He studied and took a degree in "Historical and philosophical disciplines" at the university of Trieste. His main interests are post-structuralism, Marxism and more in general philosophical practices of 20th century. His final thesis was about "'Anachronism and Spectrality in Karl Marx's 18th Brumaire'". He works as social operator of welcoming of asylum seekers but he remains active in social project management, in the area of civil service (as workshop lecturer and project manager) and in the field of culture as one of the founders of magazine "Charta Sporca". He is politically active in the fields of workers' rights and precarity.

Mojca M. Plesničar



Mojca M. Plesničar is Assistant Professor and works at the Institute of Criminology at the faculty of Law, Ljubljana, Slovenia. Her research fields include sentencing, criminology, penology, juvenile justice, gender and criminal justice, psychology and law.

Nicoletta Policek



Nicoletta Policek is Associate Professor in Policing & Criminology; Department of Business, Law, Policing and Social Science; Policing, at the University of Cumbria, UK.

Vasilka Sancin



Vasilka Sancin, PhD, University of Ljubljana, Faculty of Law - Associate Professor of International Law, Vice Dean for Quality Assurance, Head of Department of International Law and Director of the Institute for International Law and International Relations; President of the Slovene Branch of International Law Association (ILA); Expert of the OSCE Moscow mechanism on Human Rights; contact: vasilka.sancin@pf.uni-lj.si.

Rok Smrdelj



Rok Smrdelj (1992) is a master's student in sociology of culture at the Faculty of Arts in Ljubljana. In the current academic year he is receiving a scholarship of the University Foundation of eng. Milan Lenarčič. These funds enable him to work on a research project together with his supervisor Assist. Prof. Jože Vogrinc, PhD. The project is focusing on media reporting on so called »refugee crisis« on Slovenian public TV in its daily news bulletin. The paper which has been prepared for the conference deals with detailed analysis of selected news from this still emerging research.

Tjaša Učakar



Tjaša Učakar, Ph.D., is a research fellow at the Department of Sociology, Faculty of Arts, University of Ljubljana (UL), Slovenia. She holds a diploma in Sociology and Geography and a PhD in Sociology of Culture. In 2017 she published her first monograph entitled “Migracijska politika EU: nove artikulacije izključevanja v 21. Stoletju” [Migration policy of the EU: novel articulations of exclusion in 21st century]. Her research interests include migration, citizenship, human rights, border studies and European integration processes, which she addresses from the viewpoint of critical theory.

Jože Vogrinc



Jože Vogrinc has taught Sociology of Culture and Media at the Department of Sociology from 1993. His speciality is television viewing. His general interest in media studies is on changing historical boundaries and connections among culture, media and society. Recently he also researches epistemology of humanities and social sciences, evolution of societies and theories as well as critique of development, and shifting understanding of contact and relations of Europe and its 'Others'. He is the chief editor of *Studia humanitatis*, a small publisher specialising in translation of theory in humanities and social sciences into Slovene language. He wrote over dozen introductory studies to these translations. Besides, he published five monographies in Slovenia, the first among them *Televizijski gledalec* (TV viewer, 1995), the last *Transverzala. Fragmenti historičnega materializma* (Transversal. Fragments of Historical Materialism, 2014).

Aleš Završnik



Dr. Aleš Završnik is the Senior Research Fellow at the Institute of Criminology at the Faculty of Law in Ljubljana and Associate Professor at the Faculty of Law University of Ljubljana. Currently, he is an academic guest at the Collegium Helveticum, a joint research institute of the ETH Zürich and University of Zürich. He has extensively researched and published on crime and technology, cybercrime, IT law, surveillance, and social harms of technology. In the latest book he edited *Big Data, Crime and Social Control* (Routledge, 2018), he focused on impacts of big data on crime control. He is an Ethics Expert with the European Research Council (ERC).

ABSTRACTS OF CONFERENCE PAPERS

KEYNOTE SPEECHES

Neža Kogovšek Šalamon

Global Crimmigration Trends

Crimmigration, generally defined, is the increased entanglement of criminal and immigration procedures. Scholars have recently observed this trend in the United States, Australia and various European countries. Historically, these states handled immigration infractions through civil or administrative systems separated from the criminal law. However, in response to increase of migration and mobility, politization of this topic, and perhaps a cultural shift in how receiving countries perceive immigrants, immigration and criminal law have become more intertwined. This has increased the amount of people processed in immigration systems and the criminalization of immigration infractions. These changes have led to concerns of inequity, xenophobia, and a widespread assault on the rights and dignity of migrants. This presentation will examine the origins of crimmigration, recent developments, and potential paths for the future.

