

Judith Kohlenberger

THE PARADOX OF FLEEING

On Our Contradictory Approach to Forced Displacement and Displaced Persons

Kremayr & Scheriau

PREFACE: EVERYBODY OR NO ONE

There is a saying from the United States “*If you’re not outraged, you’re not paying attention*”, which is proclaimed as a slogan by climate activists, feminists and members of Congress alike. It is the intention of this book to draw our attention to a subject which should have already earned precisely this *outrage* long ago, yet which nevertheless provokes it all too rarely: the continuing, omnipresent and in the meantime already system-immanent undermining of the basic rights and freedoms of people seeking protection at our external borders, and their alienisation within those borders which consistently goes on unprotested.

The lack of attention focused on this topic and the subsequent lack of *outrage* resulting from it, may also be due to the fact that it seems not to concern ‘us’ (namely, white Europeans): after all, we are sure of our own human and civil rights as citizens within the European Union. At regular intervals, free elections assure us that we are sovereign and have control over those who govern us. Independent courts, going right up to the European Court of Human Rights, guarantee the observance of the Charter of Human Rights and penalise its contravention without exception. Furthermore, a close-knit social system and institutional solidarity ensure that our basic needs are met, from housing and food to health care and pension schemes. For us, democracy is a well-oiled, smoothly functioning machine which, although it sometimes shows signs of fatigue (the Austrian Public Prosecutor’s Office against Corruption and Economic Crime can tell you a thing or two about that), on the whole keeps the promises made to us: that we are born in dignity and equality and that our fundamental rights are inalienable and inviolable. However great our dissatisfaction with or indignation at those in power might be, we have, secretly, one basic conviction which allows us to sleep well night after night: that what is happening in Moria, in Belarus, in Bosnia, in Ceuta or in the Mediterranean, namely a loss of rights that has been knowingly and deliberately brought about, cannot happen to us as Europeans.

With this book I would like to permanently undermine this basic assumption. Fundamental rights cannot simply be turned off for some while they continue to apply to others. As the American writer and icon of the civil rights movement Maya Angelou so aptly put it, they are like air: either everybody has them or no one does. In Western democracies, those seeking protection, the marginalised and minorities therefore fulfil the function of the canary in a coal mine, warning miners of an impending loss of oxygen: if they run out of air because they are denied fundamental freedoms and human rights, then the situation will soon be getting precarious for us as well.¹ One does not have to go deep into history nor bridge geographically vast distances to recognise that the curtailment of the rights of the marginalised and excluded, the *poor and huddled masses yearning to be free*,² provides a gateway for illegitimate tendencies and violations of fundamental rights and freedoms. It is no coincidence that the rights of asylum seekers are being trampled on in countries like Poland and Hungary, precisely where in general the rule of law often seems more like a vague recommendation than a fundamental democratic principle. Symptomatic of this may be the fact that, of all words, the term “pushback”, i.e. the turning back of asylum seekers at the border in violation of international law, often through the use of force, was selected as the German Ugliest Word of the Year in 2021³ – and that in a year marked by incidence rates, breakthrough infections and mutations.

It is not only since the refugee autumn of 2015 that the treatment of people seeking protection has become the litmus test of European democracy – which, as will become evident in the following pages, we often barely manage to pass. Sometimes we simply fail. At other times we seem to pass

with flying colours, such as in the spring of 2022, when millions of refugees from Ukraine sought asylum in the EU and received it quickly, unbureaucratically and in a rare show of European unity.

Yet wait a minute, one might exclaim, the people arriving from Ukraine are not refugees, at least not in the “classic” sense, as Austrian Chancellor Karl Nehammer and numerous other politicians after him have pointed out, but “displaced persons”. Indeed, as the attentive reader will not have failed to notice, they are even mentioned as such in the subtitle of this book. There are both substantive and strategic reasons for this, but above all ones born from the *outrage* mentioned at the beginning: “displaced persons” are namely all those people who have to leave their country without wanting to – be it because of personal persecution, (civil) wars or repressive regimes, or due to natural disasters and the climate crisis that have made their homeland uninhabitable. *Displacement* is what happens to anyone whose world has been devastated by whatever circumstances, rulers or geopolitical upheavals it may be, and who is now forced to seek refuge elsewhere. Whether they succeed in doing so also depends on how legitimate their search is seen to be by that “elsewhere”.

The passive form of ‘being displaced’ spells out that one has no choice, that one becomes subject to the circumstances which force one to leave. Syrians and Afghans have “no choice” – just like the Ukrainians; historically, there was virtually no alternative to fleeing for Hungarians, Yugoslavs and for many Austrians. They were driven out and relocated, but also somehow “removed”, i.e. taken to a place that can no longer be remembered later, as in the English phrase ‘to misplace an object’. In her book *We are Displaced: My Journey and Stories from Refugee Girls Around the World*⁴, the Pakistani activist and Nobel Peace Prize laureate Malala Yousafzai tells of precisely this experience of no longer belonging where one was, but also of not belonging in the place one arrived at.

Fleeing happens exclusively under duress – yet it seems this fact is acknowledged so little in everyday language that a new term had to be created for those who fled Ukraine. The refugee may have become an actor in the political discourse, even in a dubious sense. After all, ‘to flee’ is an active verb and what we associate with fleeing and escaping, with disappearing, eluding and leaving, or running away, are not solely positive ones. Yet displaced persons can be denied any *agency* or even complicity in their precarious situation. They are completely subjected to their circumstances, almost at the mercy of them, passive. Turning the asylum discourse of the last decades around practically overnight and getting the population to accept this about-turn – that can only be achieved by making radical linguistic (and legal) distinctions.

