

**New Kinds of Confinement at the borders of the European Union
Proceedings of the Migreurop Conference
Madrid, 8 June 2019**

Introduction:

Emmanuel Blanchard (Migreurop): The evolution of the “hotspot approach” from 2015 to today

The public meetings held by Migreurop in conjunction with its General Assemblies have several objectives:

- to make Migreurop’s analyses and positions known
- to feed into Migreurop’s activist reflections
- to participate in the struggle and provide a “guerrilla of ideas” in order to support the rights of migrants
- to highlight our anger and indignation: the governance of migration legitimises unacceptable situations, which should result in much more indignation than what we see today

It is important to meet in humane and international settings, which provide alternatives to the usually sad fora around border management, whilst remembering that it is a crime against humanity that brings us together. Our agenda today reflects this situation: in spite of the joy of all seeing each other, there is much more to condemn and to criticise than there is to celebrate together.

Presentation of the evolution of the “hotspot approach”: We will propose an overview of the situation in the hotspots in Italy and Greece (those officially labelled as such by the EU) through accounts of struggles and of activist, research and assistance work. The hotspot on the island of Leros is located in a former psychiatric hospital, which was used as a detention camp for political prisoners under the dictatorship. This is not insignificant: hotspots often have a particular history, which goes beyond that of their architecture. Many articles and reports by NGOs and international organisations have pointed out that those undignified and inhumane spaces. There has been no positive coverage of these facilities despite the communication campaigns of the European Union, which has done nothing to ensure that these places meet minimal standards (UNHRC has denounced living conditions in the hotspots). On the contrary, the unworthy conditions in these hotspots, sometimes called “welcome points” though they condemn people to oblivion, are precisely designed to deter migrants trying to reach Europe.

Activists must distance themselves more than ever from this simplistic discourse. Solely denouncing conditions in the hotspots amounts to accepting the idea that those are new

mechanisms (see Migreurop's early denunciation of the premises of this approach). The hotspots are located in places where people have experienced filtering and deportation for decades, just as with the former Centre of First Aid and Reception in Lampedusa, which became a "hotspot" allowing the intervention of various actors who previously were not allowed access.

These are non-places and must be denounced as such: not only because they are inhabitable but also in the sense that these hotspots can be mobile (not fixed) and floating (on boats), as our Italian members from ASGI and ARCI have highlighted. It is important to deconstruct the word "hotspot" as well as the system behind this approach and the policy it illustrates. Hotspots do not always operate as closed detention facilities, yet without being official prisons they confine people to unsuited places. Indeed, these non-places were not designed as detention sites; they were meant to create new means for the management of borders, a strategy at the core of the IOM agenda, which has indeed condoned this approach.

The hotspot approach is an institutional response to the "refugee crisis", a phrase I insist on using in this particular context, because it contains something important. If Europe speaks of a crisis, it is because it has spent 20 years passing legislation meant to receive a limited number of asylum seekers. As soon as the number of arrivals increased, then Europe speaks of a crisis, of something that should not have happened. In the European imagination, the place for refugees is in the "Global South" and under protection of the UNHRC. This is all the more striking considering there exists an instrument to respond to such situations: the 2001 Directive on temporary protection in the event of mass influx of displaced persons, which, in spite of a request of the European Parliament, was not activated in 2015. Hotspots were set up in Greece (the situation in Italy is very different) because it is considered to border on countries under EU supervision without being part of it. Greece had been so debased by the 2008 crisis that it was possible to establish in situ refugee camps which did not even meet the standards of those in the "Global South"

By the summer of 2015, Migreurop warned that if the hotspot approach functioned as it had been described it would result in an archipelago of camps: that is the case today.

Why do we speak of the failure of this approach? Nationalist, sovereigntist and extreme right political activists were not in favour of this approach (cf. Hungary's refusal to allow hotspots in its territory and the recent Salvini legislation to deter Italy from becoming an archipelago of camps like Greece.)

The goal of hotspots is to deter arrivals and to criminalise migration, which is accompanied by an increase in violence and violations of migrants' rights: they played an important role in the politics of fear, but they are perhaps no longer at the centre of European policy, with hardly 35,000 relocations and the displacement of policies toward the Mediterranean and the Sahel region. There is ongoing discursive effort towards the "brutalisation" of migrants, in order to produce a crisis situation that in turn legitimise certain means of "crisis management", such as the agreements with Turkey and the militarisation of the Mediterranean (military presence, evacuation of NGO presence and the criminalisation of assistance towards distressed people).

I. Failures of the hotspot approach: filtering, confining and coercing at the external borders of the European Union

Session 1: Morocco and Spain

Elsa Tyszler (Migreurop), moderator:

Beginning this conference with the case of the border between Morocco and Spain shows that it has been a prelude to *hotspots* for almost 20 years, by delegating border control to the Moroccan authorities, with a targeted repression of black populations, although other populations are also concerned, and a filtering operation in the Centres for temporary stay of migrants (CETI) and at sea. The criteria for a transfer to Spain and the rules of the CETI are discretionary, with strategies to strongly discourage asylum demands.