César Cuauhtémoc García Hernández

Criminalizing Migration and Impeding Migrants' Rights in the United States

As the United States expands the role of the criminal justice system in regulating migration, federal law increasingly threatens the ability of migrants to seek legal protections they are ostensibly entitled to—in particular, the right to request asylum. Two recent trends illustrate this phenomenon: criminal prosecution of parents and other adult relatives of young unauthorized migrants and the imprisonment of migrants seeking safety in the United States. This chapter examines the use of both criminal justice tactics in the context of a decades-long entanglement of criminal and immigration law. It concludes by emphasizing the role of politics in law-making and law-enforcement.

Maria João Guia

The Emergence of a State of Exception over foreign-nationals in the European Union after the Returns Directive and the Mediterranean crisis

With the intensification of migration on a global scale, European Union countries have been tightening the restrictive and repressive laws. The geography of the EU has recently changed due to a common policy on Member-States, especially after the implementation of the Schengen space of Justice, Freedom and Security where new concepts of borders (legal, sociological and imaginary) have emerged. In this sense, the Democratic Rule of Law, has witnessed, in recent decades, a politically passive to the replacement of Human Rights and Fundamental Rights by a Criminal State of Exception, especially to solve the irregularity of immigrants. The criminalization of political and social, the limitation of rights, the forms of criminal procedure of urgency and emergency, the new social control technologies on immigrants in irregularity, but also of asylum and international protection seekers into a "Global Criminal Field Without State" have invaded the European Union regulations. In fact, the recent asylum seekers crisis has put again into European Union agendas an urgent problem related, not only with a common asylum regulation, but also with a common immigration policy. The Returns Directive has had here a crucial role on the swift in which immigrants try to solve their entry or

permanence problems, requiring asylum or subsidiary protection more often than trying to enter or overstay irregularly, since it has been widely criminalised. International protection and asylum seekers do have their regulations stated (Directives of 2013 are an example) but practices have been showing us that European Union is rising its walls and solving this challenge with exceptional measures, choosing those who deserve, from the “disposable people” who should return. Questions are emerging every day since the visibility of the massive displacement of people, on the demand of peace and/or better conditions of life, is forcing European Union to a quick decision that may probably reinforce exceptional measures.

Vlasta Jalušič

Crimmigration “Law” and the Creation of “Dual” State

In the book *The Dual State*, published in the US in 1941, a migrant from Nazi Germany, a lawyer Ernst Fraenkel, analyzes the rise of the so-called “prerogative state” (Massnahmenstaat) to explain how Germany after 1933 “slid” into a dictatorship. For the transition to the state of permanent emergency, in which there were no restrictions of laws for the actions of the authorities, the introduction of rapid temporary measures to protect against an alleged enemy threatening public security was decisive. The “pretext” of this was the ill-famed “Decree of the President of the Reich for the Protection of the People and the State” of February 28, 1933, introduced after the Reichstag fire, for which the Communists have been accused. Fraenkel explicitly shows the way, how prerogative state comes to exist through the practices of court decisions which step by step gave up to political pressure and how jus cogens ceased to be binding on the police and government officials. In fact, two parallel “states” come to exist: on the one side the governmental system with unlimited arbitrariness is introduced, unchecked by legal guarantees, on the other an administrative body (the “normative state”) which maintains economic life, and legal institutions crucial to capitalism capitalistic system. This paper takes up the thesis about the creation of the “dual” state with its prerogative side as a possible explanation path for the contemporary processes of criminalisation of migration. It is connecting it with Hannah Arendt's analyses of the decline of the nation state, the end of human rights (and the inversion of law) and Victor Klemperer's insights into the changes of public, political and legal language which justify arbitrariness of power. The paper aims at unfolding a broader framework for understanding the crimmigration processes while showing how crimmigration “law” is creating a parallel legal regime with the increasing “regulation” and “over-legislation” of migration. It also maintains that this leads to the more general transformation of the notion and the practice of law and equality principle – which both radically change their character, not solely in the context of migration.

PANEL 1

Christelle Macq

Removal and Expulsion on Grounds of Public Policy or Public Security: What Are the Limits of Punishment?

The Belgian legislator has recently extended the power of administration to take removal and expulsion measures on grounds of public policy and public security. The protection of second-generation migrants from expulsion has been weakened and the conditions and procedural guarantees surrounding the adoption of such measures have been deeply reviewed. Since April 2017, any alien who represents a threat for national security may be expelled from the country, even if he was born and has always lived on the Belgian territory. Moreover, the conditions and procedural guarantees

surrounding these sorts of measures have been reduced. By adopting these new provisions, the Belgian legislator ensures the transposition of several EU directives. These Directives offer a large margin of discretion to national authorities when exercising their power to expel an alien in pursuance of their task of maintaining public order. However, this sovereign power is still limited by respect for EU law and general principles, as well as being subject to the European Court of Justice. Moreover, Member States have to ensure the respect of fundamental rights in line with the European Convention on Human rights and with the case-law of the European Court of Human rights. European institutions do not prohibit the removal and expulsion of aliens on grounds of public policy or public security, but provide a set of minimum conditions that Member States have to respect when taking such measures. We propose an analysis of the Belgian framework regarding and highlighting these limits set out by the European legal framework and institutions.

