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# THE „MORIA COMPLEX“

IRRESPONSIBILITY, INCOMPETENCE AND  
DISENFRANCHISEMENT FIVE YEARS AF-  
TER THE EU-TURKEY ACCORD AND LAUNCH  
OF THE HOTSPOT SYSTEM

A study by Maximilian Pichl commissioned by medico  
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Lindleystraße 15  
D-60314 Frankfurt am Main  
Telephone +49 69 94438-0  
info@medico.de  
www.medico.de

Author:  
Maximilian Pichl, legal scholar and political scientist,  
works as research assistant at Goethe University of Frankfurt am Main.

Editors:  
Sabine Eckart, Ramona Lenz, Vicky Lessing, Mario Neumann, Hendrik Slusarenka,  
V.i.S.d.P. Anne Jung

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# The Moria Complex

## Irresponsibility, incompetence and disenfranchisement five years after the EU-Turkey deal and launch of the Hotspot system

Shortly before Christmas Eve 2020, refugees from the Greek islands wrote a letter to EU Commission President Ursula von der Leyen and the citizens of Europe.<sup>1</sup> In it, they describe in vivid terms their unbearable living conditions in the old and new Moria camp, one of the Hotspots for asylum-seekers that was set up at the instigation of the European Union after the summer of migration in 2015. After the Moria camp burnt down on the night of 9 September 2020, the Greek military built a new camp with the support of the UN Refugee Agency and numerous private aid organisations. „Still we wait for a sufficient amount of warm showers,“ the refugees write in their letter. „When it rains, the whole camp gets flooded and many tents get wet, we don't have heaters to keep us and our children warm, no schools or kindergartens. If we get sick, we wait hours for medical treatment and although the food we receive is enough, it is not very healthy.“

For the past five years, we have been seeing pictures of the Greek islands on European evening news; pictures of tilting UN refugee agency tents slowly sinking into the mud, images of people whose bodies display visual marks of their suffering and injuries.

„We have known for a long time that people are living there under degrading conditions,“ stated German Chancellor Angela Merkel shortly after the camp burned down. Yet the approximately 35,000 refugees who were still on the islands in mid-2020<sup>2</sup> have scarcely been redistributed down to the present day.<sup>3</sup> Even during the EU Council Presidency, the German government has not assumed responsibility and pushed through redistribution of all refugees. Instead, as one of the key players behind the EU-Turkey deal, the German government is seeking to uphold the accord to outsource migration controls,

at the expense of the rights that people on the islands are entitled to under European and international law. In order to evade responsibility, politicians in governmental positions argue that Moria is a „humanitarian catastrophe“, that „help on the ground“ should be carried out and that a „European solution“ is needed. Almost three billion euros have been channelled to the Greek government by the EU for the reception and care of refugees, while several million have been given to private aid organisations for clothing, food, medicine or children's toys.<sup>4</sup> Nothing has changed in terms of the inhumane conditions prevailing there, however.

In their letter to the EU, the refugees do not ask for humanitarian aid, and instead call for their rights to be respected: „Don't we have simple rights as human and refugees in Europe that cover basic services for everyone? We read and hear that we have to live like animals in these camps, but we think it is not true. We studied the laws to protect animals in Europe and we found that they have more rights than we do. [...] We are not asking for more donations or money for fixing the infrastructure, we read in newspapers how many million were already spent and many of us are engineers, electricians, doctors and we know it does not need very much money to fix such a camp. [...] We see many calls for donations and promises and we see that so little has changed here, even after all these millions have been donated, it makes us frustrated and angry.“

The letter from the refugees and camp residents is the starting point for this research study, five years after the „EU-Turkey deal“ and the establishment of the Hotspot system on the Greek islands. The study asks how it can be that the inhumane conditions for refugees on the Greek islands still prevail after five years. Who bears the political and legal responsibility? How does the system of disenfranchisement in the Hotspots work - and why can hardly any legal action be taken against this? Why has humanitarian aid not helped improve the situation?

The desolation and misery of Moria is not a „humanitarian

1 For the complete letter, cf.: Medico International from 23 December 2020, <https://www.medico.de/moria-brief>.

2 The figures cited are taken from Schuler, 2020.

3 The problem with the concept of redistribution is that there is no provision for any say in the matter for those affected. For a critique of the disenfranchisement and incapacitation through redistribution/relocation measures, cf. the current campaign by *borderline-europe* et al.: <https://www.borderline-europe.de/projekte/monitoring-eu-ad-hoc-relocation-sea-cities>

4 Thomsen/Hausdorf 2020.

catastrophe“, but rather the result of a European policy based on the outsourcing of responsibility for refugees and migrants. The „EU-Turkey deal“ and the construction of camps at the EU's external borders have created what will be referred to here as the „Moria complex“. A fire has destroyed a particular camp, but not the Moria complex. All the actors involved in the Moria complex contribute directly or indirectly to the continuation of the camp system and the disenfranchisement of refugees. The following discussion explores in particular:

-> The responsibility of the EU, the Greek government and the governments of other European Member States,

-> The responsibility of international organisations, especially the UN Refugee Agency,

-> The responsibility of the judiciary branch for checks and controls of EU Hotspots in line with the rule of law,

-> and the responsibility of private aid organisations active in the camps.

In this study, court decisions, scholarly studies and press reports were evaluated between December 2020 and March 2021. In addition, a total of ten interviews and background discussions were conducted by the author with journalists, scholars, lawyers and NGO workers who monitor and comment on the Moria complex in the capacity of experts.

## The policy of outsourcing migration controls

For 30 years, European ministries of the interior have been pursuing a single goal when it comes to migration control policy: on paper, inter alia the individual right to asylum, which is laid down in Art. 18 of the EU Charter of Fundamental Rights, is to be preserved and upheld. The fact of the matter, however, is that refugees are not supposed to have access to a complete asylum procedure. This objective already characterised the 1993 German asylum compromise, by virtue of which the Bundestag incorporated the notion of so-called „safe third countries“ into the asylum procedure system, denying a large number of refugees the right to claim asylum. This strategy has also been reflected in European migration policy. The EU Hotspots on the Greek islands, the „EU-Turkey deal“ and the violent push-backs against refugees in the Greek

Aegean Sea, i.e. the whole span of the Moria complex, are the result and product of this policy of outsourcing migration controls.

### How did the policy of outsourcing come about?

The policy of outsourcing goes back to the origins of the Common European Asylum System. In the late 1990s and early 2000s, EU Member States negotiated over European asylum rules. Conflicts arose mainly surrounding the so-called Dublin Regulation. This still regulates where asylum-seekers in the EU have to proceed through their asylum procedure. Among other things, an EU Member State becomes responsible for the asylum procedure if it fails to prevent an asylum-seeker from illegally entering European territory. Because asylum-seekers without valid passports cannot use planes to flee and therefore have to escape along perilous land and sea routes, the Dublin system means that mainly the States at the EU's external borders are responsible for asylum procedures. Even when the Dublin Regulation was originally adopted, the governments of Italy and Greece vehemently criticised this reception system for its lack of solidarity, but in the end they had to cave in and agree to the rules under pressure from the central European and dominant states in the EU. As a result, the advocates of a rigorous closure of borders - the central European states such as France, Great Britain and Germany - prevailed. For political actors from Germany, who are banking on a policy of outsourcing, the Dublin Regulation was temporarily considered a success: while there had always been a six-digit number of asylum applications in Germany throughout the 1990s, this number declined rapidly shortly after the Europeanisation of refugee law, reaching a historic low in 2008 with only 28,018 applications for asylum.

Since then, the states with external borders have been attempting to shift responsibility for reception of refugees, which central Europe has placed solely on them, to non-European third countries. Spain and Italy, for example, concluded agreements with North and West African states in the mid-2000s to outsource migration controls there. The policy of outsourcing is deeply embedded in neo-colonial power relations, integrating former European colonies into Europe's migration control through development aid funds and other financial contributions.<sup>5</sup> Since 2015, sub-Saharan states have also been receiving increasing support for border controls well in advance to prevent refugees' departures in the direction of the EU.

<sup>5</sup> The journalists Christian Jakob and Simone Schlindwein have described this system in detail in their book *Diktatoren als Türsteher Europas* („Dictators as Doormen of Europe“), Jakob/Schlindwein, 2017.

The policy of outsourcing has also had massive effects on Greece. Because border agreements in the Mediterranean functioned effectively for a while, the flight routes of refugees towards the end of the 2000s increasingly shifted to Greece, a traditional target for emigration that had neither asylum laws nor a functioning reception system. Upon arrival, some refugees were arbitrarily detained and subjected to inhumane reception conditions, as the internationally acclaimed report „The truth may be bitter but it must be told“ by the human rights organisation PRO ASYL from 2007 evidences. Already back then at the time, the island of Lesbos was in the public eye. There were particularly serious incidents of inhumane treatment were occurring in the Pagani camp, including some involving underage and unaccompanied refugees. The Greek government closed the camp at the end of 2009 in the wake of mounting public pressure.

Greece continued to be a major country of arrival for refugees fleeing to Europe in the ensuing years. The Greek government reacted to arrivals repressively in the form of brutal push-backs in the Evros region. At times, there was even talk of building a fence along the land border with Turkey.<sup>6</sup> In 2010, the first-ever deployment of rapid intervention troops under the border protection agency Frontex took place in the Evros region. In addition to the repressive measures taken against refugees, the severe economic and financial crisis also meant that refugees in Greece were exposed to particularly abominable reception conditions, including homelessness. All of this combined to lead first the European Court of Human Rights in January 2011 and later the European Court of Justice in December 2011 to rule that returns of asylum-seekers to Greece under the Dublin Regulation were contrary to human rights because of systemic flaws in the Greek asylum system.<sup>7</sup> As a result of the decisions, EU Member States actually stopped returns until 2016.

The suppression of the uprisings referred to as the „Arab Spring“ in the West, the global escalation in regions torn by crises and wars along with a reduction of funding for material support for refugee camps in neighbouring regions by the international community caused an unprecedented increase in refugee movements to Europe from 2014/15 onwards. Every week, tens of thousands of people fled to the Greek islands in the Aegean Sea via Turkey. The Greek government under the left-wing Sy-

riza party briefly stopped the push-back operations of previous governments. As a result, even more people managed to reach the islands and continue their exodus from there to central Europe. There were numerous pro-migrant support structures on Lesbos at that time engaged in humanitarian reception of the refugees.

## A new policy of outsourcing on European territory

The fact that camps for the detention and imprisonment of people seeking protection have been established on the Greek islands since 2016 is part and parcel of a decades-long policy of outsourcing migration controls, in which Greece has always had to serve as a proxy for the interests of the central European Member States. Bilateral agreements, Hotspots and detention centres for deportees, such as those set up on Chios, Kos, Leros, Lesbos and Samos at the insistence of the EU, were therefore not fundamentally new instruments of migration control policy.<sup>8</sup> And yet the camp and systematic deprivation of rights in the guise of the Moria complex has a new quality: not only the individual Member States, but the EU itself was involved in the forging of the „EU-Turkey deal“<sup>9</sup>, [1] and secondly, a camp system in violation of human rights was established on the islands, which even those in charge in the EU did not want to have on European soil in this form, because migration control was actually supposed to be outsourced to third countries [2].

