

## Starting Point of the Exploration

On September, 12th, 2018, I and approximately 40 more people met in Catania, a sicilian port city. We gathered in a religious building that acts as a kind of community centre. There's a good atmosphere, I sit on a plastic chair somewhere in the middle of the huge room, the persons surrounding me know each other and obviously are happy to see each other again after a long time. *Abracios* are being shared, laughter, hugs and questions are flirring through the room. In the previous year the majority of the group participated in a course in italian asylum- and foreigners-law in Rome. This course was lead by a group of lawyers, with one of whom I now absolve an internship. Also I have made some research about the current legal situation of people who are applying for international protection here. The organisation that initiated the exploration of the topic also published an extensive information database online<sup>1</sup>. The participants of the exploration come from different professional contexts. Apart from lawyers, there are people working in governmental reception centres , as managers, legal mediators, but also people whose profession has no direct link to the topic, but whose participation emerged from personal interest. The group seems to be very motivated. Goal of the exploration is to take a snapshot of the current situation in italian hotspot centres. During an exploration in spring of 2017 in the greek hotspot centres, many violations of the current legislation where recorded. The final report may serve as information for interested or professionally connected people and can be used as circumstantial evidence in trials against mistreating in hotspot centres.

We plan the procedure for the different observations, because our group will split up into to smaller groups and cover different locations. Some of us will remain in Catania, as for example I will. Even though there is no physical hotspot centre here, we hope to get to know something about the practices in the hotspot centres as many organisations who work directly in the hotspot centres have their headquarters in Catania. Other groups will continue their journey in the same day to the hotspot centres on Lampedusa, in Messina, Pozallo, and Trapani. Probably none of us will be able to enter the hostpots. For that we would need to be a chairperson of the government, or part of an organisation who is directly employed in the hotspot centre. We discuss some topics and questions on which we will focus in our research. We mark the cornerstones of our exploration. When I ask afterwards, why we chose exactly these questions to focus on, I learn, that exactly those details have been violated in hotspot centres in the past. The questions deal with the use of hotspot centres as detention camps, the treatment of unaccompanied minors and other vulnerable groups, the circumstances of accomodation, the identification process of persons, the information about legal status and legal opportunities, and the different treatment of groups depending on their nationality. I

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1 e.g. here: <http://www.asylumineurope.org/reports/country/italy>

wonder if there might be a negative effect of the focus, that we will miss a detail solely by looking at another one.

There are several tables with prepared questions and information which we are using for the interviews. They explain the connection between violations and broader context. The interview itself will be conducted by one assigned person. The meetings that I will be present on, I will remain silent. My Italian is unfortunately not good enough for interviewing myself.

In the end of our preliminary meeting I got to know a few people. The outgoing groups are heading to the airport, to bus and railway stations. We, the group remaining in Catania, are hitting the road to our housing. It is a huge flat in the middle of the old city. Exhausted we are falling down on the couches, tomorrow we will conduct the first meetings for that, we divide into smaller groups, that will head to the different institutions. Everybody is excited and tired in the same time.

### **The Hotspot Approach of the EU**

The *Hotspot Approach* submitted by the European Commission is being conducted in the locations Lampedusa, Pozallo, Messina, Trapani, and Taranto. It is designed to manage immigration in Italy and Greece at the outer borders of EU. In the *European Agenda on Migration (EAOM)* and the *Standard Operation Procedure (SOP)*, it is mentioned to „channel the mixed flows of migration.“<sup>2</sup> That, in fact, means, that the arriving people are being identified, registered and informed about their legal status in the hotspot centres. Mid-May 2015 the European Commission submitted a proposal within the then extended *EAOM*, in which the solidarity and shared responsibility of the european memberstates, also mentioned in the *Common European Asylum System (CEAS)*, is stressed. Part of this proposal is the *Hotspot Approach*. Interestingly, the document of the European Commission is not highlighting any kind of physical hotspot centre. Solely the support and emphasis of identification and regristration of immigrants is mentioned. Still, both countrys, Italy and Greece decided to install those physical centres at their borderlines. The legal character of the *EAOM* and the *SOP* is utterly unclear. Both documents are not binding law. Hence, for a exploration like ours, the possibility to record possible violations must refer to more general national and international – EU – law.

