

LOCKED UP AND EXCLUDED

Informal and illegal detention in Spain, Greece, Italy and Germany

The report of Migreurop ***"Locked up and excluded": Informal and illegal detention in Spain, Greece, Italy and Germany*** looks back at how **four EU member states practiced the administrative detention of non-nationals in 2019**. The report shows how, in both first arrival countries such as Italy, Greece and Spain and in a presumed destination country, Germany, the detention of non-nationals is evolving, taking new forms and based on new grounds. In particular, **this report argues that, in 2019, administrative detention was increasingly happening outside or at the margins of existing legal frameworks**. We consider that locking migrants up without respecting or by bending existing legislations amounted to a **generalization of *ad hoc* and informal detention and that it led to the further precarisation and deterioration of detention conditions**.

The recent release of the **New Pact on Migration and Asylum** has triggered debates about whether this proposal by the European Commission will improve the situation of migrants and asylum seekers and the way migration is governed in the EU. **This report shows that many of the practices proposed in the Pact are in fact already been taking place in member states and that they are harmful for migrants and asylum seekers**.

The way detention is evolving in different member states is not homogenous across EU territory. The form, modalities and grounds taken by administrative detention depend on national contexts and on the geographic position of each member state in the EU border regime. The Migreurop network has long argued that the EU has developed a regime of migration and border governance that is premised on an unequal sharing of control duties within and outside the EU territory, with **peripheral member states tasked to filter unwanted mobilities on behalf of their northern and western counterparts**. Within this system, the twin practices of detention and deportation have been playing a key role.

In other words, **first arrival countries such as Italy, Greece and Spain are primarily tasked with filtering migrants and halting their mobility, which is seen as unwanted and illegitimate**, so that they do not reach other member states. Meanwhile, if migrants still manage to make their way through to western and northern member states, such as Germany, they are faced with **sophisticated detention mechanisms aimed at returning them to those EU states they entered from (Dublin regulation) or to a non-EU country of origin or transit (through readmission agreements or, increasingly, informal agreements such as the EU/Turkey Statement, the Joint Way Forward on Afghanistan or standard operating procedures)**.

In order to sustain this system, new ways of detaining people have emerged and multiplied. This report shows how Italy, Greece and Spain have adopted **new modes of detention in order to filter, select and often deport people upon arrival and at the country's borders**. In Germany also, new grounds for detention have been introduced in recent years, in order **to ensure the faster deportation of "unwanted" people**. The trend in Germany tends towards an increased use of detention and a multiplication of its legal grounds and modalities to perform a significant number of deportations (22,097 in 2019). This is confirmed by the higher capacity of pre-removal detention sites (at least 745 places in 2019, compared to 438 in 2015).

Detention at the external borders is usually short (except in the Greek islands), often unregulated and aimed at the quick deportation to another country or simply push them back at the other side of the border. It takes place away from 'traditional' detention facilities, such as pre-removal centres, and is instead carried out in **informal sites, including border zones and police stations, with very little access to rights, such as legal representation and to information.** In first arrival countries, this logic has been reflected with the increased use of detention facilities focused on fast identification in the view of deportation, such as the hotspots in Italy (7,757 detainees/places: 890) and Greece (38,423 occupants/places: 6,178) or the CATEs in Spain (15,288 detainees/places: 1,020).

This detention has as purposes to speed up deportations at the borders, with a framework that gives strict priority to security considerations. In reality, this leads to an over-occupation of these interlocks of deprivation of liberty, where thousands of people blocked in their migratory journey are plunged into waiting and uncertainty.

Besides, depending on how such detention is governed and defined in national legislations, it may or may not officially count as detention: as a result, official figures sometimes seem to be dropping yet this decrease conceals the increase in informal, de facto detention not recorded in official detention statistics. It also works **as a means of deterring, disciplining and discouraging migrants.** In some member states, the practice of deporting migrants as they arrive at the border is very extensively used: in 2019, Spain refused access to its territory to 493,455 people. Most of these people were held in border facilities before being removed. Yet official data on people detained in pre-removal centres and other detention recognised facilities only account for 28,781 detainees in 2019.

This migration policy of deterrence by ill-treatment has produced enormous suffering for migrants: the Moria hotspot on the Greek Aegean island of Lesbos is perhaps the most notorious example.

Yet, the New Pact on Asylum and Migration generalises this practise and its underlying ideology and turns it into law.

Far from proposing new policies based on human rights, this pact is a tool that allows member states to systematise a repressive policy born 30 years ago as well as the brutal practices of detention, which are increasingly informal and precarious.

Indeed, one of the legislative proposals presented by the Commission on 23 September is the setting up of a pre-entry screening procedure for third-country nationals who have been rescued at sea or entered the territory without or with non-valid documents. For example, this would allow member states, to require all applicants for international protection to stay at the external border or in a transit zone in order to assess the admissibility of applications in a legal limbo considered as being still outside EU territory, presumably under coercive conditions. Following this screening procedure, many applicants for international protection or people who have not indicated intention to apply, would be directed into an accelerated asylum or return border procedure that would highly likely also involve detention.

From now on, the option envisaged by the Commission is to transform into law this policy of trivialising violence and already existing bad practices, reducing the defence of human rights, with a system where they can pick and choose which right to apply.

In fine this report demonstrates that these forms of informal detention, while not new, have grown in importance and become integral parts of the functioning of the EU border regime. **In other words, illegal detention practices are becoming the rule in the European Union.**

Although in this report we have limited ourselves to studying these four States, this reality is nevertheless very visible and tangible in other geographical areas, particularly in the Balkan region, which Migreurop will document in 2021.

This study was carried out with the support of the European United Left (GUE/NGL) in the European Parliament



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Migreurop is a network of associations, activists and researchers, with a presence in around twenty countries across Europe, Africa and the Middle East. The network strives to raise awareness of and to oppose policies that marginalise and exclude migrants, notably, detention in camps, various forms of displacement and the closure of

borders, as well as the externalisation of migration controls by the European Union and its members-states. In this way, the network contributes to defending migrants' fundamental rights (including the right 'to leave any country, including their own') and to promoting freedom of movement and settlement.