Izabella Majcher

The Effectiveness of the EU Return Policy at All Costs: The Coercive Use of Administrative Pre-removal Detention

This presentation argues that despite its formal administrative label, pre-removal detention regulated under the EU Returns Directive is not limited to non-punitive purposes. In the context of the EU's current measures to strengthen the effectiveness of the return policy, the coercive potential of detention-related provisions of the Directive became flagrant. The underlying rationale behind the current interpretation of the Directive is a policy of deterrence, retribution, and incapacitation. While immigration detention under EU law may be punitive in nature, because of the administrative label, protective features of criminal process are not assured. This gap – the crimmigration phenomenon – allows states to benefit from broader discretion typical for administrative proceedings and exacerbates migrants' vulnerability. As the presentation concludes, to tackle the crimmigration phenomenon within the EU pre-removal detention regime, arguments should focus on the concept of arbitrary detention, prohibited under international human rights law, and effective remedy, benefiting every detainee.

Aleš Završnik and Mojca M. Plesničar

Large EU-IT Systems in the Areas of Borders, Visa and Asylum: Implications for Human Rights in Slovenia

The slippery phenomenon of “security” is entrusted to the “advanced technologies”, especially biometrics, such as fingerprints, palm prints, facial image, blood samples and, outside Europe even to voice pattern collection systems (China). The paper will outline the large EU IT-systems and their implication for human rights, where data protection and privacy related issues have been at the forefront of discussion in this field. There are several large-scale EU IT-systems that serve immigration as well as security purposes, the main ones being the Schengen Information System (SIS II), the Visa Information System (VIS) and Eurodac. The list goes on, however, with the planned Entry-Exit system (EES) and ETIAS (European Travel Information and Authorisation System) and ECRIS-TCN (the European Criminal Records Information System for non-EU nationals) adopted in the EU in the areas of borders, visa and asylum. The pan-European survey conducted by the European Union Agency for Fundamental Rights (2018) shows that these systems have implications for other relevant fundamental rights, such as the principle of non-discrimination, the right to asylum, the right to leave any country, the right to liberty and security and the rights of a child. The findings of the paper build upon an extensive empirical research conducted with stakeholders in Slovenia, ranging from Police, Information Commissioner, and

the officials of the Ministry of Interior. Large scale EU IT-systems have had mixed implication for fundamental liberties in Slovenia: for instance, the Information Commissioner awarded the Eurodac administrators a prize for good practice in the area of personal data protection in 2015. However, the targeted populace of large IT-system systems is highly specific and very unlikely to challenge these systems. These vulnerable populations (e.g. foreigners, missing persons) or individuals escaping the justice system (e.g. persons wanted for arrest for surrender or extradition, person for discreet checks or specific checks) or banned from entry to the EU's territory have not complained against these systems. The paper will show the mixed blessing of the large-scale EU IT-systems in Slovenia and focus on risks related to collecting, storing and processing of biometric identifiers.

PANEL 2

Vasja Badalič

Tunisia and the EU External Migration Policy: Crimmigration Law, Illegal Practices and Their Impact on the Rights of Migrants

The paper examines how crimmigration law, combined with a range of illegal practices used by the Tunisian security forces, negatively impact on the human rights of irregular migrants, in particular asylum seekers, in Tunisia. By placing Tunisia's migration policy within the broader EU policy of externalizing migration controls, the paper shows how the EU supports, and relies on, Tunisia's systemic violations of human rights in order to prevent irregular migrants from reaching the EU. The central part of the paper is divided in three sections, with each section examining the impact of Tunisia's migration policy on a specific human right. The first section analyzes how legislation criminalizing irregular migration and migration-related activities, together with illegal practices used by Tunisian security forces (e.g. pushing back irregular migrants at Tunisian borders, detaining irregular migrants in order to prevent them from making asylum claims), deprive irregular migrants of their right to seek asylum. The second section examines how illegal practices adopted by Tunisian security forces (e.g. refusing to allow irregular migrants to have access to lawyers and interpreters) undermine the right to due process in both criminal proceedings and proceedings for protection status determination. The third section explores how the criminalization of irregular migration of Tunisian citizens violates the right to leave one's own country.