[1] The EU and Member States reacted to refugee movements in 2015 by trying to repeat the policy of outsourcing that had so obviously miscarried.<sup>10</sup> Donald Tusk, President of the EU Council at the time, said that the „days of irregular immigration“ were over. An agreement was concluded with the most important transit country, Turkey. Whereas it was individual EU Member States that had previously always concluded such agreements to outsource migration controls, in this case the EU entered the stage as an actor - even if the Court of Justice of the European Union was later to view this differently.<sup>11</sup> On 18 March 2016, the European Council issued a press release presenting a memorandum of understanding that has since then been known as the „EU-Turkey deal“. Central elements

6 The right-wing nationalist government under Prime Minister Mitsotakis also ties in with this, aiming to have a 27-kilometre-long fence on the border with Turkey completed by April 2021.

7 European Court of Human Rights, C-411/10 N.S., C-493/10, M.E. and others, judgment of 21 December 2011; European Court of Human Rights, M.S.S. v. Greece and Belgium, judgment of 21 January 2011, individual application number 30696/09.

8 Kuster/Tsianos 2016, pp. 5f.; Tazzioli/Garelli, 2020.

9 Incidentally, this is a trend that has intensified on the whole since 2015: On the basis of its „European Agenda on Migration“, which was presented in May 2015, the EU is increasingly involved in negotiations with third countries, for example also in the framework of the Khartoum process.

10 Buckel 2018.

11 For more details, cf. the chapter „The Failure of Law“ in this study.

of the deal were to return all newly arrived refugees from the Greek islands to Turkey, to host one additional Syrian refugee from Turkey in the EU for every Syrian refugee deported (the so-called „1:1 scheme“); and in return for the payment of three billion euros and the prospect of an easing of VISA rules, Turkey pledged to prevent irregular departures towards the EU. One of the masterminds of the deal, Gerald Knaus of the European Stability Initiative, claimed that it was meant to preserve the liberal order in Europe and the refugee rights system in the face of attacks by authoritarian actors, such as the Hungarian government under Viktor Orbán.<sup>12</sup> The outsourcing of reception of refugees to Turkey was supposed to provide some relief. But it is precisely the 1:1 scheme and the fact that Turkey has not signed the Geneva Refugee Convention without reservation that is undermining international refugee law and the right to individual procedures. Lawyers and human rights organisations have succeeded in individual court proceedings to rebut the presumption that Turkey is a safe third country. The mechanisms of the European legal protection system, which for good reasons prevent quick returns without trial, were simply not included in the equation in the „EU-Turkey deal“, so it was clear from the beginning that the expectation of bringing about a quick „solution“ could not be fulfilled.

It has also strengthened an actor like the Turkish government, which now no longer has to fear any forceful foreign policy criticism from the EU for its repressive actions against Kurds, refugees and political opponents, as it can use the refugees in the country as a means of pressure at any time by letting them move on towards Europe.<sup>13</sup>

The Syriza government also ultimately agreed to the deal, although its political party platform had pledged a progressive migration policy. The economic crisis had whittled away the Greek government's latitude and options, also as a result of its erratic actions in the wake of the „no“ („OXI“) to the austerity dictate. At the same time, the EU threatened Greece with exclusion from the Eurozone and the Schengen area.<sup>14</sup> In addition, there were political forces within the Greek government that advocated sealing off the country from migrants. Syriza's coalition partner, the right-wing ANEL, supported the rigorous crackdown on refugees.

[2] As a result of the „EU-Turkey deal“ and the European Hotspot approach, Greek registration centres on the islands turned into „ zones governed by special laws and

regulations“ and „open-air prisons“,<sup>15</sup> as migration researcher Valeria Hänsel documented in a comprehensive report commissioned by the NGO bordermonitoring.eu. The EU presented the Hotspot concept as part of its European Agenda on Migration in May 2015, and it was even spelled out in detail in a so-called „Explanatory Note“ by the EU Commission.<sup>16</sup> The concept „provided for states to be designated at the external borders that are particularly affected by the reception of refugees and support them with logistical, human and financial resources through EU agencies. The approach can thus even be understood as originally intended as a „solidarity mechanism“,<sup>17</sup> which at the same time was based from the very outset on not questioning the distribution of responsibilities in the EU without any solidarity through the Dublin system. The „EU-Turkey deal“ also assigned the Hotspot system the primary task of laying the groundwork for speedy returns of refugees to Turkey.

Camps such as those that sprung up on the Greek islands already existed and still exist in similar form in non-European third countries such as Mauritania or Tunisia.<sup>18</sup> Until this point, the EU had succeeded in keeping this form of camps away from European territory. In its neo-colonial ignorance, the European public was scarcely interested in these geographically distant camps. As the social scientist Polly Pallister-Wilkins puts it, the Global North's migration policy has always been aimed at „saving distant ‚strangers‘, keeping ‚strangers‘ distant.“<sup>19</sup> Refugee camps are an effective instrument with which to implement this strategy, i.e. to promise humanitarian aid but not to take responsibility for hosting refugees. But the „summer of migration“ changed the underlying conditions for such a policy of outsourcing: „The ‚refugee crisis‘ in Europe has challenged this traditional, Eurocentric humanitarian imagination. The strangers are no longer distant to Europeans they are in European towns and cities.“<sup>20</sup> The Hotspot approach was an attempt, especially by central European states, to deal with the problem that the policy of outsourcing had obviously not proven effective.

12 Quoted from: Pallister-Wilkins, 2020, pp. 999f.

13 Cf. on this Lenz 2020b.

14 Bartholomew/Wainwright, 2020, p. 57.

15 Hänsel, 2019, p. 7 und p. 47.

16 Europäische Kommission (COM), Explanatory note on the „Hotspot“ approach, 2015, c.f.: <http://www.statewatch.org/news/2015/jul/eu-com-hotspots.pdf>

17 Ziebritzki/Nestler, 2017, p. 4

18 Some EU member states have been trying for a long time to implement an „Australian solution“, based on Australia's „model“ of rigorously sealing off of its borders, which provides for a systematic construction of camps in third countries. These proposals have also failed due to the resistance of African governments, c.f. Buckel/Pichl 2018.

19 Pallister-Wilkins, 2020, p. 997.

20 Pallister-Wilkins, 2020, p. 999.

tive and stable. Instead of quartering refugees in camps in third countries, they were now to be stopped at Europe's external borders. Thus, the strategy of „saving distant ‚strangers‘ while keeping ‚strangers‘ distant“ has shifted directly to European territory itself. However, there is a difference between whether such a camp is located in the Global South or in Europe, which has laws governing the treatment of refugees with corresponding reception standards and procedural rights. This is why the Hotspots on the Greek islands are not treated by politicians as camps on European territory, but as camps outside the EU - if the EU were truly guided in its political actions by the human rights it has set for itself, it would not be allowed to maintain or tolerate such a camp system.

The EU Hotspots on the Greek islands are thus the logical consequence of a policy of outsourcing or organised irresponsibility on the part of the EU and its Member States. The inhumane living conditions of refugees in the camps and their lack of redistribution within the EU are not based on any grand plan intentionally aimed at bringing about such conditions, but rather the EU's decades-long lack of any plan regarding how to forge a refugee and migration policy based on solidarity and human rights.

### The failure of the EU and its Member States in Moria

German Minister of Development Cooperation Gerd Müller (CSU) said after a visit to the Moria camp: „Anyone who has been to this camp will not refer to it as a refugee camp, but rather a prison.“ He also added: „And I'll say it again: I have been to South Sudan, Northern Iraq, and Dadaab, the biggest African refugee camp. Nowhere are there such subhuman conditions. This means that help must be provided immediately. The people have to be distributed.“<sup>21</sup> Minister Müller went to the heart of what many politicians want to conceal: The EU has created and tolerated conditions on the Greek islands that are contrary to the standards of the European system of values and laws; consequently, only the redistribution of the refugees while taking into account their needs can be a responsible political step, and not letting them stay in the camps. But no one in the EU wants to assume this responsibility. The Moria complex demonstrates the failure of the Greek government, the European Union and the EU Member States in the area of refugee policy.

### The responsibility of the Greek government

The term „Hotspot“ actually originates from military and

security police vocabulary and has been used to denote certain spatial zones in which the deployment of the military or increased police controls are deemed necessary.<sup>22</sup> Against this background, it is only logical that initially the Greek Ministry of Defence under the right-wing nationalist Panos Kammenos from the ANEL party was entrusted with the establishment of the EU Hotspots - later, the administration of the camps was handed over to the newly created Ministry of Migration in Athens. But down to the present day the Greek military has played a central role in the administration of the camps, the reception of refugees and the distribution of food. At the same time, however, the military lacks the qualifications for the reception of refugees.

Since 2015, Greece has received approximately EUR 2.8 billion from the EU for reception and care of refugees through the Asylum Migration Integration Fund (AMIF) and the Internal Security Fund (ISF): „In relation to the number of people admitted, this is more than any other country in the world has received per capita“.<sup>23</sup> It is unclear how much of the money has actually gone to refugee reception and how much has not been used.<sup>24</sup> Nevertheless, these sums raise the question of why it is not possible with such funds to guarantee a reception that complies with European law and is humane. This question is apparently also being asked in the EU. Since 2018, the Brussels anti-corruption agency OLAF has been investigating whether European funds earmarked for refugee reception have been misappropriated. A final assessment of the matter is still pending. It is well known, on the other hand, that there is corruption in the Greek state apparatus. In the case of the funds for refugee reception, the newspaper *Fileleftheros* claimed in an article from September 2018 that EU funds had flowed to economic partners of Minister of Defence Kammenos who were supposed to attend to the food supply, among other things. According to the newspaper, the contracts were not put out to tender. In reaction to the article, criminal investigations were carried out against three female journalists of the newspaper, who were then also briefly held in pre-trial detention. Panaiotis Lampsias, editor-in-chief of *Fileleftheros*, said, „the money existed to transform the camp into a centre that could have resembled the Hilton; instead it is the Moria that is the source of national shame.“<sup>25</sup>

The Greek government has partly outsourced the recep-

22 Neocleous/Kastrinou, 2016.

23 Thomsen/Hausdorf 2020.

24 Howden/Fotiadis 2017.

25 Quoted from *The Guardian* from 26 September 2018.



tion and care of refugees in the camps to international organisations and private aid agencies - while retaining administrative and police control over the camp. How the system of shifting responsibility back and forth works was illuminated by Greek migration minister Notis Mitarachi in an interview he gave to DIE ZEIT in early February 2021.<sup>26</sup> When asked why the refugees had to spend the winter in tents despite all the money from the EU, he said that the UN Refugee Agency was coordinating this task. „The showers and toilets are not built by us, but by the non-governmental organisations. UNICEF is responsible for the sanitation.“ He said he was not blaming anyone for the conditions, including the non-governmental organisations. „I’m just saying that together with the European Commission we decided to give the money and award the contracts for these basic services directly to these organisations.“ The Greek Minister of Migration bluntly illustrates how responsibility in the Moria complex is punted back and forth between the EU, nation states, the United Nations and aid organisations until no one can be held politically or legally responsible for the conditions in the EU Hotspots, which are in violation of human rights.<sup>27</sup>

The European Court of Human Rights has consistently ruled that EU Member States may not transfer asylum-seekers to states where humane living conditions are not guaranteed.<sup>28</sup> As recently as January 2021, the Superior Administrative Court of North Rhine-Westphalia also ruled that protection-seekers in Greece cannot satisfy their „most basic needs [board, bread and soap] for an extended period of time“.<sup>29</sup> Such rulings also indirectly highlight the failure of the Greek government to comply with European law governing reception of refugees. The judgement did not refer exclusively to the EU Hotspots on the islands, instead underscoring the inhumane situation of asylum-seekers in the Greek asylum system as a whole. However, such rulings, important as they are, only provide legal

protection for asylum-seekers who have already left Greece by halting their repatriation, but for the residents of the camps who are specifically deprived of „board, bread and soap“, such rulings have no immediate effect.