## **Legal uncertainty due to underdeterminedness**

When studying the *SOP* several questions arise. The rough descriptions of goals and practices in the hotspot centres lead to double legal uncertainty. Not only this is unbearable for the persons directly affected by this practice, but also the work of people who want to support people in their search for legal protection is heavily compounded.

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<sup>2</sup> [http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots\\_sops\\_-\\_english\\_version.pdf](http://www.libertaciviliimmigrazione.dlci.interno.gov.it/sites/default/files/allegati/hotspots_sops_-_english_version.pdf)

## Legal uncertainty about the valid legislation

Because of the above-mentioned underdetermined legislation, there is an immense uncertainty about the valid regulations for people who are being treated in hotspot centres. The lack of legislation according to which the *Hotspot Approach* is executed as a physical centre is only one example for this. It appears here, that the whole establishment setup is somewhat arbitrary.

## Legal uncertainty about the share of responsibility

Not only the practical execution of circumstances in the hotspot centres is a matter of uncertainty, but also the question who the legally competent actor is in the centres. The *EAOM*, as well as the *SOP* mention in several sections, that EU institutions, such as Europol, Eurojust, EASO and Frontex are supposed to support the national authorities. The question arising here is, which institution is bearing the legal responsibility in case of possible violations. Who is the proper actor to be addressed if there is a violation of the *EAOM* recommendations, the *SOP* or other laws?

## Procedure of the exploration

We are conducting our exploration by using the „many eyes principle“. That means that we are concentrating mainly on the topics of our abovementioned questions, but in the same time we expect to get a broad picture of the actual situation, because many people are collecting different nuances of the conversation and later gather them together for a bigger picture.

The content of the focused topics is:

- hotspot centres as detention camps and the illegal detention of people
- Access to legal information and the asylum procedure
- different treatment of groups due to their nationality
- accommodation and factual circumstances in the hotspot centres
- treatment of vulnerable groups
- procedure and enforcement of the identification and registration of persons.

In the exploration of these questions and the written report we refer to the measures of the *SOP*, as well as on the more general national and international law, whereas this document shows personal perception and represents a subjective approach.

### Detention in hotspot centres

The purpose of a hotspot is theoretically exclusively the preparational organisation of the further procedure. There exist several *Reception Centres* in Italy, which serve for temporary or continuous accommodation and centres that serve as detention centres for expelled applications (so called

„CPR“). In addition to that, people may not be detained longer than 48 hours if there is no judicial order. However the *SOP* mentions in several passages, that the wait in the hotspot centre might be prolonged according to the needs of identification or registrational measures, as well as time limits that might be extended if there is an extraordinarily high amount of cases.

## **Physical hotspot centres**

One of the biggest factors for the violation of national and international law and the conflict of them with the practice executed in the hotspot centres seems to be the manifestation of the centres as physical places. According to this, the question arises, how this manifestation can be useful. The current use of the centres is pointing strongly to the direction, that the interests of government and authorities, to have a high quote of identification of people are being prioritized. It cannot be ignored, that the centralized accomodation and collective treatment of the people is often being accompanied by the violation of fundamental rights of the person. Such a calculation on the cost of a refugee is obviously absolutely inaccabtable. Thus there must be an alternative to physical hotspot centres.

## Accomodation

### ***The situation of vulnerability remains***

The five of us are meeting, five women, and later a colleague of mine joins, he asked me to text him, whether he could join before. I wrote him a message for him to come as the talk was interesting. The two women we meet are nice and sympathetic, the meeting is informal in a Café. At my request everybody speaks slowly and clearly, so that I can understand what is being told. The two women talk about the circumstances on the ships which rescue people in distress. The conversation bogs down from time to time, because the right words for describing are not being found or are non-existent. I am concentrated and in order to not forget anything, I take some notes. My colleague gives me a sign, „Don't write that down.“ he says. When I later ask, why I shouldn't have taken notes, he explains to me, that the person who was talking was afraid. I don't think I missed an according request oder didn't understand one, but my colleague tells me, that he noticed that the person was insecure, whether or not to tell us anything at all. If I write down, what a person tells me, that might create a feeling of insecurity for this person.