Neža Kogovšek Šalomon

The Influence of EU Membership Conditionality on Crimmigration in the Western Balkans

Responses of the EU to migration challenges exceed the territory of the EU member states and through externalization of border control spills over also and foremost to the countries of the Western Balkans (WB) through which goes one of the most important migration routes from the Middle East and Africa towards the EU. While the WB countries show indifference towards the migrants and consider them the "problem" of the EU, the latter conditions European integration of these countries with setting up of institutions and migration policies similar to those in the EU. Regulation by transposing EU directives necessarily brings criminalization since the newly established norms are followed by sanctions not previously known by some of these legal systems (e.g. expulsion in case of irregular border crossing or detention). It also brings repression since the regulation introduces surveillance measures against the individuals who in these jurisdictions previously enjoyed freedom of movement. These processes point

to the problematic role of the EU and national legislators in WB in relation to fundamental rights of migrants.

Maddalena Avon, Emina Bužinkić & Lea Horvat
Crimmigration Trends in the Balkans

Along with the decades of steady growth of the walls of the Fortress Europe, criminalization of migration has been present through: different policy (re)forms, market-driven needs of particular European states, political rhetorics, and public sentiments. This paper seeks to understand new forms, policies and language with regards to the criminalization of migration since the 2015 long summer of migration. This paper is centered around the relationship between two strands: one that looks into the influence of the EU policies and rhetorics, and the second one looking into specificities of the local post-war political context. The two create a specific blended form of the crimmigration trend. The paper will focus on Croatia and a case-study of the Croatian-Serbian and possibly Croatian-Bosnian border locality as a place of criminalization of migration. We are interested into deepening our critical analysis of the discursive level and political language, legal aspects and policy decisions, and the actual practice of the police and military forces in Croatia, particularly in the context of the pushbacks of refugees to Serbia and Bosnia. Based on our previous work, we believe that the practice of push-backs is unlawful and violent. That practice has criminalized refugees to the unimaginable degrees; refugees are not only seen as an external threat but the internal ones, too thus those granted international protection and asylum seekers residing in the country should be on watch. Moreover, the criminalization of refugees enjoys public support to a certain degree which hardens the possible judicial action against police as an institutional perpetrator that have caused deaths, physical injuries and severe mental health issues. This paper will partially draw on Alexander Betts and Paul Colliers (2017) analysis of the broken refuge system and the internal disorder of the EU as well as the inadequacy of the international humanitarian law and the whole system built around it in responding to current refugee needs. Also, the paper will rely on the other relevant resources either published or oral ones.

PANEL 3

Vasilka Sancin

The (In)Surmountable Challenges in Reconciling States' Human Rights Obligations and Crimmigration

There exists a well-detectable global trend of presenting and responding to irregular migration as a criminal threat. This paper aims to address the shift in States' perceptions from treating an immigrant as a criminal to considering the phenomenon of "irregular immigration" as a whole as a criminal threat, questioning whether and how are the ensuing practices and legislative measures reconcilable with States' international legal obligations under binding human rights framework. While fully recognizing implications of sovereignty and exigencies of national security, it argues, that the fundamental human rights obligations of States, deriving from at least most widely ratified human rights treaties, such as the 1966 International Covenant on Civil and Political Rights or the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, both to a large extent reflecting also customary international law and consequently binding on all States, are hardly reconcilable with any "en mass" responses interlacing crime control and migration control.

Cristiano d'Orsi

Why are Migrants Threatening Security and Democracy in Africa? Reflections from South Africa

The problem of the criminalization of migrants has become one of the most urgent concerns that Africa must face. In spite of what it is commonly believed outside the continent, the highest percentage of the migration of African nationals occurs 'intra-continent', bringing with it a number of legal and non-legal issues involving, among other aspects, challenges for the security and the democracy of many African countries. That is why my work will focus on the measures adopted by regional and sub-regional organizations and national governments in order to discourage indiscriminate migration throughout the continent. Currently, Africa offers a number of legal and policy examples put in place to halt the waves of migrants, not only to fight against irregular migrations but also through measures that makes more difficult regular migration. My contribution analyses the multi-faceted aspects of migration in Africa, how it is managed by both the countries of destination and return and the possible threats that this management could create to African countries (both countries of origin and destination of these migrants). Finally, I highlight the discriminatory measures adopted at the policy and legal level, for instance denying basic rights to migrant workers. The fact that only twenty-one African countries (out of fifty-four) have, until now, ratified the 1990 United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (entered into force on 1 July 2003) is of importance to stress how the majority of African countries still prefer to rely mostly on their domestic legal order for the management of aliens. As indicated by the United Nations Special Rapporteur on the Human Rights of Migrants in its 2017 Report, to characterize undocumented migrants as illegal has justified and still justifies policies in conflict with human rights guarantees, such as prolonged detention. This also impacts on the public's view of migrants and contributes to discrimination, violence and xenophobia. These remarks were also repeated during the Special Rapporteur's most recent visit to Angola in April 2017.