The Moria complex is characterised by a lack of responsibility, by a selective presence and absence of state sovereignty: On the one hand, the refugees are kept in camps by coercive state measures such as compulsory residence, while on the other hand, no one wants to take responsibility for the miserable living conditions facing refugees. If there are problems in the material care of refugees, no access to healthy food or functioning health care, the government simply claims that other actors in the camp have taken on this part of the administration. But it is hardly possible to take legal action against international organisations and private aid organisations. Actually, European law is quite clear in this respect: states cannot abdicate their duties under the EU Reception Directive and EU Asylum Procedures Directive, because refugee reception and asylum procedures are genuine sovereign tasks. But enforcing such legal responsibilities in a court of law is difficult.<sup>30</sup> What is missing in Moria is state sovereignty. State sovereignty in the form of granting rights and holding states liable when rights are violated.

## The responsibility of the European Union

Through its Hotspot approach and the „EU-Turkey deal“, the European Union is responsible for having created the causes for the lack of responsibility and the systematic disenfranchisement of refugees in the camps. Even Gerald Knaus, one of the architects of the „EU-Turkey deal“, now admits: „It is a strategic decision to prevent others from coming precisely through these images of people suffering. That is the policy of the European Union at the moment.“<sup>31</sup>

The Hotspot system was originally intended to identify and designate places at the external borders where the EU would provide operational support to Member States in applying the law. However, the EU has never transposed the Hotspot concept into European law; it has remained a largely informal legal practice that grants the executive bodies on the ground a broad scope of action that is hardly subject to any legal controls.<sup>32</sup> Through the Hotspot concept, EU agencies, especially Frontex (the

<sup>26</sup> Jacobsen/Zacharakis 2021.

<sup>27</sup> This is also evident at the local level: the administration of Mytilene does not want to take responsibility for the conditions on Lesbos, either, and uses the police to quell the protests of refugees and residents, c.f. Lenz 2020a.

<sup>28</sup> On the issue of ensuring sufficient material living conditions, see ECtHR, *M.S.S. v. Greece and Belgium*, Judgment of 21 January 2011, Individual Application No. 30696/09; ECtHR, *Tarakhel v. Switzerland*, Judgment of 4 November 2014, Individual Application No. 29217/12; on the issue of ensuring housing, see: ECtHR, *Chapman v. United Kingdom*, judgment of 18 January 2001, individual application number 27238/95.

<sup>29</sup> Superior Administrative Court of North Rhine-Westphalia, case numbers 11 A 1564/20.A and 11 A 298/20.A, judgement of 21 January 2021.

<sup>30</sup> See the section on „Failure of Law“ in this study.

<sup>31</sup> Quoted in Ghassim/Schayani 2021.

<sup>32</sup> For a more detailed discussion of this, cf. Ziebritzki/Nestler, 2017, pp. 2ff.

European Border and Coast Guard Agency) and EASO (European Asylum Support Office), are constantly present in and around the camps. EASO responsibilities include inter alia conducting hearings in the so-called inadmissibility proceedings, in which it is decided whether Turkey is an alleged „safe third country“ for the applicant. If EASO is of the opinion that Turkey is a safe third country, the Greek authorities usually follow this legal opinion.<sup>33</sup> EASO thus plays a major role in shaping Greek asylum administrative practice in the Hotspot facilities in Greece.<sup>34</sup> Elli Kriona Saranti works as a lawyer on the islands and has accompanied many clients through the inadmissibility procedures. In an interview for this study, she pointed out that many scholars, journalists and NGO workers focus on the undignified living conditions in the Hotspots, but the key lever of the disenfranchisement structure goes virtually unnoticed: The unfair system of asylum hearings by EASO and the Greek authorities which is incompatible with the rule of law. In an analysis, the European Center for Constitutional and Human Rights (ECCHR) from Berlin found that EASO disregards European legal requirements and quality standards for asylum hearings in the Hotspots.<sup>35</sup> While fair asylum procedures that comply with European law would not fundamentally challenge the Hotspot system itself, it is crucial to ensure that protection-seekers have access to constitutional procedures that respect their rights under the Geneva Convention and the European Qualification Directive. If the disenfranchisement structure in the Moria complex is to be addressed, the EU's responsibility for asylum procedures that are untenable under the rule of law must be clearly stated.

Frontex is another central EU agency operating on the Greek islands. For some time now, actors such as Alarmphone/Watch the Med or Mare Liberum have been documenting violations of the law by the agency in the Aegean and illegal pushbacks by the Greek coast guard in the presence of Frontex.<sup>36</sup> These accusations have recently been substantiated by investigative research conducted by SPIEGEL and Bellingcat as well as the so-called „Frontexfiles“<sup>37</sup> in major media, which has put Frontex under significant public pressure. The agency has mastered the

game of shifting responsibility back and forth, however: since command of operations ultimately lies in the hands of the Member States („command and control“), Frontex argues that it is not responsible for human rights violations that occur during operations. Yet not only does the Frontex Regulation now refer to a „dual responsibility“ between the agency and the Member States<sup>38</sup> - numerous journalistic reports suggest that the border agency is involved in violent push-backs.<sup>39</sup>

## The responsibility of EU Member States like Germany

In 2015, the EU Member States agreed on the relocation of 160,000 refugees from Italy and Greece. But five years later, only 34,000 refugees have actually been relocated. The responsibility of the German government must also be clearly stated at this point. The Federal Republic of Germany wanted to take in 27,000 refugees, but only a little more than 5,300 have come from Greece within the framework of the relocation.<sup>40</sup>

„The islands continue to be completely overcrowded amidst intolerable conditions,“ wrote the German embassy in Athens in an internal letter, as the platform Fragdenstaat found out through a request with the help of the Freedom of Information Act.<sup>41</sup> However, the German government has failed to seriously work towards an evacuation of the islands or a substantial improvement of the living situation there. It is entangled in the inhumane conditions on the Greek islands. It was Chancellor Angela Merkel who energetically worked to bring about the „EU-Turkey deal“, which ultimately turned the camps on the islands into a vacuum of responsibility and caused the disenfranchisement of refugees. After the burning of Moria, the German government finally agreed to take in a small number of unaccompanied minor refugees after massive public protests. However, of the 1,553 refugees who were to be redistributed, only 449 had arrived in Germany by February 2021.

The reception of refugees by Member States is usually justified by citing „quick aid“ and a „moral humanitaria-

33 Ziebritzki/Nestler, 2017, p. 28.

34 Ziebritzki/Nestler, 2017, p. 49.

35 Cf. on this: [https://www.ecchr.eu/fileadmin/Fallbeschreibungen/ECCHR\\_Case\\_Report\\_EASO\\_Greek\\_Hotspots\\_042019.pdf](https://www.ecchr.eu/fileadmin/Fallbeschreibungen/ECCHR_Case_Report_EASO_Greek_Hotspots_042019.pdf)

36 See for example a report by Alarmphone on push-backs by Frontex shortly after the agreement on the „EU-Turkey deal“ from 16 June 2016, cf.: <https://alarmphone.org/de/2016/06/16/statement-wacht-hemed-alarm-phone-prangert-illegale-push-back-operation-in-anwesenheit-von-frontex-an/>.

37 Cf.: <https://www.frontexfiles.eu>.

38 Cf. the 12th recital of the European Border and Coast Guard Regulation, Regulation (EU) 2019/1896.

39 Cf. for example: <https://www.spiegel.de/politik/ausland/fluecht-linge-frontex-in-griechenland-in-illegale-pushbacks-verwickelt-a-00000000-0002-0001-0000-000173654787>.

40 Cf. the Panorama article by Walter 2020 for the figures.

41 Cf. on this: Fragdenstaat, <https://fragdenstaat.de/blog/2020/12/16/aus-wartiges-amt-bestatigt-intern-untragbare-zustande-moria-fluchtlingslagern/>.

nism". Such a form of „humanitarian government“ leads to mere voluntary humanitarian aid, thereby eclipsing the enforceable claims and rights of marginalised people, writes ethnologist Didier Fassin.<sup>42</sup> In the case of the redistribution of refugees and Germany's supposed „generous willingness to receive“, what goes unmentioned is that the German government systematically disregards the rights of asylum-seekers. Refugees who already have family members in Germany have the right under the Dublin III Regulation to enter Germany and continue the asylum procedure there (Art. 9 and 10 of the Dublin III Regulation). The report *Refugee Families Torn Apart* by PRO ASYL and Refugee Support Aegean shows how the German government systematically blocks procedures for family reunification under European law, one of the few last legal exit routes from the islands. In both 2018 and 2019, the German authorities rejected between 60 and 75 per cent of handover requests from Greece. And yet, according to estimates by aid organisations, between 30-40 per cent of minors in Greece fall under the family reunification regulations of the Dublin III Regulation.<sup>43</sup>

The „humanitarian government“ has a direct impact on refugee law. Who is helped and which persons are distributed from the camps is no longer decided primarily by their reasons for fleeing, which are standardised in the Geneva Refugee Convention, but on the basis of vulnerability, i.e. a special vulnerability. But international refugee law guarantees protection not only to families with children, but also to single 20-year-old men if their reasons for fleeing meet the criteria of the Geneva Refugee Convention. The redistribution actions from the islands by EU Member States, first and foremost the German government, which are touted as humanitarian, undermine refugee protection when vulnerability and not legal protection status is paramount. When legal access routes and the subjective rights of refugees are undermined in this way, the rule of law is replaced by an executive policy of mercy.

Finally, the political strategy of Austrian Chancellor Sebastian Kurz, one of the hardliners on the issue of border closure, illustrates how EU governments are pursuing a policy of outsourcing in the Moria complex. Chancellor Kurz constantly repeated his mantra that „the causes of flight must be tackled in the countries of origin“ - a strategy aimed at negating the responsibility of the Global North for the central causes of flight, such as climate change or economic and social inequality. But Kurz is now applying this rhetoric to camps on European territory. In a

speech to the Austrian parliament, the chancellor of the Conservative-Green coalition justified not taking in refugees from Moria like this: „We not only have 13,000 people from the Moria refugee camp [...]. I have experienced endless suffering among Syrian refugees in Iraq, Jordan, Lebanon and Africa. Come with me to Somaliland or elsewhere: thousands of people in unbelievable poverty, partly malnourished, terrible hygienic conditions. When you see that [...], one thing is clear: we definitely cannot take in all these people! But we want to help, and the right response, in my view, is to help them where they are on the ground.“<sup>44</sup> Austria reacted to the Moria fire by doubling its funding for foreign disaster relief.<sup>45</sup> This speech and these policy measures are instructive: the Austrian government treats the situation in Moria as if Greece is not an EU Member State, but a country in the Global South where refugees „need to be helped where they are“. In this way, the narrative of a „humanitarian catastrophe“ is promoted and political and legal responsibility for the Moria complex is negated. It is no longer a matter of organising the redistribution of refugees from the camps based on solidarity in accordance with European law, but rather of accepting that people remain there permanently and are imprisoned - just like in a refugee camp near war and crisis zones.