Paula Domingo (ELIN Spain): The enclaves of Ceuta and Melilla, preludes to the hotspot approach

Ceuta and Melilla are two very harsh yet rather unknown realities, which are a lot like hotspots. These two Spanish cities are part of the Schengen area and form the border with Morocco, but people who live in the north of Morocco benefit from a visa extension: only a passport is needed to cross the border and enter these cities for a day. There are also no customs duties, which has led to a special informal economy in these two cities. A great many products enter Morocco without paying duty. Yet migrants and refugees are denied the right to circulate in the rest of the EU via these two cities: only the Spanish government can authorise or deny exit from these enclaves.

Not long ago, Morocco did not accept the return of people sent back from Ceuta and Melilla, as the enclaves were considered as territories annexed by Spain (« présides occupés»). The situation is changing now, with strong pressures related to cooperation. Migrants and refugees are increasingly considered as tokens in the context of negotiations around agriculture, fishing or the Sahara. Currently, Morocco is supported by the EU and it benefits from cooperation agreements, in exchange for the control of entry into Ceuta and Melilla. Consequently, the situation of migrants is becoming more and more difficult.

In order to understand Morocco's turnaround to stop the crossing of the barriers, we need to remember the EU promised 140 million euros for border control. In Brussels, the Chamber of the Council of Spain requested that the EU continues supporting Morocco in this effort. A second barbed-wire barrier has been erected 50 m after the first one, in order to stop and control migration. The Moroccan marine corps is also training to undertake rescue missions in its seas.

Once the barriers have been passed (10 m), difficulties continue often resulting in permanent injuries, even mutilations, psychological damage, a lack of financial resources. Most of the border-crossers are Moroccans, and not sub-Saharan migrants.

The “Centre for temporary stay” (CETI) in Ceuta, constructed at the end of 2000, has a capacity of 513 places yet host many more people (1500 in August 2018). It is under the authority of the Ministry of the Interior. Over the years, this centre has progressively changed from an integration into a detention centre. No one can obtain the regularisation of their administrative situation, and people who leave are mostly sent back to their countries. Asylum seekers cannot leave the city as long as there has not been a decision by the government. The conditions in the centre do not meet those required for asylum seekers, unlike in other Spanish cities (the freedom to move around Spain is authorised elsewhere for example). The consequence is that people do not claim asylum, in order to be able to leave Ceuta and Melilla as quickly as possible. Detention duration in the CETI is practically unlimited (observation has shown that people are kept for about 6 months, but we know that the length of detention can vary between 3 months and 5 years).

Coming back to the current situation in Ceuta: the people who arrive come from Africa and Asia. They are principally Moroccans, Algerians, asylum seekers as well as people from Guinea (Conakry), often minors. Previously, people came from sub-Saharan Africa but, due to the repression at the border and in other countries, black migrants attempting to leave risk arrest and deported from the territory.

Ceuta and Melilla function increasingly like hotspots. Based on this profiling, they operate a filtering process followed by either admission onto, or exclusion from, the territory, forced return, etc. Such good relations with Morocco on the part of the EU sketch out possible future relations with Turkey. Everyone who arrives at the CETI is fingerprinted and registered in police files, in order to limit their freedom to circulate. Moreover, since August 2018, “fast-track refoulement” has been practiced in Ceuta and Melilla as well as from the islands of Chafarina and Perejil. This practice has been in violation of EU law for 20 years.

The cooperation between Spain (EU) and Morocco reinforces the closing and the externalisation of borders towards so-called third countries, contributing to the deaths of thousands of people seeking a better life.

.....

Omar Naji (AMDH Morocco) : Morocco practices targeted confinement in the name of protecting European borders

The AMDH Nador publishes an annual report monitoring the violation of human rights at the border, which allows documenting the evolution of detention and consequent violence from 2015 to 2019 in Morocco. Nador is an appropriate place to evaluate the implementation of migration policies.

The Arekmane Centre, which belongs to the Youth Ministry, has been requisitioned for the detention of foreigners. It is very large, with over 3000 people imprisoned, 700 of

whom were expelled following identification by the Moroccan authorities and representatives of Africa consulates who visited the centre.

The Dar Kebdani Centre, which is 65 km from Nador, was opened in April 2019. The building belongs to the municipality.

We have observed the arrests of nearly 15 000 exiled people in 2018. The length of detention increased from a few hours in 2015 to several weeks today (maximum seen to date: 2 months in the Tangier police station, 5 weeks in Nador). Detention conditions are extremely difficult, and detention is exercised without any judicial procedure (decision of the Minister, not a judge).

The authorities refuse to allow associations to visit detention centres, notably Arekmane. The attorney general refused to engage with these opaque detention measures, declaring himself non-competent since the deprivation of liberty stems from a decision of the Minister and not a court decision (see above). Morocco is applauded by its European partners for its participation in dissuasive migratory policies.

The Nador area remains tightly closed to associations and journalists who work on migration-related questions. Migrants do not live in Nador itself, but rather in fifteen or so camps outside the city. If they attempt to come into the city, they are hounded by auxiliary forces and it is difficult for them to move around. This can be considered as a form of confinement, since these hunts continue all the way into the camps, thus limiting the freedom of movement/circulation of the migrants. If arrested, they are detained and sent to the south of Morocco, or expelled to their country of origin.

