

# Overview of Content

Table of Contents	11
List of Abbreviations	15
Introduction	19
1 EU Hotspots as a Critical Challenge to Human Rights	19
2 Europe's Largest Refugee Camps	23
3 The EU's Judicial Responsibility (Research Question)	28
4 The EU's Liability for EU Hotspots (Thesis)	33
5 State of Research and Contribution of this Study	35
6 Typical Case Constellations	40
7 Method	43
Chapter 1: The EU's New Role in the Asylum Administration	47
1 Granting and Threatening Rights	48
2 EU Hotspots as a Paradigm Example of the EU's New Role	62
3 The EU's Main Administrative Actors	86
4 The EU's Main Forms of Administrative Cooperation	104
Chapter 2: The Integrated EU Hotspot Administration	123
1 Operational Level	124
2 Supervisory Level	136
3 Systemic Deficiencies in the EU Hotspot Administration	155
4 Identifying Relevant Misconduct of EU Bodies	186
5 EU Responsibility for EU Hotspots?	192
Chapter 3: The Potential of EU Liability Law	195
1 Auxiliary Character of Non-Judicial Review	196

## Overview of Content

2	Structural Failure of Established Pathways to the CJEU	200
3	Potential of the Action for Damages (Art. 340 para 2 TFEU)	221
4	The Action for Damages and the EU Hotspot Administration	255
5	Doctrinal Approach	268
	Chapter 4: Attribution of Conduct to the EU	287
1	Emerging Doctrine on Attribution	287
2	Internal Competence and External Appearance	296
3	Conclusions on Attribution	302
	Chapter 5: Causation of Fundamental Rights Violations by the EU	321
1	Causation in Multi-Actor Situations	322
2	Doctrine on Causation I: Lessons from <i>KYDEP</i>	326
3	Doctrine on Causation II: Lessons from <i>Ledra</i>	346
4	The De Facto Bindingness Threshold	356
5	Conclusions on Causation	367
	Conclusion	389
1	Doctrinal Analysis in a Politicised Context	389
2	Why <i>WS et al. vs. Frontex</i> Should Not Discourage	390
3	Why Claiming Damages From the EU is Worth a Try	391
	Bibliography	395

# Table of Contents

List of Abbreviations	15
Introduction	19
1 EU Hotspots as a Critical Challenge to Human Rights	19
2 Europe's Largest Refugee Camps	23
3 The EU's Judicial Responsibility (Research Question)	28
4 The EU's Liability for EU Hotspots (Thesis)	33
5 State of Research and Contribution of this Study	35
6 Typical Case Constellations	40
7 Method	43
Chapter 1: The EU's New Role in the Asylum Administration	47
1 Granting and Threatening Rights	48
1.1 The EU as an 'Ordinary' and Ambivalent Public Actor	48
1.2 The EU as a Critical Actor in Asylum Administration	51
1.3 The Failure to Regulate the EU's Responsibility	55
1.4 The Challenge to Redefine the EU's Responsibility	58
2 EU Hotspots as a Paradigm Example of the EU's New Role	62
2.1 From Initial EU Hotspots to 'EU Hotspots 2.0'	63
2.2 Regulatory Framework: Crisis and Informality	72
2.3 EU Hotspots as a Testing Ground	85
3 The EU's Main Administrative Actors	86
3.1 The EU Asylum Agency (EUAA)	88
3.2 The EU Border Agency (Frontex)	94
3.3 The European Commission	99
4 The EU's Main Forms of Administrative Cooperation	104
4.1 Administrative Support	105
4.2 Administrative Supervision	109
4.3 'Determining Without Deciding'	116