Peter Billings

Crimmigration Control in Australia: 'Regulating Crimmigrants through the 'Character Test'' – A Case of Double Punishment?

Australian politicians have been categorical about their commitment to protecting the Australian community from the risk of harm that may result from criminal activity by non-citizens, proclaiming that there "is no place in Australia for foreign criminals". This policy has been pursued through administrative, regulatory, means, specifically via the administration of the 'character test' under section 501 Migration Act 1958 (Cth), and through general visa cancellation powers governing 'risky' non-citizens. . These are both clear examples of crimmigration law and practice: the confluence of immigration law and criminal law, and the intermeshing of immigration and crime controls. This paper critically examines recent reforms to the 'character test', contained in s 501 Migration Act 1958 – reforms that introduced an unprecedented regime of mandatory visa cancellation for non-citizens considered to be of bad character – and the administration of those new powers. Non-citizens subject to mandatory visa cancellation include, notably, those possessing a 'substantial criminal record'. These individuals are subject to administrative detention upon the expiration of their prison sentence, and are vulnerable to removal from Australia as unlawful non-citizens. Justified by politicians as a measure of effective crime control, visa cancellations on the grounds of bad character have increased tenfold in the last three years, as a consequence of the introduction of mandatory visa cancellation powers. The revision of the character test, and introduction of mandatory visa cancellation coheres with global 'crimmigration' trends as a means of effecting social exclusion for

'undesirable' community members. This paper analyses and critiques the introduction, justification and administration of mandatory visa cancellation in Australia. The paper argues that visa cancellation, consequential detention ('imprisonment'), attendant legal processes, and the sanction of removal, are akin to double punishment, largely because non-citizens experience these measures as punitive.

PANEL 4

Yewa Holiday

Refugees and the Misuse of the Criminal Law

The paper will consider offences committed by refugees relating to their flight from persecution (which typically involve the use of false papers or no papers or deception to enter, stay in or leave a country) in the context of article 31(1) of the 1951 Refugee Convention. The offences used to prosecute refugees may comprise offences in immigration or criminal legislation. This paper considers the use of the criminal law in criminalising refugees in Europe and elsewhere and concludes that it is a misuse of the criminal law. This is because such prosecutions do not conform to principles of criminalisation but rather focus on the offender as being a certain type of person. The paper considers liberal utilitarianism and legal moralism and focuses on Spina's ideas relating to Täterstrafrecht and relates these ideas to the criminalisation of refugees (Spina A, 'Iniuria Migrandi: Criminalization of Immigrants and the Basic Principles of the Criminal Law' (2014) 8 Crim Law and Philos 635). Täterstrafrecht has been described by Spina as being a criminal law ideal type according to which criminalisation should have types of offenders (Tätertypen), rather than types of offences (Tättypen), as its intentional objects, so that punishment is inflicted on people because of who they are or because they fit a Tätertyp, the ready-made (either criminological or legal) image of a certain type of person. Refugees and asylum seekers appear to be prosecuted precisely because they are perceived to conform to a stereotypical image such as 'illegal immigrant', 'bogus asylum-seeker', 'economic migrant', 'terrorist', 'opportunist' or 'security risk'. The refugee background which should result in no prosecution is ignored. The cause of the prosecution of refugees therefore lies in the Täterstrafrecht model. The consequences of such prosecutions are that refugees are not afforded the protection due to them under article 31(1) of the Refugee Convention.

Didem Dogar

Criminalisation of Migration: No Equal Protection for Asylum Seekers Suspected of Criminality

The amount of asylum requests made to countries in Global North involves an increasing amount of legal challenges. One of the challenges is the question of what happens to asylum seekers who are suspected of serious criminality. At present, there is a policy of separating possible foreign criminals from asylum seekers. A growing number of European countries resort to refugee law instruments to identify foreign criminals. However, resorting to refugee law instruments to detect possible criminals violates the effective enforcement of laws that ensure equal protection, the due process of law, and the rights of the accused. The paper will analyse how refugee law instruments are implemented against asylum seekers with the examples from the European countries and Canada.

Dušan Nolimal

Lessons from the Wars on Drugs, Terror and Immigration: The Case of Europe-Afghanistan Relations