In practice, sub-Saharan migrants in Morocco do not have the right to visit the asylum offices in Ceuta and Melilla. We have seen illegal networks developing to smuggle people into Melilla. The construction of a fourth border barrier in 2016 makes this even more difficult. Smuggling by sea has increased as well (between 2000 and 5000 euros are required to travel on rubber boats), as a direct consequence of the closure of the land border. In 2018, the corpses of 244 migrants arrived at Nador hospital.

Questions from the audience:

- *What do Morocco authorities receive in exchange for controlling migration?*

We don't have detailed information on the content of the negotiations between Morocco and the EU nor on the "rewards" obtained by Morocco. But we have seen the consequences of these negotiations directly on the ground, without any response of European authorities regarding the violations of human rights.

- *Paula Domingo, can you tell us what happens to minors in the CETI?*

Various activities are proposed, and they can go out in the city, but not outside of it, and they must return by 11pm.

- *Omar Naji, what about the regularisation policies in Morocco, what do you think of them?*

The Moroccan Human Rights Association was against this regularisation campaign from the beginning because the criteria are very selective, and also, even with residence permits, migrants are still arrested and expelled. Since August 2018, the important campaign of arrests and evictions in northern Morocco has swept away any effects of the few regularisations. 270 people who were in Nador asked to be regularised, but these requests were all rejected in the end.

- *Paula Domingo, what is the difference between fast track refoulement and on-the-spot refoulement (notably in regard to Spanish and European legislation)? It is important to understand the difference for political strategies and contentious proceedings.*

On-the-spot refoulement takes place at the border. A Spanish directive calls it legal, but it is done without identifying the person and thus can result in the refoulement of potential asylum seekers and minors. The people are handed over to the Moroccan authorities and then placed in detention in Morocco.

Fast track refoulement happens later: the person has entered the CETI (she was identified and placed in the CETI) and was then turned away the next day.

There is confusion at the legal and judiciary level, but both are refoulements. Don't forget that there are also refoulements at sea (by the Moroccan and Spanish marines) as well as refoulement of Moroccan minors.

Session 2: Italy and Greece

Amandine Bach (GUE), moderator

There was no legal framework for hotspots prior to their introduction in the revised Frontex regulation which came into force in 2016 (only a brief paragraph was dedicated to the issue after the Commission opted not to include a more extensive formalisation of the concept). In order to understand the differences in conditions at the 'official' hotspots in Italy and Greece, it is important to take into account the countries' differing contexts and levels of dependency on European institutions. One of the main differences is the 'contingency' policy applying to people in Greek hotspots, whereas in Italy, by law, people should stay for a maximum of 72 hours (in practice, the period of stay is often extended, but rarely exceeds a maximum of 2 or 3 weeks). Another difference lies in threats to suspend Greece from the Schengen area for failing to record people arriving on the islands in Eurodac, whereas Italy never received these threats when it failed to record people.

One possible evolution of the 'hotspots' could be the concept of 'controlled centres', which was coined by Macron and Sánchez (the socialist head of state in Spain) at a European Council Summit, and entails detaining asylum seekers throughout the duration of an accelerated asylum procedure, and directly deporting people if they do not seek asylum or their demand is rejected. This would amount to closed hotspots, which do not currently exist. This proposal has not yet been implemented, but the risk of detention during the asylum process remains present as the review of the Reception Conditions Directive has been blocked and the new Commission may

make a new proposal regarding this matter. Another proposal was introduced in the last review of the Frontex Regulation in 2019: to create hotspots all over European territory, not only at arrival points, but the idea was eventually rejected.

→ We must continue to monitor developments in European legislation.

Adelaide Massimi (ASGI Italy): in Italy: profiling filtering, dispersing or deporting

- Risk of collective deportations

The ASGI project began with nine applications to the European Commission of Human Rights. Following a pilot phase, the second phase began in 2018.

These centres were introduced in 2015. Hotspots are places where migrants are received and identified, forming part of a strategy to manage so-called 'mixed' flows, i.e. identification via fingerprinting and assessment of the reasons for migration in order to differentiate between asylum seekers and economic migrants.

- Inadequate legal framework

Hotspots have been introduced without any law to regulate the process. This legal vacuum has been filled with administrative decisions and operational procedures introduced at the Italian level to regulate medical care, pre-identification, provision of information on rights, etc. These regulations contain serious breaches of Italian law and of migrants' rights during the identification process. In Italy, detention is only possible after identification and for a maximum duration of 24 hours with a judge's authorisation. Yet, in hotspots, detention is systematically extended up to 72 hours. In Lampedusa, people are detained until they are transferred to Sicily or deported. The situation is very unclear.

An initial law introduced in 2017 stipulates that all migrants arriving in Italy must receive assistance and information on the laws concerning international protection and identification.

- Hotspots have become detention sites

The 2018 law stipulates the use of detention in hotspots in two sets of circumstances:

- For asylum seekers for a maximum of 30 days in order to ascertain their identity,
- For people awaiting deportation for up to 3 days.