Once again, it occurs to me, that normative regulation is a not fitting instrument for handling emotional situations. How can a right to do something be fought for, if it is charged with emotion for a person, that she or he wants no connection to it. I try to apply the template of the *SOP* to the picture that is arising here in Sicily to me and realize that many parties are not being covered.

## Legal Info

### ***The big picture***

In Catania there are many private persons as well as NGOs who decided to co-work with refugees and asylum-seekers. One of those groups invited us to their weekly meeting for exchanging experiences. Most of them adopted unaccompanied minors into their families. In the meeting some situations are being described and sorrows are being exchanged. One person talks about the boy who is living at her place and recently tried to run away to reach his brother in England after he learned that he won't be able to do this journey legally on the base of family reunion law. I understand that this group is a lot about backing up the volunteers and supporting them in their everyday work. Still, I can't lose the feeling that we are missing to focus also on the needs of the boy.

In the afternoon my colleague tells me about another meeting, that he left somewhat frustrated. He says that his interview partners mostly stressed their own political opinion much more than reaching for a big picture of the situation and the needs of the actually affected people.

But still: the practice of a government in the immigration sector is such a complex thing that it appears to be quite impossible to have an overview or criticise it from a small point of view that a private person or a smaller group can adapt.

### ***Language mediation: if only 4 languages are provided...***

During my research for this article some parts of the *SOP*, *EAOM* and the *Consolidated Act on migration (TUI)* pop out to me as their content seems to be very questionable. In the passage about language mediation during the information about legal status and legal protection the *SOP* can be quoted: „International organizations in the effective performance of their respective mandates will conduct information activities to all country nationals and stateless on the national legal framework on immigration and asylum, also through the distribution of leaflets translated into several languages (English, French, Tigrinya and Arabic).“. The guarantee of information about these important topics is limited to four languages, at least one of those underdetermined since arabic is the umbrella term of several, sometimes very different, dialects. The *TUI* says in Article 2, *The Alien's rights and duties* the following legislation: „In order to notify the alien concerning measures as regards entry, stay and expulsion, acts are translated, also synthetically in to a language comprehensible for the addressee, or, when this is not possible, in to French, English or Spanish, preferring the one indicated by the involved party.“ Solely the wording of this passage makes one thing clear: This rule is not taking into account the subjective needs of the individuum it is referring

to, but to the needs or better: the lowering of requirements and thus to the needs of authorities. Which difference it makes for a person, to be informed about the own rights in English, French or Spanish, rather than in Italian when none of these languages can be understood, remains unclear.

## **Vulnerable Groups**

The Italian asylum system offers several procedural guarantees for so called *vulnerable groups*. Those groups consist of (unaccompanied) minors, pregnant women, single parents with underage children, victims of trafficking, disabled, elderly people, persons affected by serious illness or mental disorders; persons for whom has been proven they have experienced torture, rape or other serious forms of psychological, physical or sexual violence and victims of genital mutilation.<sup>3</sup>

### ***When the disregard of duties can't be prosecuted***

We are meeting some employees of an organisation, which supports victims of trafficking. In the headquarter of the organisation, several offices are being used for counseling and examinations by psychologists the organisation employs. Victims of trafficking are one of the vulnerable groups, which is acknowledged in the Italian legislation. In theory that means, that people, belonging to this group must get special protection right after their vulnerability is being discovered. We try to get to know how this protection is prosecuted and guaranteed in reality. Thereby we learn that the actual situation is different from what the ideal displays. By asking, whether the affected people actually get the protection they should, we quickly reach an impediment: one of the psychologists explains to us, that it is practically impossible to ask a client if the legal procedure of informing people about their rights took place. Due to a matter of priority, other topics are being taken care of first. Primarily a person's mental condition and their well being must be taken care of. Their work is about supporting them. A formal request as to whether or not they were informed about their legal state rarely takes place. For us that means, that there is no real possibility to find out, if the recommendations of the *SOP* are actually being followed in this interview. But even beside the impossibility to examine, whether or not the as members of vulnerable groups identified people are being informed about their special rights according to the *SOP*, another issue remains. It often occurs, we are being told, that the vulnerability of a person is never or only very late being discovered. For a bystanding individual it can be very difficult to discover a vulnerability sometimes. That means, that in many cases the screening of vulnerability of people is not successful in a matter of actually discovering the presence of the premises of vulnerability.