### The „favelas“ on the Greek islands

In EU migration policy, the transfer and quartering of protection-seekers in large camps has long been part of the repertoire of pat phrases in order to have „control“ over refugees. In this respect, the Moria complex is first of all no different from the accommodation situation in other EU Member States - in Germany, for example, deprivation of rights takes place systematically at the anchor centres introduced by Federal Minister of the Interior Horst Seehofer. But Moria is not a „normal“ refugee camp in another respect as well. The selective absence of sovereignty by the Greek government and the lack of jurisdictional and accountability structures have led to the spread of informal and clandestine power structures in the camps: „Only the law of violence applies here“, as one resident of the camp puts it.<sup>46</sup> In the end, the Moria camp was less a refugee camp than a „slum“, according to Valeria Hänsel, a migration researcher from Göttingen University. Or a „favela“, as Karl Kopp, European officer

42 Fassin, 2011.

43 Bundesfachverband unbegleitete minderjährige Flüchtlinge, 2019, p. 127.

44 Plenary Session of the Austrian National Council, Stenographic Minutes of the 51st Session of 23 September 2020.

45 Similarly, the Dutch government, represented by the Minister of Foreign Trade and Development, mobilised money from its development fund, which is actually intended for humanitarian projects in the Global South.

46 Cited in Höhler 2019.

of PRO ASYL, characterises the camp. In other words, a place more similar to megacities in the Global South. In Moria there were mafia structures, brothels, drug dealing and an underground economy. „Refugee rights cannot be protected in camps and settlements,“ contend researchers Guglielmo Verdirame and Barbara Harrell-Bond in their study of refugee camps in sub-Saharan Africa. „We found that in refugee camps the law of the host state is practically no longer applied; camps are places beyond the rule of law.“<sup>47</sup> With the Moria complex, such conditions have also come about on European territory.

## The failure of the United Nations

Since the very beginning, the Moria complex has also involved United Nations institutions, first and foremost the UN Refugee Agency (UNHCR) and Unicef. UNHCR's mandate is actually clear. The preamble to the Geneva Refugee Convention states that the contracting states have decided „that the United Nations High Commissioner for Refugees shall have the task of supervising the implementation of international conventions for the protection of refugees“ - in cooperation with the states. UNHCR is thus supposed to defend the rights of refugees and exhort states to comply with their obligations under international law. This is also what the organisation does time and again.

As recently as 28 January 2021, UNHCR appealed to EU Member States to refrain from forcible push-backs at external borders. But if you ask journalists, academics and NGO workers on the Greek islands, they say that UNHCR is part of the problem and not the solution.<sup>48</sup> For example, the German journalist Isabel Schayani wrote on Twitter that UNHCR does not intervene in push-backs ashore in Greece, that the government was not allowing them to protect refugees once they have gone ashore. „How is UNHCR living up to its mandate?“ she asks.<sup>49</sup> The question looms large when one takes a critical look at UNHCR's role on the Greek islands. The organisation has become part of the structure of incompetence, even if unintentionally.

### UNHCR and the disaster narrative

In Europe, UNHCR has traditionally been involved in provi-

ding advice in legislative processes and in quality control of asylum procedures. Outside the EU, the organisation had long been involved in humanitarian disaster management and refugee camp management, especially in sub-Saharan Africa.<sup>50</sup> Comparable disaster management in Europe, on the other hand, is new for UNHCR.

In the summer of 2015, UNHCR declared a disaster situation in Europe. On the Hungarian-Serbian border, along the Balkan route and on the Greek islands as well, UNHCR took part in setting up makeshift shelter structures. In the summer of 2015, this humanitarian crisis intervention was justified, but five years later it is clear that the conditions reigning in EU Hotspots have political roots. UNHCR has stuck to a principled approach to operating on the Greek islands as if it were still a humanitarian crisis. This has pushed UNHCR's rights-based approach into the background.

UNHCR is involved in the camp structures on the Greek islands in a variety of ways, from setting up infrastructure to providing accommodation and food.<sup>51</sup>

The Greek government has therefore outsourced tasks that are the responsibility of the Member States under the EU Reception Directive to UNHCR in its capacity as an international organisation. This makes it difficult for residents of the camp to identify responsibilities when something is not working right. Shirin Tinnensand works for the NGO Stand by me Lesvos, which, among other things, supports the self-organisation of refugees. She says that most of the time it is unclear who is to take on which tasks and for what purpose. Normally, each actor in the camp has certain areas of responsibility. However, when the authorities or international organisations start to outsource their tasks, e.g. through subcontracting, then actors are given the authority to operate who are not trained for such activities. Overall, this has contributed to the chaotic conditions on the islands, in which there has been no consensus between the EU Commission, the Greek government and UNHCR on a joint approach.<sup>52</sup>

Accompanied by the narrative of a „humanitarian disaster“ and additional financial support, UNHCR also beefed up its staff in Greece to over 600. In the process, a staffing system has emerged, as journalists report, in which UNHCR's international staff earned considerably more

47 Verdirame/Harrell-Bond, 2005, p. 15

48 Cf. on this: Bogaers 2019, pp. 75ff.; Mühletahler 2017, pp. 87ff.; Howden/ Fotiadis 2017.

49 Tweet from 7 February 2017.

50 Research on the role of UNHCR in these camps concludes that the organisation was partly responsible for the violation of refugee rights in the African camps, see Verdirame/ Harrell-Bond, 2005, p. 17; Agier 2011.

51 Bogaers 2019, S. 72.

52 Pavlásek 2017.

than the Greek staff on the ground.<sup>53</sup> Particularly against the backdrop of the economic crisis, such a remuneration system has exacerbated conflicts among staff. The accusation that Greece has experienced two-fold colonisation by the EU and international organisations as a result of the economic and refugee crisis<sup>54</sup> is also becoming more pronounced in this context.<sup>55</sup>

## UNHCR facing a conflict of interest

If UNHCR's activities are focused on immediate assistance, there is little latitude left with which to fulfil its core mandate. While the organisation repeatedly criticises the unwillingness of EU Member States to take action, with this criticism taking on a sharper tone in the wake of the Moria fire, it lacks detailed reports cutting to the core of refugee law - namely systematic documentation on camp structures and asylum procedures.

Stakeholders from the legal advice structures in place on the islands say that UNHCR has a conflict of interest: According to its mandate, the organisation is supposed to monitor whether the rights of refugees are respected in the reception structures and is itself a part of these structures. UNHCR scarcely directs any criticism at asylum decisions made in EU Hotspots - although the main task of the refugee agency is to guarantee the rights of refugees in the asylum procedure. And this leads to another problem. Courts, such as the European Court of Human Rights or the European Court of Justice, usually rely on international organisations to present the facts in handing down their decisions.<sup>56</sup> For example, in a decision on the Hungarian transit zones similar to those on the Greek islands, the European Court of Human Rights ruled that the blanket assumption that Serbia was a safe third country was contrary to human rights.<sup>57</sup> In this judgment, the Strasbourg Court relied on a report submitted by the UNHCR's permanent representative in Hungary. Comparable analyses of the asylum system on the islands are lacking because the organisation is directly involved in the camp administrations and reception structures. This makes it much more difficult for the legal advisory structures to legally challenge the „EU-Turkey deal“ and the

concept of safe third countries in principle before European courts.

## UNHCR and the human rights crisis

UNHCR's role on the Greek islands reflects a wider crisis in the human rights-based system. With the global rise of authoritarian actors, such as Donald Trump, Jair Bolsonaro or the New Right in Europe, more and more states are aggressively questioning their obligations under international law and human rights treaties. The global campaign by the extreme and New Right against the Global Compact for Migration and the Global Compact on Refugees clearly illustrates this. UNHCR's work is strongly influenced by these developments. The organisation has only been „loaned“ its mandate from nation states and is funded by them. When governments come to power in many states that want to abandon their commitments to refugee protection, and at the same time the EU makes concessions to such actors in the form of an even stronger policy of outsourcing, UNHCR as well increasingly sees the basis of its mandate erode. Jeff Crisp, the former head of UNHCR's Policy Development & Evaluation Department, wrote on the occasion of the organisation's seventieth anniversary that the refugee agency was holding back on criticising the policy of outsourcing, especially in Europe, so as to avoid risking cost-cutting measures affecting its structures and personnel.<sup>58</sup>

Moreover, UNHCR is in strong competition with the International Organisation for Migration (IOM), which has been granted a similar status at the United Nations since 2018. IOM has become increasingly involved in the refugee sector at the operational level in recent years. The organisation has also been able to expand its influence on Lesbos. It is active there in counselling on „voluntary return“, says migration researcher Valeria Hänsel from the University of Göttingen - although there is no such thing as „voluntariness“, as this assumes a far more important role in the repatriation of refugees than deportations. It is precisely activities like these that make IOM interesting for nation states. The political scientist Fabian Georgi has cited a host of aspects why states of the Global North prefer IOM to UNHCR: „efficiency and low costs for services (instead of too much bureaucratic red tape and high costs), quick reaction to the desires of member governments (instead of having its own agenda), non-normative practice (instead of publicly criticising governments) and independent decision-making structures (instead of control by

53 Howden/Fotiadis 2017.

54 For details on this, cf.: Samaddar 2016.

55 Pavlásek 2017.

56 According to the lawyer Kriona Saranti, the Council of Europe's human rights commissioner in particular repeatedly voices criticism of conditions on the islands, which can be cited in legal proceedings

57 ECtHR, Ilias and Ahmed v. Hungary, Judgment of 21 November 2019, Individual Application 47287/15.

58 Crisp, 2020, p. 367.

the UN General Secretariat]“.<sup>59</sup>

The main responsibility for conditions in camps like Moria lies with the EU, the Member States and the Greek government. Organisations like UNHCR are faced with the structural dilemma of deciding whether humanitarian considerations are decisive in participating in such structures. Camps are places where systematic disenfranchisement of refugees is taking place, however. Even if UNHCR's intention is not to stabilise systems of disenfranchisement, this is precisely what is happening within the specific non-competence structure of the Moria complex. The historical aim of the Geneva Refugee Convention has been to grant refugees prospects for the same rights as those enjoyed by nationals of the host state. This standard is being eroded by camps like those on the Greek islands.