- Human rights violations

- In order to meet the objectives of the hotspots, arbitrary detention of migrants has been continuously practiced
- Hotspots are characterised by a lack of information on rights, difficulties in communicating with the outside world, and violation of the right to safety, especially among unaccompanied minors. Nationals of some countries fail to receive sufficient information regarding the possibilities of and procedures for claiming asylum.
- The contracts and conventions established between the Interior Ministry and the associations responsible for managing hotspots are subject to confidentiality agreements, preventing the associations from speaking out about what is happening. Civil society is thus unable to condemn the rights violations taking place.

- Development of hotspots

The latest law from 2018 introduced the possibility of detaining migrants and asylum seekers in order to identify them or verify their identity. This heightens the nature of hotspots as grey areas removed from civil society.

Migrants experience detention and violations of their human rights. Asylum seekers are detained in order to ascertain their identity, while a new law introduces the possibility of fast-track procedures at the border for asylum claims, with fewer guarantees that migrants' rights will be protected and inadequate opportunities for appeal and legal assistance. Even when migrants' asylum claims have been rejected, they may continue to be detained.

Moderator: during a trip to one of the hotspots in Greece by a delegation from the European Parliament (EP), the meal served to the migrants was not that specified to the EP. Moreover, we observed that a group of people were isolated in an overcrowded tent, and handcuffed to go to the toilet. They were all Libyan (filtering by nationality). When we asked why, the guards told us that they had scabies.

Vicky Skoumbi (editor-in-chief of the Greek magazine *αληθεια*): in Greece, islands are overwhelmed and human beings forgotten

The EU-Turkey Statement of March 2016 imposed a strict geographic containment policy on migrants arriving on the islands, whereby people arriving in Greece after the day of the statement would be returned to Turkey if their asylum claims were rejected.

At present (8 June 2019), forced removals are no longer taking place; what remains of the EU-Turkey Statement is confinement of asylum seekers on the islands until their claims are processed. Exceptions are made only for people recognised as vulnerable (pregnant women, single-parent families, unaccompanied minors, shipwreck or torture victims, people suffering serious illness and people with a sexual orientation exposing them to discrimination). In most cases, identification of such vulnerabilities requires medical or psycho-social expertise. However, inadequate staff numbers mean that it is very difficult for people to be recognised as vulnerable and to receive authorisation to leave the island of arrival. According to the Greek Council of State decision in 2018, these geographic containment measures represent a breach of the Geneva Convention and give rise to a considerable risk of social tension on the islands; the Council of State therefore decided to waive the containment measures on the islands from 17 April 2018, positioning itself against the limits on free movement imposed on people arriving on the Greek islands since the EU-Turkey Statement. The Greek government was preparing to implement this waiver but went back on its initial decision after coming under informal pressure from Brussels, eventually opting not to apply the Council of State's resolution.

The effects of containment are devastating. Migrants wait in disgraceful conditions for endless periods at the hotspots. It often takes a very long time for them to receive an appointment, reaching up to two years from the date when the initial asylum claim was made. Time is suspended and people end up no longer knowing why they are there. They fall into depression or become aggressive or apathetic, while various forms of trafficking take hold in the camps to meet people's basic needs. Self-harm, suicide and suicide attempts (including among children) are far from rare.

Migrants are traumatised by their stay at the Moria camp on Lesbos, or the Vathi camp on Samos: after being transferred to the continent, they remain scarred for life by their experience. The toxic impact of this situation on local societies is significant, as the camps are perceived as 'dumps for unwanted people' or 'open-air prisons'. On the islands, identity-based tensions and rising xenophobia have been observed, with a proliferation of racist incidents. One such example is the attack by far-right groups and angry locals on 22 April 2019 on a group of Afghans who were occupying the main square of Mytilene, the capital of Lesbos, to call for better living conditions. In this specific case, the incident could be described as a small-scale pogrom. During the latest regional elections on 26 May 2019, dissidents from the xenophobic right, supported by the neo-Nazis (Golden Dawn) won in the North Aegean region with a large proportion of the votes. This is all the more worrying given that at the beginning of 2015, local communities on Lesbos and Samos were very welcoming. Today, however, those who continue to assist the refugees are at the end of their tether; isolated and stigmatised, they have in some cases been the target of physical attacks by angry neighbours.

Tensions run so high that local communities opposed the Greek government's plans to improve the situation in the hotspots by installing containers instead of tents, which was perceived as a sign that the camps would be extended and become permanent.

Figures in the camps:

Occupancy rates in the hotspots on the five islands (Lesbos, Samos, Chios, Leros and Kos) released by the Greek ministry on 4 June 2019 show that the camp on Samos was functioning at 600% of its reception capacity, Moria camp at 150% and Kos at double its capacity (some migrants were transferred from Samos). There has been a slight improvement in recent years, but living conditions remain appalling and the good weather in the summer months brings an increase in arrivals to the islands.