One of the purposes of this presentation has been to draw attention to some analytical blind spots which impede understanding the causes and consequences of the recent migrations to Europe. It reveals the dangers and complexities of international military-humanitarian interventions. It analyzes the linkages between the wars on drugs, terror and deepening migration crisis, in particular criminalization of the migration. The link is in part described in the “EU Drugs Strategy 2013-2020” which included the potential connection between drug trafficking and financing of terrorist groups and activities, migrant smuggling and trafficking in human beings. For years, the people of Afghanistan have been caught in one of the worst humanitarian crises in the world. Europe, in close coordination with international partners, has been unsuccessfully providing security and stability in this unstable world. The humanitarian interventions did not enable economic growth, reduce poverty, strengthen democratic institutions and improve well-being and health of most people. Despite decades of costly “war on drugs” they neither lessen drug production and trafficking. They contributed instead to widening inequality between the rich and poor. One reason the humanitarian interventions failed is the fact that the humanitarian aid, economic exploitation and military intervention do not mix. Much of the problems may stem from political “divide and conquer” strategy to destabilize, weaken and exploit the targeted country. Such hypocrisy in policies for Afghanistan and some other Muslim countries most probably increased the terrorist threat in Europe. Moreover, Europe had faced a growing wave of migrants coming mainly from regions of the armed conflict or war. Afghanistan has been contributing the second-largest group to Europe’s migrant influx. At the same time the country became one of the world’s greatest illicit opium and cannabis producer. The misguided «war on drugs» in Afghanistan had grave humanitarian consequences. It has encouraged unsuccessful approach to drug control, also leading to additional violence, corruption, displacement, and human suffering. The country is confronted by one of the highest levels of drug abuse in the world. The drug industry advanced to become the most significant illicit source of revenue in the war economy, including human trafficking and smuggling of migrants. The 2015/16 “refugee crisis” triggered a number of political changes and policy approaches to migration in Europe. Complex political, economic, social and human issues were often reduced to criminal justice problems. Just like in the case of global “war on drugs”, resources were directed toward law enforcement rather than peoples’ and societies’ real needs. The migration policies of individual countries were frequently shaped more by fear, prejudice and stereotype than by empirical evidence. Some were specifically designed to create more xenophobia, Islamophobia, tension and conflicts between the native populations and the immigrants. Increasingly stricter and more repressive responses to the immigrants acts have been adopted. A large number of measures have been implemented to deter migrations. The policies have increasingly focused on detection, detention and deportation of migrants. The “war on drugs”, “war on terror” and “war on immigration”, remain controversial norms in international relations, largely because of continued ideological disagreements and concerns about their potentially negative consequences. Europe is expected to play a greater role in providing justified humanitarian interventions and migration policies that must be based on solid scientific evidence, respect for human rights and public health.

PANEL 5

Ana Kalin

Criminalising the Other: Identity Creation, Othering and Crimmigration

The builders of the international concept of universal human rights are increasingly using two sets of standards: those applied to in-group members, their citizens, and those used for 'the others', migrants. With the aim of managing migration, states are among others creating new criminal categories of migrants, reinforcing border controls and even externalising them, and tightening conditions of entry - all accompanied by increasing levels of anxiety among politicians, decision-makers, the media and the public. This is not a new trend, but with the new migration reality that started in 2015 and consists of continuous arrivals of persons to the European Union, we are witnessing an increasing number of restrictive changes to the states' legislative and policy approaches to migration. The paper aims to provide a theoretical framework to explain the causes of criminalisation of migration. It analyses the relationship between the process of identity creation and the attitude towards migrants, predicting that identity creation at individual and collective levels is responsible for the divide between 'us' and 'others'. Identity is strongly related to ontological security in individuals and groups, and as a reflexively constructed category, strengthening of self-identity always comes first and often at the expense of 'others' – migrants. Analysing the functions of identity to self and states, the paper argues that criminalisation comes in the name of protecting our (individual and collective) self-identity, life narrative and ontological security.

Veronika Bajt and Mojca Frelih **Crimmigration and Nationalism in Slovenia**

Across Europe and beyond, a rise in hate speech against migrants, and in particular Muslims, has been apparent. This is especially the case when taking into consideration the 2015 "refugee crisis" in Europe. Borders are subject to progressive securitization, surveillance and militarization, while EU migration policies are increasingly based on exclusion and denial of rights with the purpose of control over migrants. The paper attempts to show the interlinking between the concepts of crimmigration and nationalism. While migration law is taking over elements of criminal law (i.e. the criminalization of migration or "crimmigration"), nationalism and racist hate speech spur threatening consequences for migrants' fundamental rights. Migration, both in public policy debates and in everyday life of ordinary people, has increasingly become associated not only with issues of integration, questions of belonging, loyalty, identity, co-existence, but also with fear of terrorism, "population mixing", Islamophobia and social conflict. The biggest potential for conflicts can arise from atavistic understanding of nation-states as monolithic units of primordial ethno-cultural bonds that become mobilized for political gains of right-wing parties. The paper proposes that situations such as the recent refugee crisis can hence be better understood when nationalism is also analyzed as a form of collective paranoia. In this way, Triandafyllidou's concept of "Significant Others" is here supplemented with the idea of "Dangerous Others", whose purpose is to maintain the status quo of the ruling elites and the existing system. The paper analyzes how the migration phenomenon has become reduced to a question of security, how migrations are increasingly considered solely in terms of "management" of the people, who in consequence have become "de-personalized" as "flows". Even though the paper proposal is a close-up observation and analysis of the situation in Slovenia, the analysis is equally relevant in the international context because the current crisis of response to migration involves Europe as a whole.