## The failure of law

### Why it is hardly possible to legally attack the Moria complex

One need not have studied law to realise that the EU Hotspots systematically violate human rights. Yet refugees and asylum-seekers are entitled to a whole package of rights under international and European law. The Geneva Refugee Convention guarantees refugees unimpeded access to justice [Article 16 of the Refugee Convention], permission to work [Articles 17, 18 and 19 of the Refugee Convention] and the same treatment by the public welfare system as is due to the host state's own nationals. The European Reception Directive is even more specific regarding the rights of asylum-seekers. Article 21 of the Directive guarantees, for example, access to appropriate treatment for particularly vulnerable persons, such as (unaccompanied) minors, disabled persons, elderly persons, pregnant women, single parents, victims of trafficking or persons with mental disorders. A large proportion of asylum-seekers residing on the Greek islands are likely to fall under this provision. Thousands of deprived children are on the islands, and according to Doctors Without Borders, depression and suicide attempts are mounting among them.

„The fact that these camps are based on violations of human rights and that the victims are unable to take legal action can only function if the Greek government need not fear being held accountable,“ says journalist Franziska Grillmeier, who lives on Lesbos and has been do-

documenting the situation of the people in the camps. But why is it not possible to put an end to the systematic disenfranchisement of refugees through court decisions? To answer this question, one has to look at the conditions upon which legal proceedings depend. And then one notices pretty quickly that there are many barriers and challenges in the Greek and European legal protection system facing lawyers of refugees.

### Legal battles in Greek courts

When lawyers have attempted to address conditions on the islands in Greek courts, the main issue has been the release of (particularly vulnerable) clients from the camps or a rebuke of faulty asylum decisions. In cases of refugees in particular need of protection, such legal interventions have also been repeatedly successful in court. However, it has not been possible to fundamentally change the „EU-Turkey deal“, the concept of a safe third country (aside from individual cases), faulty procedures or conditions in the camps by legal remedies. According to migration researcher Valeria Hänsel, there are a host of reasons that explain why there are hardly any deportations from the islands despite the „EU-Turkey deal“, the 1:1 scheme and partly unsuccessful legal battles. First of all, the deal allows Turkey to leverage its power position vis-à-vis the EU; this became most apparent in March 2020, when the Ankara government moved to unilaterally cancel the deal briefly. Secondly, there have never been the institutions and infrastructures needed to truly implement the 1:1 scheme. Thirdly, there have been legal battles over the treatment of Turkey as a safe third country, while repatriations remain highly controversial from a legal point of view. Fourthly, the geopolitical conflict between Greece and Turkey has repeatedly spilled over to affect the fragile logistical cooperation. And fifthly, the Corona pandemic has also caused ruptures to occur in the system of repatriations. Instead, the Greek state is trying to rely more on voluntary repatriations through the IOM - a system that can hardly be attacked legally because in the end the people concerned are repatriated „voluntarily“, not forcibly.

The fact that the refugees have to stay on the islands is mainly due to the residence obligation that was introduced into Greek asylum law. However, it is almost impossible to verify whether this residence obligation complies with European law [Article 7 of the EU Reception Directive]: „The problem is that there is no legal remedy under Greek law to directly invoke the Reception Directive,“ says Robert Nestler, a lawyer at the NGO Equal Rights Beyond Borders, which provides legal support to refugees on the islands in cooperation with Greek lawyers. And it is

<sup>59</sup> Georgi, 2019, p. 348.

always the same courts that decide on the asylum-seekers' complaints. But once a certain line of case law has been established - in this case a restrictive line towards the rights of asylum-seekers - it is scarcely possible to change it.

„And in the end, a lot also depends on the capacities that are available to you,“ says lawyer Elli Krionas Saranti. The law is not powerful on its own, courts are not proactive when it comes to carrying out rule of law checks and controls - courts have to be petitioned and mobilised. This requires sufficient personnel, money, evidence and public attention. Even if the numerous legal advice structures on the islands - Legal Centre Lesvos, Refugee Support Aegean, Equal Rights Beyond Borders, European Lawyers in Lesvos, Refugee Law Clinics Abroad or HIAS - try to provide the best possible legal advice and support under the given conditions, the resources are lacking to be able to conduct legal proceedings. The proportion of donations to very questionable private aid organisations far exceeds the funds received by legal advice structures. It is comparatively difficult for legal aid to generate donations, according to the lawyer Kriona Saranti. Humanitarian aid works with heart-wrenching images of misery, which lawyers (also because they want to protect their clients) do not want to or are unable to project in the same way. But in the battle for donations, such images and the immediacy of the aid are the greatest asset in the effort to attract donors. In addition, it is often difficult to communicate the legal successes achieved to the public. Either the legal material is complicated and inaccessible or lawyers deliberately decide to refrain from making successful legal cases public out of fear that political leaders in the Greek government apparatus will try to put pressure on the judiciary. This is because the Greek legal system on the islands has been massively politicised since the „EU-Turkey deal“ at the latest. This means that proceedings are no longer solely about legal issues, but also about the political consequences of judgments.

### Legal battles before European courts

With regard to legal proceedings before the European courts, a distinction must be made between the European Court of Justice [ECJ] in Luxembourg, which is responsible for European law, and the European Court of Human Rights [ECHR] in Strasbourg, which deals with upholding the European Convention on Human Rights [ECHR]. In both courts, there are factual barriers that make it difficult to legally attack the injustices of the Moria complex.

Lawyers cannot file a direct complaint with the ECJ; there is no possibility of filing a complaint comparable

to a constitutional complaint, for example.<sup>60</sup> First of all, lawyers have to file an action in the national legal protection system and have to make sure that their clients' case involves questions of European law that have to be referred to the Court of Justice (so-called preliminary ruling procedure). „However, Greek courts practically never submit questions to the ECJ,“ reports lawyer Robert Nestler. European law is hardly present as a subject at Greek law faculties and in the education system, and it is only in the last few years that European directives have even been transposed into Greek law. So the Greek legal protection system has hardly had any experience with European law. This is not a Greek peculiarity; courts in Germany are also very cautious when it comes to questions of referral to Luxembourg. In addition, refugee law is highly politicised and, according to Nestler, it requires the courage of individual judges to initiate a preliminary ruling procedure. But if national courts do not formulate questions for referral for the reasons mentioned, then the ECJ cannot become active, either. Although European law offers much more protection for asylum-seekers than national Greek law in many aspects, e.g. with regard to material living conditions or detention, as Elli Kriona Saranti points out, this protective power cannot in fact have a real impact.

The problems with the ECtHR are different. In contrast to the ECJ, lawyers can, for example, file a case directly in Strasbourg by way of injunctive legal protection (so-called „Rule 39“). In the past, the ECtHR has ruled in some cases that the plaintiffs must be lodged in accommodation other than the camps. In the course of the Corona pandemic, lawsuits for at-risk groups have also been successful because the ECHR imposes a duty on signatory states to protect life and health [Art. 2 of the ECHR]. The problem is, however, that such decisions always apply only to individual cases and do not fundamentally attack the hotspot system itself. Only those who get in touch with legal advice structures have any chance of leaving the camps through the courts. And even successful lawsuits in individual cases fail when it comes to implementation. „The Greek authorities and camp management regard every legal recourse as an affront,“ says Robert Nestler. His organisation has experienced Greek authorities finding clever ways to sabotage the execution of court decisions or carry out deportations without constitutional controls. Rulings are sometimes simply ignored or their execution is delayed for months, if not years. The calculation here is that legal advice structures on the islands only have limited capacities. Karl Kopp at PRO ASYL confirms that partner lawyers of his organisations have to commit an

<sup>60</sup> An action for annulment and failure to act sets such high hurdles for individuals that, in contrast to the preliminary ruling procedure, it is only an option in exceptional cases.

enormous amount of effort to each individual case. And in other ways, too, the authorities prevent legal protection from being claimed in a very targeted manner. When deportations from the islands do take place, the authorities often carry them out at weekends - when the ECtHR is usually not working and lawyers are not in a position to effectively stop or delay deportations, Nestler explains. And finally, the authorities by now know very well which individual cases have the potential to fundamentally call the Hotspot system into question. Therefore, the authorities „solve“ individual cases informally by granting a right to stay after all, releasing the persons from the camp or paying high compensation. By then, however, the original reason for the legal case has ceased to exist and it can no longer be used before a court at the highest instance. The lawyers, who are above all obliged to effectively represent their clients, have to accept such offers, even if this means that their overriding strategic considerations come to nothing.

In January 2021, the ECtHR referred questions to the Greek government on the treatment of refugees on the four islands, Chios, Kos, Lesbos and Samos. These proceedings would have the potential to legally challenge the Hotspot system as a whole. „These cases therefore demonstrate the structural illegality and impossibility to implement the hotspot approach and border procedures in a way that does not violate human rights,“ according to a press release from Equal Rights Beyond Borders and HIAS. Lawyer Kriona Saranti, who represents clients in these proceedings, also expressed hope in the interview because the ECtHR has systematically pooled the cases from the four islands into one proceeding. Even though the admissibility of the proceedings constitutes a preliminary legal success, it is questionable whether the ECtHR will overturn the inhumane conditions on the islands in human rights terms. The ECtHR has been rolling back its case law on migration since 2015 and is now much more restrictive regarding protection for asylum-seekers.<sup>61</sup> Moreover, the ECtHR always takes a very long time - which is also due to its structural overload - to allow legal proceedings to culminate in a decision. Often a judgement can only be expected three or four years after the petition has been filed. The judgement would then relate to a situation that no longer exists, condemning conditions in camps that are no longer there. The ECtHR could evade the responsibility of judicial review being conducted by having the judges claim that the old Moria camp burned down and that conditions in the soon-to-be rebuilt camp are quite different - even if conditions have actually worsened since the fire.

## Legal responsibility of EU institutions

Finally, one thing has not worked so far: To legally saddle the EU with the blame for the conditions on the islands. As a rule, it is at most possible to hold the Greek government liable as a proxy for the EU's migration control policy.

Initially, actions against the EU-Turkey deal failed before the EU court of first instance, with the court holding that the heads of state and government had not acted as Union institutions in the negotiation and signing.<sup>62</sup> With this construction,<sup>63</sup> which was also sharply criticised in the jurisprudence literature and did not do justice to the facts of the case, the General Court of the EU did not fulfil its function, which is to exercise due process of law by means of legal review. According to Robert Nestler, the unsuccessful action before the Court of the EU and the subsequent failure of the appeal to the ECJ also gave rise to discouragement within legal advice structures about bringing further actions to Luxembourg. In his view, however, the Reception Directive and the EU Charter of Fundamental Rights continue to offer potential that should not remain unused to legally challenge the inhumane conditions on the islands.

The European Center for Constitutional and Human Rights tried to legally challenge the impact of the deal on asylum procedures. The organisation filed a complaint against EASO with the European Ombudsman to investigate the disregard of basic standards in asylum hearings. The Ombudswoman identified problems in EASO's actions, but nevertheless closed the investigation in view of a possible change in EASO's legal basis.<sup>64</sup>

Complaints brought to the ECtHR against actions of EU institutions are not possible because only Member States, not the EU as a supranational community, have signed the European Convention on Human Rights - Strasbourg can therefore not address the injustice of EASO and Frontex. „All these unsuccessful legal battles show,“ writes Greek lawyer Yiota Masouridou, „how blatantly the rule of law is circumvented when EU institutions and agencies act together with Member States outside the EU legal framework. It is also clear from this jurisprudence crisis that the courts are unwilling to take the lead in addressing the dominance of politics over law“.<sup>65</sup>

62 ECJ, orders of 28 February 2017, T-192/16, T-193/16, T 257/16.

63 On this cf. e.g. Bast 2017.

64 On this, cf.: <https://www.ecchr.eu/fall/Hotspots-in-griechenland-beschwer-de-gegen-das-europaeische-asyl-buero-easo/>.