The Greek government has made considerable efforts to educate 12,500 refugee children aged 5 to 15 years old across Greek territory. They are either given preparatory classes or join the regular school system. The children at the hotspot on Samos attend school, while in Moria children are denied an education due to opposition from the local population. Only a few NGOs have been able to work in the camp thanks to the efforts of certain local people, offering classes and educational activities for children, although this cannot be considered equivalent to a proper education. On Chios, the parents of Greek children reacted violently to refugee children attending school, but eventually the children were able to join the regular education system.

In Vathi camp on Samos, the levels of overcrowding are unimaginable. Sanitary facilities are almost non-existent, as the camp was designed for 650 people but now houses 3,500. Most of these people gravitate around the hotspot, in the 'jungle', living in makeshift shelters made from tarpaulins, tin plate and cardboard boxes. The situation on the island is very tense. The small local hospital, which was already struggling to meet the needs of the local population and must now tend to the people arriving on the island, who are often in fragile health and require care, is overwhelmed. Tensions continue to rise, and this winter on Samos and Leros, groups on motorbikes were seen driving around and violently lashing out at refugees.

Chios is also overpopulated, as is Leros, where the camp cannot be extended towards the 'jungle', as it is located within the grounds of a hospital.

One-third of the people arriving in Greece do so by land (northeast border at Evros). Before 2017, only a tiny proportion of migrants entered via this border, but the situation has now changed. Evros has not only become a gateway into the country, but also a no-go area. Migrants suffer violent pushbacks, are stripped of their belongings, beaten and pushed into inflatable boats, often in highly dangerous conditions, to be forcefully returned to Turkey. Besides police officers, other unidentified groups also practise these brutal pushbacks. These groups performing illegal refoulements are made up of men who speak Greek, German or English, suggesting that they may be Frontex staff. This hypothesis requires further verification.

Above all, the EU aims to make migrants' lives intolerable in order to discourage them from coming to Europe: 'hell on earth' as a kind of dissuasive measure. The Syriza government has been forced to apply this policy.

The [Open the Islands](#) campaign calling for an end to the containment of thousands of asylum seekers trapped on the islands in the Aegean Sea in deplorable conditions, winter after winter, is important but insufficient, as even migrants in continental Greece, who benefit from greater freedom of movement, are often abandoned without assistance or integration support, and are at constant risk of homelessness. The solution is not to transfer the problem from the islands to the continent, as without genuine measures to provide support and promote integration, such a decision would merely shift the problem.

Despite the criminalisation of solidarity, initiatives continue to emerge from different actors on the ground (NGOs, local associations, activist groups, etc.): these are local initiatives with very limited scope, but which go some way to changing the population's perception of migrants. The impact of their actions is very limited in terms of meeting the urgent needs of the migrants arriving on Greece's shores, but even at this small scale, they remind us that it is possible for everyone to coexist in harmony in a world that belongs to us all.

Moderator:

In Greece, Syrians were made ineligible for resettlement following the EU-Turkey arrangement, a de facto practice among member states which was never enshrined in a legislative text and represented a breach of the resettlement decisions made by Greece and Italy: there has been no possibility of legal redress against this illegal measure, which is truly shameful. Numerous people could have been transferred from Greece. In a resolution on resettlement which was passed on 18 May 2017, the European Parliament emphasised this fact, but there was unfortunately no co-decision on this matter.

It is also important to emphasise the role of the media in rising xenophobia in Greece.

Elections have been called by Syriza and will soon take place in Greece: there has been resistance from the Greek Syriza government in a context of extreme dependence on the European institutions and of humanitarian crisis among the Greek population itself in order to mitigate the impact of the agreement with Turkey. Two examples: the groups identified as the most vulnerable (with few doctors, identification is a real challenge) are exempted from this agreement and are able to access the normal asylum procedure. They cannot be returned to Turkey as a safe third country; despite pressure from the European Commission, the Greek parliament has not listed Turkey as a safe third country in its legislation. It is important to remain attentive to any changes introduced by the New Democracy party should it win the elections, as they have promised to speed up removals and to deport all migrants.

Questions from the audience:

- *Have there been any responses in legal terms or mobilisations against the block on family reunification between Greece and Germany?*

The block on family reunification has no legal grounds, but informal agreements have been signed between the ministry in charge of migration policy and the German government which limit reunification to 50 families per month. This measure has been strongly criticised by NGOs and civil society organisations, as well as by Syrian migrants (who have protested by occupying public squares, including Syntagma Square in Athens). Currently, slightly more than 50 reunifications are carried out per month, but decisions on the matter are always arbitrary despite the right to family reunification being enshrined in the Dublin Regulation. The European Commission has ruled that this denial of reunification is legal, and no legal redress is possible. Germany is using this issue for leverage in its negotiations with Greece, despite it contravening the EHR Convention. Reunifications sped up again once Greece accepted returns of migrants who had made their first asylum claim on Greek territory under the Dublin Regulation.

- *Could you tell us more about the nine applications made to the ECHR?*

In March 2018, several applications were made to the ECHR concerning illegal detention in Greece with no provisions made for migrants seeking to lodge an asylum claim (families and children were detained from November 2017, 4 months in the hotspot). Article 5 of the EHR Convention on arbitrary detention, Article 3 on the risk of inhuman or degrading treatment at the Chios hotspot, and Article 8 on respect for private and family life were all cited.

