

# Hypocritical and Illegitimate

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2020-06-09T14:21:46

In March, the German Ministry for Transport and Infrastructure ('Ministry') [amended](#) a number of ship safety laws. While appearing standard at first glance, they are the latest attempt to obstruct the operations of civil sea-rescue NGOs, which is why this week the affected NGOs went [public](#) with their outrage at this development.

This blogpost will first illustrate that the relevant legal amendments were made with one single purpose in mind: to impede civil sea-rescue operations. As a second step, this most recent change of law is put into relation with similar legal measures in the realm of Maritime Safety Law. Previous attempts to obstruct civil sea-rescue were centred around the pursuit to conjure up [criminal responsibility of those involved](#) (see also [here](#), [here](#) and [here](#)), or the closure of national ports through executive decrees (see [here](#), [here](#) and [here](#)). Since these attempts did not have the desired effect of thwarting civil sea-rescue – as they were consistently struck down by the judiciary – we will demonstrate that European States have now moved on to outlawing private search and rescue efforts through the means of Maritime Safety Laws.

## The Means

On 3 March 2020, the Ministry amended, among others, the German Statute on Ship Safety ([Schiffsicherheitsverordnung, 'SchSV'](#)) and the German Statute on Sea Leisure Yachts ([See-Sportbootverordnung, 'SeeSpbootV'](#)) [executive statutes, enacted by federal ministries within their competency, have force of law in Germany; [Art. 80 \(1\) German Constitution](#)]. The amending statute was cloaked as to be necessary, in order to comply with obligations stemming from EU Law. However, the major change – a novel definition for leisure yachts (or craft, boats or ships) – is not at all related to the implementation of EU Law.

Prior to the amendments, leisure crafts up to a length of 24 meters, or other comparable small vessels ('Kleinfahrzeuge'), used for *leisurely purposes* were exempt from certain safety requirements and did not require security certificates. Through the amendment of the Statutes, the Ministry now defines leisure yachts as vessels which are *exclusively* used for the *purposes of sports or recreation*.

According to the Ministry's interpretation of the law, humanitarian missions do not constitute a sports or recreation related purpose, imposing the requirement of a security certificate on them. Those security certificates entail safety requirements regarding construction, equipment, and crewing of the ship and subject humanitarian missions to requirements that are designed for the commercial shipping industry.

## The Ends

With reference to the change of law, the German flag state authority [contacted](#) German NGOs operating leisure yachts, or similar smaller vessels, and called to attention the need for a safety certificate while also pointing out that in case of non-compliance, NGOs would risk being fined up to EUR 100.000,00. It is noteworthy that the Statute on Ship Safety allows for significant leeway in the way the authorities enforce the rules, only a small number out of all affected NGOs were contacted – amongst them all sea-rescue NGOs.

The [reason](#) for doing so is explained by the Ministry itself: it is a reaction to the [ruling](#) of the Higher Administrative Court Hamburg ('Court') from last year. In the lawsuit, the charitable NGO [Mare Liberum e.V.](#) prevailed against the unlawful detention of its vessel. In April 2019, German authorities detained the NGO vessel 'Mare Liberum' that flies the German flag and is registered as a leisure yacht. The crew is [monitoring](#) the eastern Mediterranean migration route between Turkey and the Greek Islands – documenting [illegal push-backs](#) and the [inhumane conditions](#) migrants are currently confronted with in [Greek refugee camps](#). Last year, the German authorities claimed that the 'Mare Liberum' did not meet the required safety obligations and thus was not allowed to leave the port of Skala Loutron, Greece.

The Court had to decide whether humanitarian action – such as human rights monitoring or rescue at sea – could be regarded as falling under the purposes of sport or leisure. The Court found that it in fact could, if certain conditions are met (e.g. being voluntarily on board). Consequently, the legal provisions for leisure yachts were applicable and the 'Mare Liberum' did not have to meet the strict safety requirements which would otherwise have been applicable, same as to e.g. cargo vessels (see [here](#)).

The current legal amendments are an obvious reaction to last year's lawsuit. Since, according to the interpretation of the Court, human rights monitoring falls under a sport or leisure purpose, the Ministry is now trying to prevent NGO vessels from operating by considerably restricting the scope of leisure yachts and creating the new requirement of an *exclusive* sport or recreational purpose. As a result, all German NGOs operating leisure yachts, or similar small vessels ([Mare Liberum e.V.](#), [Mission Lifeline e.V.](#) and [RESQSHIP e.V.](#)), are now prevented from sailing out.

## The Common European Strategy

The German policy against NGO vessels is far from being a unique national example of using Maritime Safety Law in order to interfere with civil search and rescue activities in the Mediterranean. The Netherlands and Italy, to cite the most prominent examples, have already adopted similar measures.