65 Masouridou, 2019.



The Moria complex thus illuminates, as if in a burning glass, the EU's attempt to formally preserve the right of asylum, but to block access to the rule of law. A historically unprecedented exception to this approach occurred in March 2020. When the Turkish government temporarily unilaterally revoked the „EU-Turkey deal“ and tens of thousands of refugees were brutally pushed back and forth between borders, the Greek government under Prime Minister Mitsotakis suspended individual asylum procedures for a month.<sup>66</sup> Violent push-backs of refugees were the result. Yet Article 18 of the EU Charter of Fundamental Rights explicitly provides for an individual asylum procedure, and the Asylum Procedures Directive does not make any exception to the general implementation of a review procedure.<sup>67</sup> As the „guardian of the treaties“, the EU should have sharply criticised this process. But the newly elected President of the EU Commission, Ursula von der Leyen, went to Greece, had herself photographed on social media channels with martial pictures and backed the government's actions, which were contrary to European law. She thanked Greece for being the „Aspida“ (protective shield) of Europe in these times. The EU paid Greece an additional amount of EUR 350 million for border protection and from mid-March there was a Frontex rapid deployment unit in the Evros area. The Moria complex is also in this respect a prime example of the disenfranchisement of refugees in the European Union and especially at its borders.

## The failure of aid

### How aid organisations stabilise the Hotspot system

According to Karl Marx, all great events in world history repeat themselves twice, the first time as a tragedy, the second time as a farce.<sup>68</sup> Against this background, the humanitarian aid operation in Haiti was the tragedy, the failure of aid in the Moria complex the farce. After the 2010 earthquake in Haiti, the largest international aid operation in history at the time was supposed to be „quick and effective“,<sup>69</sup> writes medico's staff member Katja Maurer in her article on humanitarian aid. Billions in funds were pledged by the international community, but only a fraction was disbursed

and hardly anything reached those affected directly.<sup>70</sup> Thousands of aid workers were overwhelmed and oriented themselves to the „respective requirement profile of the organisations“<sup>71</sup> that had recruited them instead of the real problems on the ground. „Transparency about the use of funds, control mechanisms to check whether the announced projects were carried out or even liability for measures that had not been executed but had already been paid for did not exist either in Haiti or in the Philippines,“ is how Katja Maurer sums up the aid missions.<sup>72</sup> This description is consistent with the impression gained from numerous journalistic investigations critically examining humanitarian aid in the EU Hotspots.<sup>73</sup> And even if the aid operation in Haiti involved many more victims, thousands of NGOs were active and far larger sums of money from the international community flowed there than into the „on-site aid“ on the Greek islands, the fundamental similarities with the failure of aid in the Moria complex are nevertheless striking. „The post-earthquake reconstruction was like a kind of mine that was released for exploitation until it was totally empty,“<sup>74</sup> writes Katja Maurer about the Haiti operation. Shirin Tinnesand at the NGO Stand by me Lesvos comes to the same conclusion when she says: „Moria has become a gold mine like in California, which everyone is profiting from.“

### The withdrawal of professional help from the camps

There was a brief period from 2015 to 2016 when there was indeed a humanitarian crisis on the Greek islands. During this time, immediate aid was quite adequate. But at the latest with the „EU-Turkey deal“ and the transformation of the islands into Hotspots, conditions have to be seen as the outcome of political decisions. The Moria complex clearly shows that humanitarian aid that develops an interest all its own and unreflectedly perpetuates a narrative of „humanitarian catastrophe“ must fail because it no longer actively cooperates in attacking the causes that have led to the disenfranchisement and degradation of those affected.

A key moment for humanitarian aid in the Moria complex occurred in 2016, shortly after the signing of the „EU-Tur-

66 Lehnert/Nestler, 2020.

67 Lehnert/Nestler, 2020, p. 73.

68 Marx-Engels-Werke (MEW), Band 8, p. 115.

69 Maurer, in: Maurer/Pollmeier 2020, p. 77.

70 Maurer, in: Maurer/Pollmeier 2020, p. 79.

71 Maurer, in: Maurer/Pollmeier 2020, p. 82.

72 Maurer, in: Maurer/Pollmeier 2020, p. 89; the reference to the Philippines relates to the Tsunami that hit there at the end of 2004.

73 Godin 2020, Hoden/Fotiadis 2017, Thomsen/Hausdorf 2020; for a scholarly analysis cf. Bogaers 2019.

74 Maurer, in: Maurer/Pollmeier 2020, p. 89.

key deal". At that time, some NGOs decided to withdraw from the camp system. The clear criticism by Doctors Without Borders (Medecins Sans Frontieres) received particularly great attention in this context. In the letter Don't turn your back on Asylum: #TakePeopleIn, the president at the time, Joanne Liu, wrote to the EU that the agreement with Turkey was a „historic abdication of Europe's moral and legal responsibility".<sup>75</sup> The organisation declared that it would no longer accept funding from the EU and its Member States in the future, and it also withdrew from the camps on the Greek islands. This course of action was not without controversy within the organisation: It was feared that MSF would be denied access to those affected in the camps and that it would have problems with donors.<sup>76</sup> These fears did not materialise, however. The strong and high-profile statement gave the organisation credibility and even brought in more private donations; and likewise, the NGO did not lose its access to the EU institutions because there were people in the EU who welcomed MSF's move, even if it could not be expressed openly.<sup>77</sup> The withdrawal of MSF, Oxfam and other actors from the Hotspots was an important political signal of the rejection of important parts of organised civil society with European migration policy. But this step also had unintended consequences: The loss of established and professional actors opened the doors for aid organisations without adequate experience to organise humanitarian aid on the ground.

### The system of assistance in the Moria complex

The fact that NGOs and international organisations assume functions and tasks in the administrative and reception structures in refugee camps in the first place is a comparatively new phenomenon that only emerged in the 1980s and 1990s. Shortly after the Second World War, camps for so-called „displaced persons" functioned differently. Camps back then were administered by states and residents organised themselves into councils or created other self-governing structures to represent their needs and interests vis-à-vis the sovereign power. NGOs as we know them today in the field of humanitarian aid did not yet exist. In contrast, refugee camps in Africa, the Middle East and, since the „summer of migration" in 2015, on European territory as well, have produced structures that can be described, in the words of the ethnologist Michel Agier, as places for the „administration of undesirab-

le persons". In his research, he has shown that the governance of refugee camps combines military or police and humanitarian measures in a way that has a depoliticising effect: The inhabitants of the camps are no longer treated as subjects and holders of rights or as citizens, but as victims, as vulnerable people, as unwanted.<sup>78</sup>

Numerous NGOs are active in the Greek camps, including Movement on the Ground, EuroRelief, Remar, Because We Carry, Drops in the Ocean, Refugees4Refugees, Diotima and Starfish Foundation. Immediate help from aid organisations is typical of humanitarian disasters, which are not always unforeseeable, but often unavoidable. But the fact that refugees are quartered in barracks for months or even years, sometimes even for generations, and are exposed to untenable conditions is precisely not the result of a disaster, but rather of political decisions or the avoidance of decisions. The establishment of the Hotspots in the Aegean coincided with Greece being hit by an economic crisis on a massive scale. The fragile state administrative structures there were already overwhelmed by the task of ensuring the basic needs of Greece's own population - and then all of a sudden the Greek state was also supposed to take on the main responsibility for refugees at the EU's external borders. In this situation, it entrusted not only the UNHCR, but also NGOs with essential tasks in caring for refugees, including the construction of tents, accommodation, water supply, educational services, etc. The Greek state was not able to provide these services. The tasks that the state outsources to NGOs are actually classic sovereign activities of refugee reception, i.e. obligations of the state to which refugees have a right, and not optional services that may or may not be provided on site by NGO staff and volunteers. It is precisely this circumstance, that law has been replaced by mercy, that NGOs should actually be criticising. Instead, as contractors, they have become accomplices in the Moria complex. „Many NGOs seek closeness to state institutions and take on tasks that should actually be public responsibility," write Thomas Gebauer, former executive director of medico for many years, and the author Ilja Trojanow in their book on humanitarian aid. NGOs „ensure the social care that states no longer provide, either because they lack the fiscal means to do so or because they no longer see it as a public task. ‚Privatisation of the state' goes hand in hand with ‚statification of NGOs'".<sup>79</sup> In the Greek camps, we can see how the combination of the economic crisis, the unwillingness of EU Member States to redistribute refugees, and the restrictions imposed by the „EU-Turkey deal", such as the detention on the islands, has promoted the lack of responsibility and disenfranchisement in the Moria complex.

75 Maurer, in: Maurer/Pollmeier 2020, p. 89.

76 Medecins Sans Frontieres from 13 May 2016, cf.: <https://www.msf.org/europe-dont-turn-your-back-asylum-takepeoplein>.

77 Dany 2019, p. 198.

78 Agier 2011, p. 215.

79 Gebauer/Trojanow, 2018, pp. 163f. Translation of the German text.

In a study, human geographer David Bogaers has elaborated the type of aid system that has emerged on the Greek islands since 2016. When humanitarian organisations have wanted to take on tasks in the Moria camp, they have had to adapt to the rules of the Greek government.<sup>80</sup> In doing so, aid organisations have become directly involved in almost every aspect of camp life. EuroRelief is an evangelical organisation that has taken over the task from the Greek state, for example, of controlling access to the different parts of the camp and allocating tents or containers for new arrivals to live in. The organisation has been showered with accusations. It is said to have carried out missionary work as part of its aid work<sup>81</sup> and, according to former volunteers, to have treated refugees in an undignified manner.<sup>82</sup> Euro-Relief in turn assigns accommodation tasks to refugees in the camp,<sup>83</sup> who accept these in order to escape the desolation of camp life. This approach is particularly questionable because it integrates the refugees themselves into the structure of lacking responsibility characterising the Moria complex - and does not, as in the context of political self-organisation, create the possibility to stand up against their living conditions. Another evangelical organisation called Remar has assumed the task of organising educational services for children in the Moria camp and in the new Kara Tepe camp.

The NGO Movement on the Ground, on the other hand, comes from the Netherlands and has rented land around the Moria camp in the so-called „Olive Grove“<sup>84</sup> in order to provide accommodation for refugees. Even though the organisation tried to bring about better conditions in the „Olive Grove“, the accommodation does not come up to the level that refugees are legally entitled to when they are admitted to Europe; furthermore, this area, as well as other places in the Moria camp, have always been overcrowded.<sup>85</sup> On top of it all, the Greek state has not assumed any responsibility for these refugees, which it indeed has according to the European Reception Directive. However, Movement on the Ground in its capacity as a private NGO cannot be held responsible for the conditions in the „Olive Grove“. While the new Greek government under Prime Minister

Mitsotakis supports or tolerates the activities of some aid organisations, it at the same time takes repressive action against critical NGOs and any form of self-organised coexistence of refugees,<sup>86</sup> as the forced eviction of the City Plaza Hotel in Athens<sup>87</sup> or Camp Pikpa on Lesbos illustrate.