- *Greece: what effect has the EU-Turkey arrangement had on migration policy in Greece?*

We have noted tensions surrounding several illegal refoulements by sea (which remain fairly rare, unlike the situation in Evros), as the coastguards of both countries each claim the other is responsibility for the shipwrecks. There is a political dimension to this disagreement: Erdogan has received little criticism for the human rights violations committed in Turkey and a laissez-faire approach has been taken by other countries.

II. What's next for the hotspot approach: from controlled centres to 'regional disembarkation arrangements'?

Claudia Charles (Migreurop), moderator:

The concept of 'controlled centre' was brought forward by so-called progressist politicians – like Tony Blair who was the first to promote the externalisation of asylum request processes back in 2003. Although no Member State has so far allowed the presence of such controlled centres on its territory, and even if no third State has accepted the establishment of disembarkation platforms, such developments could take place in the future. Indeed, these new forms of detention are slowly being put in place.

Marc Tilley (SAR organisation): Malta, from uncertain disembarkation to systematic detention

Migration in Malta dates back many decades. Since 2002, and particularly since the war in Libya broke out, the number of incomers by sea has never stopped increasing.

Migrants have become a bargaining chip between Malta and the Member States. However, since 2014, the number of arrivals by sea started decreasing. Some consider that this is the direct result of an agreement between Italy and Malta providing for migrants intercepted in Maltese waters to be disembarked in Italy as part of a Frontex mission in exchange for a sea strip to be left by Malta to Italy for oil exploitation.

Since 2013, Malta has followed a systematic detention policy (up to 18 months) whose sole exit is return – whether forced or voluntary – for both minors and adults. This policy, characterised by very harsh detention conditions and no access to NGOs, has been part of a strategy aimed to deter migrants from departing towards Malta. It has brought about tensions leading to protests in detention centres such as in Alsafi, where law enforcement intervened and used violence.

Systematic deprivation of liberty has been declared illegal during the review of the Reception directive in 2013. In 2016, Malta was condemned by the ECtHR for arbitrary detention conducive to inhumane and degrading treatment, following a case brought before the court by two lawyers.

As a result, Malta had to adjust its legislation especially by characterising explicitly who should be regarded as a vulnerable person, by abiding to the non-refoulement principle and by providing alternatives to detention. The applicable legislation now provides for an upper limit of 9 months in detention to be decided in six specific cases only (e.g.: in order to identify the nationality and the identity, or if national security or public health is at risk).

After disembarkation, people have to transit through a reception centre where they undergo a medical and an identity check. This procedure is not always respected. It may also happen that detention is prolonged without reason. Last January, two NGO vessels disembarked people for whom the procedure lasted 4 months when it should only last a week.

Nowadays, in the absence of any relocation agreement between Member States, the disembarkation of exiles in Malta is systematically subject to ‘ad-hoc relocation’ negotiations on a case-by-case basis. This means that the whole process is being conducted out of any legal framework, away from the public eye, and with little respect for commitments made.

In late May 2019, 216 people were disembarked followed by 370 the next weekend. This was one of the largest disembarkations on the island, and reception capacities were severely outnumbered. As a result, the authorities have tried to fasten refugee status determination procedures, which generally results in the rejection of claims lodged by applicants from third countries deemed safe (for instance Moroccans, who are directly sent to closed centres).

Disembarkations are always postponed so that they take place either early in the morning or late in the evening in order to avoid witnesses and racist attacks against migrants. As soon as such operations become visible, not only locals but also the army react fiercely. Soldiers have been accused of shooting a migrant dead and of having injured two other persons simply based on their skin colour.

The refugee recognition rate in Malta is very low, especially over the past few years. Half of the international protection requests have been abandoned, often because of pressure by the authorities or because mistakes were made in the file registration process.

14% of asylum requests are rejected. 27% of asylum seekers are granted subsidiary or temporary protection (no right to family reunification). However, only a few people return to their countries because Malta has very few diplomatic agreements with countries of return (except for Eastern Europe and North Africa). North Africans are not eligible to the IOM voluntary return programmes because Maltese authorities consider this may act as an incentive for these populations to emigrate.

Toche Garcia (APDHA) : The case of Spain, from ‘reception’ to detention

APDHA’s latest report focuses on the migration situation at Spain’s southern border, i.e. on the south Atlantic coast, on the Mediterranean coasts, in the Balears and the Canary Islands.

Migration situation

The number of arrivals has almost tripled over the past three years

The increase in the number of sea arrivals in Spain – still lower than the peak of 2015 – is due to the closure of the other Mediterranean routes following the EU-Turkey arrangement, the Italy-Libya agreement and the crisis in Morocco, connected in particular to the denial of rights in the Rif region. The exponential increase in the number of arrivals in the south of Spain happened simultaneously with the decrease in the number of arrivals in Italy and Greece, as a direct result of the above-mentioned agreements.

