

# **Human Rights and Migration: reflections in the light of European Union values.**

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## **1. Introduction**

This article seeks to articulate elements of reflection around the migratory crisis that is still plaguing Europe today and the values of the European Union, in an attempt to identify the challenges that may be interfering with their realization in a context of so many violations. Initially, we will try to locate the issue of migration in a world closed to dialogue and its repercussions for the individual migrant who throws himself into the unknown "non-place" of existence. It will then reflect on the obstacles to the realization of the values of the European Union and the principle of solidarity in the context of the actions of the member states in the migratory context.

## **2. Migration and the challenges of a closed world**

On the subject of migration, seen as a reality or process<sup>1</sup> that blends in with humanity's own historical development, this reality has multiple facets of analysis, from the legal to the anthropological, the economic and the social-political. Theoretical debates in recent years, when international migratory flows have intensified, have sought to connect this context with so-called globalization.

George Martine states that

the migrant lives in a world where globalization dispenses with borders, changes parameters on a daily basis, flaunts luxuries, squanders information, stimulates consumption, generates dreams and, finally, creates expectations of a better life.<sup>2</sup>

And it is precisely this yearning for expectations of life, in other words, a different and higher standard of guaranteed rights, which, impacted by political and economic pressures, often leads to a search where the dream fades into inadequate accommodation, xenophobic structures and ethnic-racial prejudice<sup>3</sup>.

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<sup>1</sup> WIMMER, A.; GLICK SCHILLER, N. Methodological Nationalism, the Social Sciences, and the Study of Migration; An Essay in Historical Epistemology, in "The International Migration Review", v. 37, n. 3/2003, pp. 576-610.

<sup>2</sup> MARTINE, G. Unfinished globalization: international migration and poverty in the 21st century. São Paulo em Perspectiva, v. 19, n. 3/2005, 3-22.

<sup>3</sup> BARALDI, C.; MEURINER, I. O processo de construção da política municipal para a população imigrante de São Paulo: desafios e potenciais, in "Revista Videre", Dourados, MS, v.11, n.

The relevance of the debate on the vulnerability of the migrant population is solidified when we look at this population group as individuals who are excluded from the spheres that dominate power in society, that is, the transnational capitalist classes<sup>4</sup>. Furthering this view of alienation, Catherine Dauvergne states that "in contrast to the legalization of migration at the beginning of the previous century, we are currently witnessing the 'illegalization' of migration"<sup>5</sup>. Furthermore, this whole scenario can be associated with the lack of effective access to the political sphere and consequently to the exercise of their rights. Using Giorgio Agamben's concept of Homo Sacer<sup>6</sup>, it can be said that the individual immigrant, faced with illegality, is marked by a condition inferior to simple exclusion. This is the individual who is not granted access to rights, but only to repression and violation, because his state of origin does not exercise protection in the territory where he is currently located and the state where he is does not consider him to be a citizen in his exercise of rights - the Homo Sacer is the immigrant who is on the street just existing and without wanting to be an official statistic.

The view that by leaving their country, immigrants expand their territory also has the opposite effect of de-characterizing their place in the world. Marc Augé states that the excess of space paradoxically refers to the shrinking of the world<sup>7</sup>, and it is this somewhat ambiguous relationship that alters the scales affecting entire population groups such as migrants, giving rise to what he calls the non-place. These non-places are the "environments" where people and goods pass through, but are incapable of constituting a group identity<sup>8</sup>.

With an increasingly involuntary character based on survival - which in itself is expressed as an individual impulse - and fostered above all by violence and the dismantling of public policies in their states, mass migration in search of an alternative to the original non-place is a phenomenon that marks the beginning of this 21st century.

This non-place, where there is a flow of people but group identity is not established, can, in a way, be perceived in the context of the repercussions of

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21/2019, pp. 193-208.

<sup>4</sup> SOUZA SANTOS, B. *A Gramática do tempo: para uma nova cultura política*, São Paulo, Cortez Editora, 2010.

<sup>5</sup> DAUVERGNE, C. *Making people illegal: what globalization means for migration and law*, Cambridge, University Press, 2008.

<sup>6</sup> AGAMBEN, G. *Homo sacer: o poder soberano e a vida nua*, Belo Horizonte: UFMG, 2002.

<sup>7</sup> "Non-place is the space of others without the presence of others, the space constituted in spectacle." AUGÉ, M. *Le sens des autres. Actualité de l'anthropologie*, Paris, Fayard, 1994. p. 152.

<sup>8</sup> "This conception of space is expressed, as we have seen, in changes in scale, in the multiplication of imagined and imaginary references and in the spectacular acceleration of means of transport, and leads concretely to considerable physical changes: concentraciones urbanas, traslados de poblaciones y multiplicación de lo que llamaríamos los "no lugares", por oposición al concepto sociológico de lugar, asociado por Mauss y toda una tradición etnológica con el de cultura localizada en el tiempo y en el espacio. The no-places are as much the facilities needed for the accelerated circulation of people and goods (highways, roadblocks, airports) as the means of transport themselves or the large shopping centers, or also the extended transit camps where the planet's refugees are parked". M. Augé, *Los "no lugares" espacios del anonimato: Una antropología de la Sobremodernidad*, Editorial Gedisa, Barcelona, 2000, pp. 41-42.

integration (or lack thereof) between countries?