Organisations like EuroRelief, Remar or Movement on the Ground, which are active in the camps, have set up a „volunteer“ system in which people with no previous experience in refugee aid are sent to the Hotspots. Thus, these are not professional social workers from the refugee aid sector who are assigned by these organisations, but mostly unqualified volunteers. Youtube videos, Instagram and Facebook posts of these organisations show cheerful young people setting up tents or serving food in order to recruit new volunteers and generate donations at the same time.

Bernd Mesovic, who as former head of legal policy at PRO ASYL has helped to shape and observe the structures of refugee aid since the 1980s, says that non-governmental organisations and aid agencies have increasingly become „prisoners of the neo-liberal advertising strategies that have taken hold in the field of international fundraising“. The „hierarchical gesture of almsgiving, the appeal to generosity“ obstructs the search for possibilities of joint action against the real roots of misery and wretchedness. Shirin Tinnesand of Stand by me Lesbos has been observing just such processes in the Greek camps: she says some aid organisations work on the principle of „help first, ask questions later.“ Ultimately, this means several NGOs performing the same activities in the camps, often poorly, and a lot of money being spent on the same thing without any real improvement in the situation of the refugees, she says. The Times wrote in a February 2020 article that „... a different kind of volunteer has also been arriving on Greece's shores; young, untrained and unskilled visitors, who can inadvertently exacerbate the problems they seek to address.“<sup>88</sup> Shirin Tinnesand sums up the problems of sending volunteers with no previous experience to the camps like this: „If I'm hiring a plumber in my house, and the plumber company bringing unskilled or unqualified personell and they doesn't even have the right tools. I'd be sceptical. Every time it rains, my house would be flooded, my property damaged. What would I do about that? First, I would get them out of my house and would probably take them to

80 Bogaers 2019, p. 74.

81 Kingsley 2016; Broomfield 2018; Are You Serious 2018.

82 Are You Serious 2018.

83 Bogaers 2019, p. 78.

84 On this, cf.: <https://movementontheground.com/story/what-is-the-olive-grove-19833>.

85 For a description, cf. Bogaers 2019, p. 20.

86 On the history and forced eviction of the City Plaza Hotels in Athens, cf.: Bartholomew/Wainwright, 2020, S. 64ff.

87 Neumann 2019.

88 Godin 2020.

court for damaging my property. And that's what we're seeing January in Moria, that unqualified NGOs have assumed the task of fixing the drainage system: They were bringing shovels, instead of excavators. Then everything was flooded again."<sup>89</sup>

In his study, David Bogaers writes that humanitarian aid organisations have contributed to maintaining the status quo in the camps, human rights violations not being publicised and those responsible, the EU and Greek government, not having to fear any consequences.<sup>90</sup> In the interview for this study, Bogaers contradicts the frequently raised objection of aid organisations that they have to remain in the camps, otherwise everything would collapse there and this would not be in the interest of the refugees. In his opinion, part of the problem is that the Greek state is not prepared to act itself due to the large number of humanitarian actors. Even though the Greek administration has the capacity, including through EU funds, to organise a properly functioning reception system, a clear political will is lacking. If the humanitarian organisations were to leave the camp, the Greek state would be forced to assume the tasks. One advantage, including from a human rights-based perspective, would then be that the Greek government and the EU could no longer hide behind the private aid organisations when it comes to justifying their failed management of the refugee camps. The Greek state would then be clearly responsible for the situation on the islands.

## The Moria „gold mine“

Why do private aid organisations act in this manner? Why are they part of the problem? „Follow the money“ is the answer in this case. Immense amounts of private capital flow into the aid structures on the islands on a regular basis. It is often unclear how the money is used in the first place. „The Tageszeitung asked 18 aid organisations active on Lesbos how much they had received in the way of donations since the fire and what they had been able to spend the funds on. Nine NGOs responded. They said they had received EUR 5.8 million since the fire. EUR 4 million of this was said to have already been spent on emergency aid, emergency shelters and specific aid projects. [...]“<sup>91</sup> It is also striking that the Greek state, which is taking ever more rigorous action against critical NGOs, is protecting dubious organisations all the more: Like in

the case of Hopeland, which, according to journalistic research, has entered into a contract with the Greek state to house refugees in Athens flats – even though the organisation was only recently founded and does not have the necessary previous experience to take on such a task.<sup>92</sup>

Shirin Tinnesand states that practically all actors, including many aid organisations, whether intentionally or not, benefit from the chaotic conditions in the camps and the lack of responsibility. The local economy and the state benefit from the „tourism of volunteers“, the volunteers can mention their involvement in their CVs, journalists write articles, make photographs and produce documentation that they can offer to editors, academics publish books and texts about the misery and participate in scientific panels. All this does not necessarily happen intentionally, but it is an effect caused by this camp system. So there is now a vested interest on the part of some aid agencies in keeping these camps going. Movement on the Ground, one of the NGOs, for example, received many private donations from the Netherlands. Journalist Ingeborg Beugel attributes this to one of the founding figures of the organisation, Johnny de Mol, a well-known TV star in Holland. Through him, it was possible to generate many donations. But to receive donations, one needs the right pictures of the islands and to suggest that the aid provided with the money directly meets the basic needs of the people there. If all the refugees were evacuated overnight, the basis for this aid system would vanish, says Tinnesand.

The private money that has gone into the work of the aid organisations could have been used to pay many lawyers instead. The financial efforts made to stabilise living conditions in the Moria complex at the lowest conceivable level far exceeds what would be needed to give all refugees on the islands access to health, education and work in the EU Member States. The system of disenfranchisement at the EU's external borders is not based on either a humanitarian or an economic efficiency logic, but rather the overarching goal of keeping refugees away from European soil at all costs.

## „Help on the ground“: The strategy of the Dutch government and NGOs

NGOs from the Netherlands played and still play a special role in the Moria system. The best known of them, Because we Carry and Movement on the Ground, are involved in the reception structures of the camp. Some of the NGOs also receive grants from the Dutch govern-

89 Contribution at the conference „The reconstruction of the world“ by Medico International on 12 February 2021.

90 Bogaers 2019, p. 80.

91 Thomsen/Hausdorf 2020.

92 Malichudis 2021; Beugel 2021.

ment. The Dutch government, which has an interest in „helping on the ground“, is involved in the Moria complex in a special way: Through the Dutch government, which was preparing for its stint at the EU Presidency, the European Stability Initiative placed the concept of the „EU-Turkey deal“ in the consultations at the European level at the end of 2015. Frans Timmermans, a Dutch Social Democrat, was heavily involved in the negotiations with the Turkish government, as he was the Vice-President of the EU Commission at the time.<sup>93</sup> Shortly after the summer of 2015, the governing Dutch coalition of Social Democrats and Conservatives vigorously pursued the goal of reviving the policy of relocation: at the time, it even wanted to implement the plan to bring refugees from the islands directly back to Turkey by means of a regular ferry service, thereby circumventing refugee law.<sup>94</sup>

Like the Austrian government, the Dutch government vehemently opposes an effective redistribution of refugees from the islands, preferring instead to provide „aid on the ground“. To this end, it provides financial and logistical support for humanitarian aid on the islands, so that it can pretend in public that it is mitigating the suffering of the people there, but at the same time does not have to take political and legal responsibility. Some NGOs on the islands have a self-image in common that contributes to this strategy. Movement on the Ground, for example, writes on its homepage that at the heart of its „mission“ is the „campUs“ philosophy: this is a strategy to transform refugee camps into safe, healing and dignified environments.<sup>95</sup> The organisation is thus not primarily concerned with overcoming the system of camps itself, but with transforming them into „better places“. This approach aligns with the Dutch government’s strategy of not accepting people from the Hotspots.

But the Dutch NGO scene is by no means homogeneous. In April 2020, the Dutch Refugee Agency and children’s rights organisations published an appeal in the Handelsblad newspaper calling on the government to take in 500 underage children from the islands, after the government had declared that it would only provide „local assistance“. Under the hashtag #500children, the appeal quickly spread throughout social media and gained even more supporters. The

demands from the appeal sent out a political signal and went above and beyond the problematic disaster narrative. However, according to Dutch media, Because We Carry and Movement on the Ground did not sign the appeal.<sup>96</sup> At the same time, Movement on the Ground, together with the Greek organisation The Home Project, received 3.5 million from the Dutch government for humanitarian aid on the ground.<sup>97</sup> The organisation is to participate in the construction of a new centre on the Greek mainland in which 16 unaccompanied minor refugees (UMF) are accommodated<sup>98</sup> – even though Movement on the Ground has no experience in dealing with this group of refugees<sup>99</sup> and, according to the EU Reception Directive, UMF are refugees in need of special protection, whose best interests must be a priority [see Art. 24 of the Directive]. When representatives of Movement on the Ground were asked about these accusations during an anniversary event of their organisations, they said that they had voiced criticism of the camp system to persons holding political responsibility, but at the same time they were pursuing a „realistic“ course and had decided to help the people who were suffering on the ground. Demonstrations and petitions had not been effective in the past, they contended. Movement on the Ground believed that its power lay in exerting influence directly at the local level.<sup>100</sup> However, there is a great danger that civil society organisations with projects close to the government will become accomplices of the state’s political strategies or, as the theologian and activist Rikko Voorberg from the organisation Let’s Bring Them Here put it in an interview with the magazine Het Parool: „If you don’t demonstrate for a real change in conditions, you are only greasing the wheels of the system.“<sup>101</sup>

The strategy of not accepting refugees and only providing „on-site assistance“ is not new. It has been pursued by European countries for many years. However, the buzzwords „fighting the causes of exodus and flight“, which became prominent after 2015, has given it a new basis of legitimacy. Following in the footsteps of the Netherlands and Austria under Chancellor Sebastian Kurz, the Danish government recently announced in January 2021 that it would no longer accept refugees. Instead, its hu-

93 Quoted from an interview with Gerald Knaus in FAZ from 23 April 2018.

94 ZEIT Online from 28 January 2016, cf.: <https://www.zeit.de/politik/ausland/2016-01/niederlande-fluechtlinge-tuerkei-plan-zurueck-schieken>.

95 Cf.: <https://movementontheground.com/what-we-do>.

96 Wiegman/Spaans, 2021.

97 Wiegman/Spaans, 2021.

98 Cf. on this the declaration issued by the Ministry for Justice and Security in charge, <https://www.government.nl/latest/news/2020/10/01/first-greek-dutch-shelter-operational-to-receive-unaccompanied-minors>

99 Beugel 2021.

100 On this, cf. Movement on the Ground Youtube channel from 3 December 2020, <https://www.youtube.com/watch?v=-EAZL1sSeDM>.

101 Wiegman/Spaans, 2021. Translation of the German text.

humanitarian commitment is to be strengthened. The governments of Europe are thus gradually withdrawing from the international system for protecting refugees - even without the extreme right itself being in the coalition governments in these respective countries.