The three main routes to Spain are the following:

- The Gibraltar route: most of the vessels arrive from Tangier and Larache
- The Alborán route: most of the vessels arrive from Al Houceima and Nador in Morocco, with some of the boats arriving from Algeria
- The Levant route: most of the vessels arrive from Algeria

In 2018, more than 51,711 arrivals by sea were counted, mainly via Cadiz, Málaga, Granada (Motril) and Almería. 62% of the 64,120 arrivals were migrants of Sub-Saharan origin, 32% originated from the Maghreb and 6% from other areas. Other changes were also noticed, such as a greater proportion of women (10% greater in 2018 than in 2017) and of minors, whether accompanied or not.

The reception system at the southern border:

There is no reception system in Spain. Over the past three decades, Spain’s migration policy was based on the deportation of people accessing the Spanish territory.

- Why is there no reception policy?
- The EU directive 2008/115/EC of the European Parliament and the European Council related to the norms and procedures of third-country nationals in an irregular situation;

- the European Court of Justice (ECJ) closed all possibilities to switch a deportation sentence to a fine;

- Spanish law No. 4/2000 on Immigration provides for the deportation of people found irregular on the territory

- The deportation system:

Search and rescue by the Spanish maritime rescue services and the *Guarda civil* are structured by Search-and-Rescue zones (SAR). Vessels are transferred to the ports that correspond to the zone where they have been rescued. Once in the port, the Guardia Civil is in charge of the vessel's reception. People on board are then cared for by the Red Cross, which conducts a first mental and physical health assessment. People are then transferred in a CATE (temporary care centre for foreigners).

- The CATE

CATE centres are located close to ports and managed by the national police. They are not meant for reception but for detention: migrants are locked up for 72h pending their identification. Such centres have no clear legal basis and are considered as "police stations where services (interpretation, legal information etc.) are provided" according to Interior Minister Marlaska. Once migrants exit the CATE, they are brought to:

- The CIE

Foreigners' detention centre (= immigration detention centre) -> such centres are used for the purpose of deportation from Spanish territory

- Humanitarian reception: conducted by NGOs and private institutions

- The CAR: reception centre for refugees -> aimed for international protection seekers: people are enrolled in the asylum process

- The CAE: Reception centre for foreigners where migrants stay for two or three weeks until they have found a new place to go

New direction?

In May 2018, the appointment of the Sánchez administration (PSOE) in Spain brought about some hope for a change in the way migration policies are conducted, especially in light of the reception of the private vessel The Aquarius in Valencia harbour in June 2018. However, this move by the Spanish government was merely cosmetic and no change was noticed in Spain's migration policies.

The Spanish authorities did not anticipate the increase in the number of arrivals at the southern border. As a result, municipalities and local residents had to ensure the reception of migrants alone, especially in the village of Barbate (Cadiz area) and in other ports of Andalucía where reception was completely improvised, without adequate care (notably for minors), housing (no sleeping or bedding equipment) and legal support.

Conclusive remarks:

- Mounting xenophobic narrative and hate speech in Spain as well as throughout the European Union.
- No legal and safe avenues that would guarantee access to the Spanish and the EU's territory
- People willing to migrate to the EU are forced to do so in an illegal – or illegalised – fashion which puts them in an irregular situation
- People in a regular administrative situation may become irregular

Sara Prestianni (ARCI): towards new partnerships

As a mean to solve the “hotspots issue”, since 2017, the Italian government has further externalised the control of its border by outsourcing it to Libya. As a result, in 2017, arrivals in Italy dropped by 80 % compared to 2016 and, today, hotspots are not an issue anymore in the public debate.

European funds were used to reinforce Libyan coastguards' capacity to intercept migrants at sea before they reach Italy and to bring them back to Libya – amounting to “refoulements by proxy”. At the same time, the Italian Justice system and the media encouraged the criminalisation of rescue NGOs, to the effect that nobody can witness what happens at sea.

The roles played by the EU and Italy often merge. Most of the funds used come from the EU, more precisely the EU Trust Fund for Africa (EUTF), but Italy negotiates bilaterally with its former colony, Libya.

The political frame is the Italy-Libya agreement signed in February 2017 and not yet ratified in Italy under the pretext that it is an annex to the agreement signed in 2008 between Berlusconi and Kaddafi. This non-ratification constitutes a violation of article 80 of the Italian constitution stating that all international agreements have to be signed by the Parliament.

In March 2018 Italy put its own money in the launch of military missions related to migration issues, including the deployment of soldiers in Libya and Niger. The mission in Libya has been renewed at the beginning of June to reinforce the 2017 approach.

A second instalment, still from the EUTF, completed the initial 45 million Euros made available on December the 13th 2017. Of those, 10 millions came from Development Funds, the rest from the Visegrad group. The aim was to support the new Libyan maritime coordination centres and the Libyan SAR zone.

The Italian magazine “AltraEconomia” monitored the use of these funds and found out that calls for tenders had been issued not only regarding the reinforcement of the maritime border, but also in relation to the control of the land border between Sudan and Niger.