Jože Vogrinc & Rok Smrdelj **Objectification of Migrants in TV News Discourse**

The paper is a preliminary sum of results of the detailed research of how TV Slovenija, Slovenian public TV, in its daily news bulletin reported about migrants or refugees trying to reach Western Europe across Balkan borders. It is focused on the period from summer 2015 until the beginning of 2016, the

crucial period when the current handling of 'refugee crisis' by EU and Turkey precipitated and when also the current regime of representation of the people in question in media was established. The aim of the paper is not only to present a case of how an important opinion maker like TV Slovenija negotiates political pressure from European and Slovenian politics in its attitude to migrants/refugees but primarily to focus on particular practices of reporting to show how they direct TV news viewers to reading and understanding the 'refugee crisis'. While the topical frame of discussion of refugees shifted from humanitarian concerns to national security, specifically televisual practices of reporting on the day-to-day existence of the people stuck along the paths of passage and points of control of their movement gradually established patterns of visual presentation in which refugees became a silent object of control and care, a mute object of speaking about them by media, politicians, police and caretakers, practically never given a chance to speak for themselves in their own name. Such a regime of TV reporting can be accepted by silent majority and anti-refugee chauvinism, as well as by humanitarians, as long as it frames migrants/refugees as willing objects of 'our' concerns 'about' them. Instead of humanitarian framing of a whole population as passive victims, media should shift their attention to enabling victims to actively voice and articulate their social and political needs, concerns, and demands.

Tjaša Učakar

The Rhetoric of European Migration Policy and Its Role in Criminalization of Migration

European migration policy frames migration predominantly as a securitarian issue and thus pictures migrants as a threat to the established order of the EU. Even though the most recent documents use a more liberal and humane rhetoric, the basic assumptions about migration don't change, but are getting more difficult to recognise. My contribution shows how the European migration policy has undergone some discursive changes since the pre-Maastricht period until today. Whereas the softening of discourse doesn't lead to less restrictive measures of the migration policy, it does establish a novel field for the production of foreignness and for the discursive (and ensuing legal and political) delineation of membership and belonging of migrants in the EU. The discursive shifts, mainly through the widening of themes and terminology, and through integration of new sensitivities show a picture of greater liberalism and humanitarianism, but don't change the hierarchy of fundamental values, since all novel themes remain subordinate to the securitarian aspects. These developments are important, since it is getting more and more challenging to detect and point out repression and exclusion, marginalization and criminalization of migrants within this novel field of political discourse, which is characterised not only by repressive aspects of power, but also by affirmative discourses of fundamental European values, protection of human lives, humanity and humanitarianism.

PANEL 6

Pia Brezavšček & Jernej Kaluža

Familialism as a Source for the Criminalisation of Migration

The ideology of familialism is one of the most common reasons for the criminalization of migration. For example: marital status in certain cases presents one of the crucial principles of selection between different sorts of migrants who are searching for a possibility of permanent living in the states of arrival. Nevertheless, our aim is not to concentrate on the marital status as a law category specifically,

but more so on the discursive and practical effects that are connected to the paradoxical separation between personal and economic relationship, between (the so-called) authentic love and love out of profit and with a hidden interest (getting domicile, citizenship, wealth, etc.), even though we can see that even the traditional familialistic image of marriage is usually connected to economic interests (in broader meaning). This discourse can be found in the core of some argumentations that tend to delegitimize and even criminalize migrants and present migrations as dangerous for European civilization in the long run. Our claim is, that there are some crucial discontinuities between xenophobia in Europe before and after the so-called “refugee crises” in 2015-16. Familialism was to a certain degree integrated into this new form of xenophobia (“Muslim man want to take our women!”). We will try to deeply examine the position of that statement and the interesting fact that it is often posed from the specific perspective of the white man, but at the same time presents itself as universal. What could be the effects of this new sort of racial evolutionism on the long term? What is the exact political intention that supports such discourses and which kind of argumentation could be used against such claims that are not based on a simple lie or false facts, but on a series of deeply rooted customs? In conclusion, we will try to connect these problems with a broader sphere of the traditional familialism, in which selective distinctions between legitimate and illegitimate sorts of families are usually based. A change in our understanding of different sorts of relations could imply changes in our understanding of the marital status and could, therefore, have broader impacts and would not be perceived only as a particular question of identity-politics but also in the context of the struggle for an open and equal society. Therefore, it could have an impact in the struggles that are often, instead of recognizing a common interest, competing against each other inside the sphere of contemporary progressive politics (class versus identity politics).