Despite the new category of “temporary protection”, which has been created for plausible and understandable reasons⁵ and spares Ukrainians (for the time being) lengthy asylum procedures, thereby granting them (or denying them, according to one’s point of view) a “refugee status” with a legal basis, the only thing that can be said as far as the substance of all this is concerned is that “refugees” have been driven out of Syria and “displaced persons” have fled from Ukraine – or vice versa, because the conditions of their departure in both cases exhibit a loss of freedom and free choice, as well as coercion. It is no coincidence that, in 2015, I was involved in a study which bore the title *Displaced Persons in Austria Survey* – in reference to people arriving from Syria, Afghanistan and Iraq.⁶ It is a widespread expert opinion that the Mass Influx Directive from 2001, which now grants Ukrainians special rights as displaced persons and at the same time relieves the asylum systems of the receiving countries, should have been activated as early as 2015.⁷

It is therefore not only in relation to granting universal rights and conceding international protection, but also to concepts such as that of the “displaced” that Maya Angelou’s slogan is always relevant: everybody or no one. For behind the terminology and rhetoric there also lie fundamental

assumptions about how we deal with the consequences of displacement and forced migration: should refugee protection apply “universally” (to “everybody”), or should special categories of protection (such as that of “temporary protection”) be created for certain groups on an *ad hoc* basis, without prior individual assessment? The latter emphasises the humanitarian “emergency” in which a group may find itself and allows for an unprecedented response to such “exceptional circumstances”. However, this increasingly replaces the universality of international protection with special rights for specific groups.

In the face of the war in Ukraine, the European admissions policy was therefore reminiscent of the politicised refugee policy of the Cold War, when Europe aligned the admission of refugees with its political interests: the urge to grant refuge to dissidents and deserters from the Soviet Union derived not only from a universal idea of protection, but was (also) due to its own ideology of wanting to strengthen the opposition and subsequently “the West”. In its most blatant form, such an interest-driven admissions policy undermines the universal right to asylum, as the German refugee researcher J. Olaf Kleist argues in relation to the activation of the Mass Influx Directive for Ukrainian arrivals.⁸ This perspective also explains the differentiation between Ukrainian nationals and third-country nationals in Ukraine, who come primarily from the Global South. According to reports in the media and from those affected, the latter were repeatedly turned back at border crossings or, if they did make it to the EU, their passports were taken away in the country of arrival, in order to deport them. All this is hardly surprising in view of the three-pronged European asylum policy of recent years (isolation, deterrence and relocation).

Yet this differentiated form of solidarity is a highly fragile one, even for those who are now enjoying it to the full. What if they are joined by Ukrainian men? What if those seeking protection do not come across as being in such “need of protection” as we imagine it, but flee across the border in an SUV or “in a Bentley with leather seats” (see Chapter 3 – Security)? What if one or more of them commit a criminal offence (as Austrians also do)? They are then still people who are fleeing persecution or war and who are entitled to protection according to the fundamental legal framework to which we have committed ourselves. A willingness to help and accept other people based on their gender, culture or skin colour is built on rather shaky foundations

However, perhaps – and now I am indulging in professionally calculated optimism – Europe’s paradoxical way of dealing with the consequences of the war in Ukraine also opens up new possibilities. Perhaps behind all the astonished comments about how the refugees now look “just like us”, behind the strident emphasis on their geographical and cultural proximity, behind the eloquent declarations of immediate concern and historical affinity, there lies the uncanny and unconscious European realisation that the idea of international protection, as enshrined in the Geneva Convention on Refugees and the Convention on Human Rights, could be of some concern to us after all. That it might be quite a good idea after all if refugees were offered unconditional sanctuary and protection – because if Putin’s bombs were falling just a few kilometres further west, then we would be the ones who would have to apply for it. And hope that we wouldn’t then be left gasping for breath, like the tens of thousands who have drowned in the Mediterranean or frozen to death in the marshes off Poland.

Because “everybody or no one” means exactly that. This book describes the choice that I have made.

Vienna, May 2022

(...)

Notes

- 1 For this impressive image I would like to thank J. Olaf Kleist, my colleague from the German Institute for Integration and Migration Research (*Deutsches Institut für Integrations- und Migrationsforschung, DeZIM*) in Berlin, who consistently and unswervingly stands up for the protection and rights of refugees in his home country of Germany. Many ideas and reflections in this book also derive from his tireless work.
- 2 From the sonnet 'The New Colossus' (1883) by Emma Lazarus, a plaque of which hangs in the pedestal of the Statue of Liberty and became symbolic of the United States' image of itself as a safe haven for (religiously) persecuted and displaced persons (as long as they came from Western and Central Europe).
- 3 According to the jury, this was intended to express criticism of the euphemism, which after all describes a misanthropic process that prevents refugees from exercising their right to apply for asylum.
- 4 Yousafzai, M. *We are Displaced: My Journey and Stories from Refugee Girls around the World*, 2019.
- 5 The European Commission feared that the asylum systems would be overburdened if millions of Ukrainians all had to apply (almost simultaneously) for asylum.
- 6 Buber-Ennser, I., Kohlenberger, J., Rengs, B., Al Zalak, Z., Goujon, A., Striessnig, E., Potancokova, M., Gisser, R., Testa, M. R., Lutz, W. „Human Capital, Values, and Attitudes of Persons Seeking Refuge in Austria in 2015.“ *PLOS ONE*, 11/9, 2016.
- 7 This is also against the background that, traditionally, in order for asylum to be granted under the Geneva Convention on Refugees, personal persecution on political, religious or other grounds must be proven, which is not the case *per se* in the context of every war. However, this seems likely to apply in the case of Ukrainian displaced persons, due to the numerous Russian war crimes and targeted ethnic or national persecution.
- 8 Kleist, J. O. 'Wer darf kommen?' *IPG-Journal*, 3 April 2022.