At the time of Kaddafi, Italy offered 6 vessels to Libya. In the last years, several 10-meter vessels were offered. Today, we observe that a wide range of funds can be extended to ensure that the Libyan coastguards intercept migrants before Italian coastguards do so. In 2019, the number of migrants sent back to the Libyan hell kept rising. Thanks to the few NGOs that managed to remain at sea, reports of delusional situations were issued, particularly regarding SAR calls: when the

Italian coastguard is called, they merely suggest calling their Libyan counterparts... on an Italian number! Surreal communications ensue, involving with coast guards who do not speak English, do not seem to understand the calls, except when it is in their interest to intervene quickly to intercept migrants.

Commander Bija is accused by the United Nations of being one of the most important human traffickers. This Libyan coast guard turns out to be a migrant smuggler, involved in trafficking, while also coordinates one of the Libyan coast guard units. He was seen leading part of the fleet under the flag of the Libyan coast guard. He is known to bring migrants back to Libyan detention centres where violence is continuously perpetuated.

Considering that a complaint for crime against humanity in the Mediterranean has been filed with the International Court of Justice (ICJ), this amounts to the EU delegating missions to criminals. Detention centres, including informal ones and warehouses, have been proliferating. Migrants detained there are deprived of liberty. They are tortured “live” with their families on the phone, in order to demand ransom. The tortures taking place daily in these centres are the result of European policies and the spread of detention centres is a direct consequence of borders controls.

This process does not only happen in Libya: the same applies to Niger along the land route. Border militarisation pushes migrants towards more dangerous routes: to avoid Libya, many try to pass through Algeria, which pushed back 35 000 migrants towards Niger. Algeria seems ready to give in to pressures concerning disembarking platforms. Migrants are caught in the ongoing conflict in Libya, which is an extremely dangerous situation. There is a risk that the equipment offered by Italy or France ends up being used as a weapon against Libyan or foreign civilians. Responsibilities can be clearly identified: we have the names and surnames of those who sought this situation, as well as of the EU leaders who provided means and funds to make this system work.

Deaths are daily occurrences and the images we receive are terrifying. European States did not support the peace process in Libya: they pursued their interests, meaning oil and “zero migrant arrivals”. Libyan civilians are the victims of these conflicts, fuelled by the same criminals who are perpetrating systematic violations of migrants’ rights. Every day, calls for help are sent out from Libyan detention centres by migrants who are dying there.

Muhammad Al Kashef (Lawyer and researcher, member of WatchTheMed Alarmphone, Germany): The situation in Egypt

Over the last four years, we have documented the policies impeding freedom of movement in Egypt and monitored the situation in detention centers, the use of European Union funds and the application of various agreements. Egypt is considered as a starting point for exile by the EU. As of 2004, there have been negotiations (then with late President Mubarak) and the conclusion of a readmission agreement, in force until 2016. Egypt has become a point of departure for Egyptians to Europe after the change in visa policy. Mubarak has ensured that these people are contained. After the uprising in 2011, the EU was afraid to face a situation similar to the Tunisian situation, but Egypt secured its borders.

In 2012, following the revolution in Syria, there were many arrivals in Egypt. This country has signed the Geneva Convention, but there is a limitation regarding nationality and social rights (no access to education, no access to the public health system, obligation to renew the residence card every 6 months). Morsi then put in place measures to curb arrivals.

In 2013, a military coup d'état unleashed a war against all those who supported democracy, including the Syrian people (they were accused of supporting Morsi and of having the will to destroy Egypt after destroying Syria). Hate against Syrian citizens led to many departures. For a long time, there were no crossings of the Mediterranean, but rather westward or via the Sinai. In 2014, the closure of the Sinai route and of the Libyan border led to departures from Egyptian ports. People arriving in Italy would then say they were coming from Libya (to avoid the application of readmission agreements). The army was in turn deployed, in the aim of showing that the situation was 'under control'.

Crossing the border is considered a criminal offence in Egypt, which can be punished by a fine. The EU encouraged Egypt to protect its borders and saw an advantage in updating its cooperation with Egypt on border outsourcing.

Between 2014 and 2015, refoulements increased towards Syria, Gaza and Sudan (under a readmission agreement). Police were very violent, including shooting at a boat and causing the death of a minor.

EU-Egypt cooperation has intensified. In October 2015, Egypt, which supports General Haftar's army and the closure of the Libyan border, hosted the second summit of the Khartoum Process in 2016. Joint operations with Sudan have been carried out to secure the border, against the backdrop of cooperation in the fight against human trafficking. In 2019, Egypt hosted the EU-Arab League Summit, where migration was at the center of discussions. Military equipment and training were offered in exchange for furthering border control. Germany sold €4.3 billion worth of equipment (submarines, surveillance equipment, fingerprinting machines for fingerprinting). The army is in charge of border control, not the police.

All this support, at different levels, encourages the government to keep its borders closed. There is a risk that Egyptians will take the place of the Libyan coastguard in the east Mediterranean allowing Europeans to claim that they respect human rights. This is also confirmed by talks about the reception centers to be established in the Western desert of Egypt.

A report on this issue, produced in cooperation with Euromed, was published in July 2019: "EU-Egypt migration cooperation: where are human rights?"

<https://euomedrights.org/publication/eu-egypt-migration-cooperation-where-are-human-rights/>