Nicoletta Policek

The Hint Half Guessed: The Criminalization of Stateless Children in Italy

Italy is host to a considerable number of migrant children, many of them stateless or at risk of statelessness. Migrant children often lack a residence permit or other identity documents and consequently as undocumented persons, they have no political rights and limited access to social services, health care, education and housing. They also risk receiving expulsion orders and being detained in a detention centre, in this way the shift from legal protection of the child to criminalisation of the child is manifest. At the nexus between correctional and social policies, contemporary discourses and practices about statelessness rest at the intersection of national and international laws about displacement, migration, national security and citizenship. Mostly, statelessness is the result of factors such as political change, expulsion of people from a territory, discrimination, nationality based solely on descent, and laws regulating marriage and birth registration (Ahmed, 2010). Statelessness is read in this contribution as the moment when the very structuring principle of society, the fundamental form of social pact, is called into question (Žižek, 1991). For this reason, statelessness becomes a site of fear. Being stateless is translated into being part of a ‘fragmented and dispersed multiplicity’ (Hardt and Negri, 2004) in turn legitimising the organisation of a (formal and informal) defence. Communities are turning into gated communities where the right to citizenship is always on a precarious level and where migrants are a uniform, genderless and threatening body. This contribution highlights several concerns embedded in the hybrid nature of statelessness and quasi statelessness as experienced by children who find themselves in a limbo of legal invisibility (Policek, 2016), thus facing too often the prospect of detention in the name of national and international security. This paper, consequently underlines the significant problem in terms of state practice, mainly embedded in the Italian legislation on citizenship (law 91/1992), whereby children born in Italy to non-nationals who have not been recognized as stateless persons, do not acquire Italian citizenship at birth. In Italy,

nonetheless, there is an automatic conferral of nationality under the law to otherwise stateless children born on Italian territory; this is in theory what constitutes a perfect safeguard. In reality, very few stateless persons actually enjoy this status. Understanding the causes and consequences of criminalization of migration, through the experience of stateless children offers us the opportunity to read local challenges as global complexities where being stateless is to experience wordlessness (Arendt, 1958).

Davide Pittioni & Tomaž Gregorc

“Time Bandits”: Time as a Factor of “Criminalization of Legality” of Asylum Seekers. An Example from Trieste (Italy)

The recent migratory flow imposes a reflection surrounding the practices of subjectivation of immigrants inside the “welcoming/accommodation machine”. The extreme bureaucratization, in the Italian case governed by the police and state apparatuses, brings to light in a very clear manner the extension of the administrative-technocratic dispositive that supports the concrete practices of identification of subjects in late neoliberal societies from borders to the core of everyday life: cities. Even once through the border, asylum seekers condition is usually related to an absolute absence of documents – in French terms *sans papiers* – and is exactly the system of welcoming or accommodation that assumes the responsibility to fill this bureaucratic void in the life of immigrants. In addition to the *sans papiers* phenomena we witness another process of criminalization: what we decided to address as “criminalization of legality”. With this concept we will try to describe a specific condition when an asylum seeker is *de jure* legalized - having applied and been recognized by the state apparatus as an asylum seeker - but *de facto* there are elements of discontinuity in this process marked by renewals of his permit of stay, for example. What is a administrative-technical lack, a bad organization of work or a “simple” overlook in a bureaucratic procedure for the state apparatuses, is an re-experiencing of illegality for the person subjected to this. Time plays a crucial role, taking in consideration that a renewal of a document can take – in some cases – more than 6 months. In this period the person is experiencing what we describe as “criminalization of legality”. What we further argue is that this condition is – in the eyes of asylum seekers – extended to the entire process of an asylum request. Waiting time becomes a factor of criminalization and total precarisation of their lives. And who are the time bandits? We argue state apparatuses, especially the police headquarters (Questura) who are acting inside this dispositive as a time “dealers”, having the decisional power on times of renewals of documents. As “social operators” and workers inside the welcoming/accommodation machine we have a privileged research position to explore and expose the effects of subjection (*assoggettamento*) and time governance that this dispositive causes, that is: registration in the migration office of the police headquarters, formalization of the asylum request, attribution of the fiscal code and the welfare card, waiting for the various renewals of the permit of stay – the phenomena of “criminalization of legality” –, waiting for the territorial commission who decides of the asylum request, waiting for their answer, an eventful change of personal data, appointment to issue digital fingerprints and the request of digital permit to stay with protection and last but not least the travel document. This are obligatory or imposed steps, full of discontinuities, that causes concrete effects on migrants lives, obligated to confront with long waiting times and permanence in the welcome/accommodation machine in a position of absolute or total precariousness. In our paper we will try to face up to the administrative-technocratic tangle to which the asylum seekers are subjected to, using the perspective of social operators who are in everyday close-contact with those affected by it.