## The New Camp, dwindling solidarity, NGO laws and the new pact on migration and asylum

„No more Morias“ was what EU Commissioner for Home Affairs Ylva Johansson said after the September 2020 fire, but the opposite has happened. The new makeshift camp in Mavrovouni (or Kara Tepe, also called Moria2) was built by the Greek military right on the coast. Flooding is a daily occurrence in the camp, and UNHCR's tents are so close together that fire safety regulations are violated, according to observers on the ground there. And upon the initiative of Human Rights Watch, the Greek Geological and Mining Survey found elevated levels of lead in the camp's soil, which is harmful to children.<sup>102</sup> Photographs of conditions there are forbidden by the police, journalists no longer have official access to the camp. It is mainly „non-political“ organisations, those that indirectly support the Moria complex and leave the disenfranchisement structure untouched, that are authorised access. This is already a foreshadowing of what the government is currently planning: An even stricter NGO law that will prohibit aid workers from disclosing information on problems in the camps to third parties.

The EU, meanwhile, is planning a new camp on the island to be built by September 2021.<sup>103</sup> In addition, an EU task force has been set up to work with the Greek government. „The new camp is to be built next to a landfill site,“ reports journalist Franziska Grillmeier. It would then be banished to the centre of the island, where the island's residents would no longer happen by when they go shopping or play sports, and the camp's residents would then be even more isolated from the local population. „As a journalist, sometimes you can't even write down how absurd the situation on the ground really is,“ Grillmeier continues. „Readers may think it is all being exaggerated, but the impact of this reality on the refugees, humanitarian aid workers, islanders and witnesses on the ground is much more drastic than I can often write down in words,“ says Grillmeier. It is already becoming apparent that it will

hardly be possible to document human rights violations in the new camp, as Grillmeier explains: „Since in the newly planned high-security camp entrances and exits are to be monitored by the military and the camp will be far away from the public eye, it will also become more and more difficult for journalists to tell about the everyday life of the people there and to document human rights violations. Just like we are already seeing in the rest of the camps in Greece.“

The residents of Lesbos still feel solidarity with the refugees five years after the deal, but this has noticeably diminished. Lesbos is traditionally a left-wing island and therefore it was not surprising that many residents actively supported the refugees in the summer of 2015 and afterwards. But in February and March 2020, there were serious clashes on the island, a civil war, as journalist Ingeborg Beugel puts it. NGO workers were attacked, protests against refugees arriving were instigated, right-wing extremists from all over the EU went to Lesbos to „defend Europe.“ However, it would be too easy to blame the reactions of the population on them alone. The island is politically and economically divided due to the Hotspots. While West Lesbos is economically dependent on tourism - and the conditions in the camps may cause tourists to shy away from the island - East Lesbos benefits economically from the presence of international organisations, NGOs and other stakeholders. Ethnographic analyses also show that some residents believed they were right to protest against what they saw as the two-fold colonisation of the islands: Both against the EU's austerity programme and against the attempt to shift the entire task of refugee reception to the islands.<sup>104</sup> Last but not least, repressive migration control policies not only have an impact on the disenfranchised refugees, but also on the host society receiving them. A society that accepts conditions such as those on Lesbos also changes socio-psychologically, i.e. becomes more authoritarian internally, as political scientist Wendy Brown writes:

„Walls built around political entities cannot protect without making securitisation a way of life; one cannot define an external ‚them‘ without producing a reactionary ‚us‘.“<sup>105</sup>

The European Commission presented the „New Pact on Migration and Asylum“, which is supposed to reform the Common European Asylum System, in September 2020. The Pact will exacerbate the problems characterising the Moria complex, because the Commission wants to en-

102 Tagesschau from 20 February 2021.

103 European Commission from 3 December 2020, cf.: [https://ec.europa.eu/gerrmany/news/20201203-lehren-aus-moria\\_de](https://ec.europa.eu/gerrmany/news/20201203-lehren-aus-moria_de).

104 Diaz 2019, 45ff; on this cf. also Lenz 2020a.

105 Brown 2018, pp. 73f., Citation from the German work has been translated into English here.

force the policy of outsourcing to the external borders with even more restrictive measures.<sup>106</sup> The Hotspot camps on the Greek islands serve as a „blueprint“ for the EU: the Moria complex will then be „codified and legitimised“ by law.<sup>107</sup> In camps at the EU’s external borders, asylum-seekers are to be detained and accelerated „screening“ procedures carried out. Those refugees who have come from a safe third country are to be deported without any review of their actual reasons for flight. Particularly perfidious are the new „repatriation sponsorships“, which has been declared „Unword of the Year 2021“. Member States that do not want to take in asylum-seekers can take on „sponsorships“ for rejected asylum-seekers and must then ensure that the people are repatriated as quickly as possible. Not only is the EU Commission turning a concept of welfare into its absolute opposite, namely into an instrument for robust border closure – the principle of solidarity is being changed in terms of regulatory policy: The aim is no longer to welcome refugees in a spirit of solidarity, but quite openly and bluntly to rigorously ward them off. So instead of „No more Morias“, the EU Commission has presented a plan to perpetuate the disenfranchisement structures from the Moria complex. The German Federal government, which held the Council Presidency at the time, actively supported these plans.<sup>108</sup>

## Repoliticisation, responsibility, legal battles and critical emergency aid

### Ways out of the Moria Complex

„Fences, push-backs, camps and shoot-to-kill orders have long been [...] a reality at Europe’s external borders, albeit, due to their extraterritoriality, beyond the everyday perception of EU citizens,“ writes political scientist Sonja Buckel.<sup>109</sup> Due to deep-rooted neo-colonial ignorance, the European public has been able for a long time to ignore the conditions under which people have to live in the refugee camps. But this policy of externalisation has arrived on European territory through the „summer of migration“ and is now visible

to the European public. One does not even have to use a human rights-based line of argumentation to realise that this camp system has never worked. Even from the perspective of actors with an interest in order, control and good governance, the „EU-Turkey deal“ and EU Hotspots are a monumental failure. While the „summer of migration“ is equated with an alleged loss of control across all political parties, and the phrase „2015 must not be repeated“ has become a central political mantra, the policy of outsourcing with its devastating consequences on the Greek islands constitutes the actual loss of control. The narrative that the conditions on Moria are a „humanitarian disaster“ obscures the fact that the Moria complex is a result of political decisions and calculations, and blocks the possibility of placing the rights of refugees at the heart of the social debate.

This investigation of the Moria complex has shown that the policy of relocation on the Greek islands has led to inhumane conditions, a lack of responsibility between the actors involved and a systematic disenfranchisement of the refugees. The EU, the Greek state and the EU Member States are shirking their responsibility, international organisations have become part of the problem and not the solution, there have been few opportunities in the European system of legal protection to legally challenge the injustice, while part of the humanitarian aid is helping stabilise the structural injustice of the camp system instead of working towards its abolition.

A (legal) political strategy to combat the Moria complex should focus on four levels:

[1] A large part of the European public has apparently tacitly accepted that the refugees should remain on the islands in inhumane conditions. Here, the narrative of a „humanitarian disaster“ is powerful and needs to be countered by a repoliticisation of the Moria complex. The political strategies of European governments that have brought about the conditions on the islands must be named and changed. People must not be abandoned to the camp system. The demand for a solidary distribution of people within the EU while taking their interests into account must not be abandoned despite massive resistance. „Repatriation sponsorships“, which the new EU Asylum and Migration Pact provides for, are not an acceptable concept to replace serious solidarity among EU states when it comes to taking in refugees.

Repoliticisation also aims to increase pressure on governments and international organisations. Social movements and organisations such as Mare Liberum, SeaWatch, the Alarm Phone/Watch the Med are already

106 PRO ASYL, 2021.

107 Hänsel/Kasperek 2020, p. 3.

108 For the influence of the German Federal government on this development, cf. Hänsel/ Kasperek 2020

109 Buckel, 2018, S. 441.

trying to promote this repoliticisation, document human rights violations and pressure EU Member States to accept refugees.<sup>110</sup>

[2] Political responsibilities on the islands and the root causes of conditions there must be investigated and clearly identified. The EU has a duty to monitor this. Beyond the measures taken so far by the EU Commission and the anti-corruption agency OLAF, such an investigation also needs to be conducted in public. The EU Parliament could, for example, set up a committee of enquiry under Art. 226 of the TFEU,<sup>111</sup> in which parliamentarians could comprehensively investigate conditions on the Greek islands. A committee of enquiry would also offer the possibility to bring in the expertise of human rights organisations, critical NGOs and, last but not least, the refugees themselves. In addition, it is also necessary to shed light on the Moria complex through forums at the level of nation states (e.g. through national committees of enquiry or within the framework of mandatory committees). After all, EU Member States have been decisive in bringing about the „EU-Turkey deal“ and helped to create the structures on the islands.

[3] The rights of refugees must be placed at the centre of any political strategy. One benchmark should be the EU's self-imposed rights and obligations under European refugee law. This also means supporting the resources assigned to legal advice structures more strongly: because these actively work against the disenfranchisement of refugees and look for ways to get people out of the Moria complex. Legal advice structures could cooperate even more, pool their knowledge and thus use the instrument of strategic litigation even more effectively.

[4] Finally, an understanding of critical emergency aid must replace a view of „aid“ that ultimately only serves a short-sighted political legitimisation strategy and the NGO sector itself, but not the refugees. Critical emergency aid in this field should always ask which activities concretely save lives and support refugees without stabilising the camp system. Ultimately, however, the yardstick for all action must be that this camp system is ended as quickly as possible and the refugees are given humane prospects for life in suitable places. Emergency aid is not an end in itself.

Ironically, it was precisely the Corona crisis that led to refugees on the islands becoming more self-organised. While in Central Europe many democratic processes

came to a standstill during the pandemic and NGOs withdrew their staff from the camps partly for health protection reasons, the residents had to stay there and cope with the situation. The Moria White Helmets or the Moria Corona Awareness Team - supported by the Greek medico partner organisation Stand by Me Lesvos - are trying to empower themselves and other refugees and to counteract reproduction of the camp system as well as the disenfranchisement of refugees. Critical emergency aid must ultimately not only aim to address the root causes of humanitarian aid - it must want to make itself superfluous and unnecessary.

110 The Greek state takes repressive action against precisely such actors and criminalises them, cf.: Christides/Lüdke/Popp 2020.

111 Treaty on the Functioning of the European Union.



## Sources and materials

### Interviewed persons

Interviewed person	Activity/Institution	Subject of the interview
Ingeborg Beugel	Dutch journalist, Lesvos	Role of NGOs in the Moria system, role of the Dutch government
David Bogaers	Geographer, Radboud University of Nijmegen	Role of NGOs in the Moria system
Franziska Grillmeier	Free journalist, Lesvos	Development of the camp system on the islands
Valeria Hänsel	Migration researcher, University of Göttingen	EU-Turkey deal, conditions on the islands
Karl Kopp	Europe officer for PRO ASYL e.V.	NGO system and strategic litigation
Ellio Kriona Saranti	Lawyer, HIAS	Strategic litigation
Bernd Mesovic	Former head of legal policy at PRO ASYL	History of refugee aid
Robert Nestler	Jurist, Equal Rights Beyond Borders	Strategic litigation
Thomas von der Osten-Sacken	Wadi e.V., Stand by Me Lesvos	NGO system, background
Shirin Tinnensand	Press officer, Stand by Me Lesvos	NGO system, conditions on the islands

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\* Passages from non-German-language articles were translated into German in the original text.

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