The current change of German law is a flagrant reminder of the legislative measures adopted by **the Netherlands** in 2018 to impede the operation of search and rescue ships that flew the Dutch flag, by [amending](#) their national Maritime Safety Law. In April 2019, the Dutch Ministry for Infrastructure and Water Management [introduced](#)

stricter safety requirements for ships that '*systematically take drowning persons on board*' in order to counter '*acute safety risks*'. This affected a number of NGOs, especially since there was no transitional period for the change of law to take effect. This resulted in the '[Sea-Watch 3](#)' ([Sea-Watch e.V.](#)), that was at the time flying the Dutch flag, being detained for several months, leaving the Central Mediterranean [without humanitarian assistance](#), as all other civil sea-rescue ships operating at the time found themselves in similar predicaments. Sea-Watch [successfully appealed](#) the Ministry for Infrastructure and Water Management's failure to grant a transitional period, but political pressure in the Netherlands continued mounting to [criminalise sea-rescue operations](#) (in contravention of [international law](#)). This ultimately led Sea-Watch to [change its flag state to Germany](#). Now, only two years later, the same strategy to use the pretext of Maritime Safety Law in order to obstruct search and rescue operations, and prevent effective humanitarian responses in the Mediterranean, is implemented in Germany.

**Italy** is also not afraid of using Maritime Safety Law to enforce its hard stance on search and rescue. Currently, the NGO vessels '[Alan Kurdi](#)' ([Sea-Eye e.V.](#)) and '[Aita Mari](#)' ([Maydayterraneo](#)) are detained by Italian authorities. Both vessels are kept at port due to alleged security deficiencies. Before its last mission, the 'Alan Kurdi' went through five weeks of shipyard work, receiving [an overhaul in many areas](#). Still, Italian authorities do not accept the safety standards of the 'Alan Kurdi' and continue the detention of the ships. Even though the [German flag state strongly disagreed](#) with this assessment and concluded that the 'Alan Kurdi' did not have serious safety deficiencies. It remains unclear when the vessels will be on mission on the Central Mediterranean route again.

## The Hypocrisy of It All

The current amendments are in line with EU Member States' past attempts to exploit legal means to prevent rescue at sea. It is also in clear contradiction of the 2019 [recommendations](#) by the [Council of Europe](#) that explicitly urges states to ensure adequate rescue capacity in the Mediterranean by making full use of all NGO vessels able to assist necessary relief operations at sea.

In their current policy, several European countries now regularly put forward maritime safety concerns, while since the beginning of civil sea-rescue and observatory missions [in August 2014](#), there has not been a single accident or emergency in which a crew member or passenger aboard suffered serious bodily harm or loss of life. It also seems particularly cynical to block rescue missions out of safety concerns, since no one would question that it is safer for refugees to spend a couple of days – or weeks – on one of the NGO ships, rather than failing to receive any humanitarian assistance at all.

EU Member States, as we have shown, are using the pretext of ship safety to divert focus from the real questions [NGOs](#), [International Organisations](#), and [civil society](#) have been asking for years: Why do European States not let rescued persons disembark in a timely manner – as is [legally required](#)? Why does the EU – after

almost [20.000](#) lives lost at sea since 2013 – still not provide safe passage for people fleeing conflict?

## The Shape of Things to Come

Europe is facing a humanitarian crisis in the Mediterranean of its own making. However, said crisis does not represent an insurmountable challenge. A way forward was shown by the Council of Europe. In its [2019 recommendations](#), the Council laid out a constructive plan to prevent more migrants' deaths on Europe's doorstep by implementing binding obligations for EU Member States: (1) an effective search and rescue coordination; (2) the timely disembarkation of rescued migrants; and (3) the creation of safe and legal routes can be achieved.

Nevertheless, signs of improvement are not in sight. On the contrary, EU Member States are attempting to control migration in deliberate disregard of national legislation, international public law and the human rights of the people fleeing conflict. The current twisting of Maritime Safety Laws in Germany comes at a time when [Malta](#) and [Italy](#) have declared their ports [unsafe](#); Maltese officials stand accused of [tampering](#) with the engines of refugee boats; Greek officials handed out tent-like inflatable life rafts to refugees and [pushed them back](#) to Turkish territorial waters; and a video of Greek officials [threatening](#) a refugee boat close to the shores of Lesbos went viral. In the last weeks, when [no NGO vessels](#) were present in the Central Mediterranean, worrying reports of illegal push-backs to [Libya](#) and [Turkey](#) emerged; the New York Times uncovered a [collaboration](#) between Malta and the so called Libyan 'Coast Guard' and many refugee boats [disappeared](#) – highlighting the terrible uncertainty of the number of people dying en route to Europe.

These most recent examples of obstructive behaviour show a worrying trend of leaving behind any semblance of adhering to fundamental legal obligations. The question the EU and its Member States need to ask themselves is this: What is to come next? What is to come next if the EU, and its Member States, truly want to stand for the protection of human rights? To stop the current trajectory, we must recognise its failures, and call out these new legal developments for what they are – flagrant attempts at denying fundamental rights. We must acknowledge and condemn these developments and push for an EU which truly embraces the ideals it espouses.