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<sup>3</sup> See also: [http://www.asylumineurope.org/reports/country/italy/asylum-procedure/guarantees-vulnerable-groups/identification#footnote1\\_8ju140t](http://www.asylumineurope.org/reports/country/italy/asylum-procedure/guarantees-vulnerable-groups/identification#footnote1_8ju140t)

Therefore the group of people whom should be treated with special procedural guarantees is not actually being treated as such.

Most of the time, the NGO we are talking to, is being informed by an international organisation present at the disembarkings or in the hotspot centres, such as the *International organisation for migration (IOM)* about the arriving of a person from one of the vulnerable groups. The NGO itself is not present at the landings, neither for the first care nor in the hotspot centres. This circumstance is especially problematic in the light of the above mentioned difficulties of discovering the vulnerability of a person.

## **Difference in treatments of different nationalities**

### ***Foglio Notizie***

People who arrive in the hotspot centres most of the time already filled a form which is called *Foglio Notizie*. It is a one-page form in Italian, English, French and Arabic. Personal data is being queried, such as name, surname, date of birth and name of the father. Beside that, people are being asked about their place of departure (partly pre-filled mechanically by the authorities), country of origin and reason for immigration. The reasons that can be ticked here are in this order: working, family reunion, escaping poverty, other reasons and asylum. Sometimes the people may not fill the form by themselves but a police officer would read to them the options, asking: „Are you here for work?“. And if the answer is „Yes“, the other reasons remain untold. Obviously this technique is absolutely insufficient for examining, if a person would desire to apply for international protection. Even if a person actually ticks *Asylum* as the reason for his or her immigration, misunderstandings are very likely to occur. Ticking that box is in fact not sufficient as an application, but only may be understood as the manifestation of this will. After this so called manifestation the formalization of a request still has to take place. Therefore it is necessary to later fill in the C3-form of the Italian government. Even though it is possible to manifest a will to seek asylum after ticking another box on the *Foglio Notizie*, it often occurs, that people from certain nationalities are being channeled to the group of expelled immigrants after they filled in the *Foglio Notizie*. This happens, although the Italian asylum system does not foresee a safe country principle.

## Identification

### ***Frontex in the harbour***

We are visiting the harbour in order to get to know the local conditions of the disembarking of people in Catania. The location of the disembarkment of immigrants is prepared so that journalists cannot enter or get sight of the actual places of matter in the moment of arrival. We find a ship of the European agency for borderprotection *Frontex*, and a ship of the Italian coastguard, the *Dicotti*. On land there are some tents. The first three of them show the symbol of an Italian first aid organisation. Next to it there are about five more tents. A colleague reads out loud the purpose of these tents to us. Next to the medical tents the identification and registration takes place. In the tents next to that, something to eat and drink can be found. In fact the procedure of disembarking looks like this: people are leaving the boat, are being handed a flyer about their rights, with no regards of the comprehensive conditions of the individuum, then, during the walk to the first aid tents that is the timeframe to read and understand this information. After being scanned medically, the so called *fotosegnalmento*, which is the registration and identification process by the authorities, and the filling out of the *Foglio Notizie* take place. Only after that people have the opportunity to eat and drink something.

Next to the tents there is a small hut. I approach it, since some of my colleagues stopped next to it to take fotos. Somebody painted the words „Hope“ in several languages on it. Only later, when I left the hut about 30 meters behind, I realize, that the words together complete to a bigger version of the word, visible from far away. I find that graffiti somewhat cynical, since its message is painted next to such a denial of its very own meaning. But yet, I imagine, that it might actually express what some people are feeling and what some people want to support.

One of my colleagues is talking to a sailor on the *Frontex*-ship. When I later ask her about their talk, she replies, that the sailor was not able to give any contentual descriptions. Instead they talked about everyday live aboard. After seven days at sea follows one day on land. I ask her, if she thinks that today will be this day on land. I wonder what emotions this work might awaken.

## Conclusion

In a summarizing analysis of the description of my impression one fact emerges: the current condition of hotspot centres at Italian and Greek borders is extremely poor. Fundamental rights cannot be or at least are not guaranteed. If several locations show such a poor performance as

becomes clear in our examination emerges in our examination, it is clear that this must be due to a systematic failure.