## *Table of Contents*

Chapter 2: The Integrated EU Hotspot Administration	123
1 Operational Level	124
1.1 A Multitude of Actors	124
1.2 The ‘Migration Management Support Teams’	127
1.3 The Agencies’ Procedure-Related Support	129
1.4 The Agencies’ Reception-Related Support	134
2 Supervisory Level	136
2.1 Belated Consolidation of the Commission’s Supervision	136
2.2 Coordination and Ensuring Legality	138
2.3 Procedure-Related vs. Reception-Related Supervision	140
2.4 Reduced Discretion in Case of Systemic Deficiencies	143
2.5 The Agencies’ Obligation to Assist the Commission	145
2.6 The Commission’s Institutional Supervisory Structure	147
2.7 The Commission’s Concrete Supervisory Measures	152
3 Systemic Deficiencies in the EU Hotspot Administration	155
3.1 Reception-Related Deficiencies	156
3.2 Procedure-Related Deficiencies	165
3.3. Qualification as Systemic Deficiencies	182
4 Identifying Relevant Misconduct of EU Bodies	186
4.1 The EUAA’s Misconduct at Operational Level	186
4.2 Frontex’s Misconduct at Operational Level	188
4.3 The Commission’s Misconduct at Supervisory Level	189
5 EU Responsibility for EU Hotspots?	192
Chapter 3: The Potential of EU Liability Law	195
1 Auxiliary Character of Non-Judicial Review	196
2 Structural Failure of Established Pathways to the CJEU	200
2.1 Failure of Enforcement From Above (Art. 258 TFEU)	201
2.2 Failure of Indirect Enforcement From Below (Art. 267 TFEU)	210
2.3 Failure of Direct Enforcement From Below via Annulment (Art. 263, 265 TFEU)	214
3 Potential of the Action for Damages (Art. 340 para 2 TFEU)	221
3.1 Preconditions, Potentials and Pitfalls	223

3.2	Interpreting in Light of the Constitutional Standard	229
3.3	A Makeshift Fundamental Rights Remedy	236
3.4	Towards Declaratory Relief	248
4	The Action for Damages and the EU Hotspot Administration	255
4.1	Defining the Potential Trigger for EU Liability	256
4.2	A Sufficiently Serious Breach and Individual Rights	260
4.3	Legal Basis in Case of the Agencies	264
5	Doctrinal Approach	268
5.1	Concepts of Attribution and Causation	268
5.2	Imputation and the ‘Normative Bridge Function’	270
5.3	Specific Doctrinal Questions	273
5.4	Non-Applicability of DARS and DARIO	283
5.5	Case Law Relevant to the Doctrine on EU Liability	284
	Chapter 4: Attribution of Conduct to the EU	287
1	Emerging Doctrine on Attribution	287
1.1	Public Conduct vs. Ultra Vires Conduct	289
1.2	Union Conduct vs. Intergovernmental Conduct	291
2	Internal Competence and External Appearance	296
2.1	External Appearance Criterion	296
2.2	Internal Competence Criterion	297
2.3	Relationship Between the Criteria	299
3	Conclusions on Attribution	302
3.1	Attribution of Conduct to the EUAA	302
3.2	Attribution of Conduct to Frontex	308
3.3	The Agencies’ Liability for Inherent Violations	315
	Chapter 5: Causation of Fundamental Rights Violations by the EU	321
1	Causation in Multi-Actor Situations	322
1.1	Failure of the Conventional Causation Criterion	322
1.2	Why <i>WS et al. vs. Frontex</i> is No Counterargument	324
2	Doctrine on Causation I: Lessons from <i>KYDEP</i>	326
2.1	Liability for Administrative Support	327
2.2	Liability for Non-Formally Binding Conduct	330

## Table of Contents

2.3	Confirmation of the 'KYDEP Doctrine'	333
3	Doctrine on Causation II: Lessons from <i>Ledra</i>	346
3.1	Liability for Breach of Supervisory Obligation	347
3.2	Liability for Breach of Supervisory Standard	351
4	The De Facto Bindingness Threshold	356
4.1	Degree of Bindingness as Decisive Factor	356
4.2	Degree of Bindingness in Case of Omission	359
4.3	Decisive Criteria Establishing <i>De Facto</i> Bindingness	362
5	Conclusions on Causation	367
5.1	The Agencies' Individual Recommendations	368
5.2	The Commission's Failure to Supervise	372
5.3	The EU's Liability for Resulting Violations	376
	Conclusion	389
1	Doctrinal Analysis in a Politicised Context	389
2	Why <i>WS et al. vs. Frontex</i> Should Not Discourage	390
3	Why Claiming Damages From the EU is Worth a Try	391
	Bibliography	395