The situation faced by Italy and the other countries that make up the European Union can provide important reflections on this context, especially in the light of the European Union's values. With the arrival of refugees, without the initial condition of "workers", the internal challenges of the host country to meet the needs of those arriving have been presented as significant elements of a world closed to individuals and human rights.

### **3. The values of the European Union and the effectiveness of migrants' rights**

It is important to say that the initial measures taken after the mass arrival of migrants and refugees in the European Union, especially since 2015, were based on the search for an organization of migratory flows and an attempt to contain irregular migration.

In this context of crisis, emergency relocation - an alternative to minimize the impact on the countries affected by the migratory wave, such as Italy and Greece - was a possibility proposed by the European Union. However, the member states have not presented uniform measures for this scenario. Measures such as reinforcing the budget for security areas and containing the arrival of migrants in the European bloc received support and approval, but the relocation of refugees and free movement at the outset did not receive the same attention.

At the time, the emergency relocation of migrants in the member states of the European Union aimed to better guarantee reception conditions and access to rights, without overburdening any specific state. However, countries such as the Czech Republic, Hungary and Poland<sup>9</sup> refused to receive migrants, and some countries failed to meet the emergency relocation targets to which they were bound.

It is important to note that the obligation of emergency relocation is linked to the Principle of Solidarity and the fair sharing of responsibilities, as can be seen in Article 80 of the Treaty on the Functioning of the European Union, Part III, which deals with the Union's internal policies and actions, in particular on the area of freedom, security and justice, in the context of policies relating to border control, asylum and immigration:

The Union policies referred to in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibilities between Member States, including in financial matters. Where necessary, Union acts adopted pursuant to this Chapter shall contain appropriate measures for the

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<sup>9</sup> MAVROULI, R. (2019). The challenge of today's Area of Freedom, Security and Justice: a re-appropriation of the balance between claims of national security and fundamental rights. *Freedom, Security & Justice: European Legal Studies*, 2, 90-119.

implementation of that principle<sup>10</sup>.

Therefore, it can be understood that the decision not to collaborate with the emergency relocation of migrants can be seen as a violation of both the Principle of Solidarity and the principle of fair sharing of responsibilities, which are structuring elements of the vision of migration established by the Treaty on the Functioning of the European Union.

Furthermore, it can be understood that the challenges after this initial phase are also sensitive to the fulfillment of the European Union's values in their entirety.

According to Article 2 of the Treaty on European Union (Consolidated Version), the Community bloc is based on a set of values of universal importance. These are: human dignity, freedom, democracy, equality, the rule of law and human rights. Article 2 of the Treaty on European Union (Consolidated Version) states this:

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail<sup>11</sup>.

Considering that each of these values make up the very meaning of the EU bloc's existence, they must be fully applied, above all to strengthen cooperation actions in order to tackle challenges common to the EU's member countries. If it is not possible to implement these values in the bloc's daily actions, especially in the context of the migration crisis, it is assumed, albeit tacitly, that the challenge of integration and sharing responsibilities may be generating a crisis of non- applicability of the European Union's values, which affects, above all, individuals from third countries. It is important to remember that the values of the European Union are:

These are values that are common to all Member States and whose adoption and respect by the latter constitute, as expressly stated in Article 49 TEU, an indispensable condition for membership of the Union. The whole process of European integration has been developed on the basis of the effective respect for these values by all the players on the European scene and on the basis of mutual trust between the Member States in this respect.<sup>12</sup>

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<sup>10</sup> EUROPEAN UNION, Consolidated version of the Treaty on the Functioning of the European Union - Part III: The Union's internal policies and activities - Title V: The Area of Freedom, Security and Justice - Chapter 2: Policies on border checks, asylum and immigration - Article 80. 2016. Available at: [https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0019.01/DOC\\_3&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar:9e8d52e1-2c70-11e6-b497-01aa75ed71a1.0019.01/DOC_3&format=PDF) Accessed on 12 Mar. 2024

<sup>11</sup> EUROPEAN UNION, Treaty on European Union. Available at: <https://eur-lex.europa.eu/legal-content/PT/TXT/HTML/?uri=CELEX:12016ME/TXT&from=PT> Accessed on 12 Mar 2024.

<sup>12</sup> MORI, Paola. The primacy of the common values of the European Union. In: *Il Diritto Dell'unione Europea*, 2021, Issue 1, p. 73.

It can be seen that the European Union's values are based on respect for human dignity. This is important because human dignity applies not only to European citizens, as can be seen in Articles 18 and 19 of the Charter of Fundamental Rights of the European Union, which deals with the Right to asylum and Protection in the event of removal, expulsion or extradition. In addition, Article 78 of the Treaty on the Functioning of the European Union deepens the European Union's responsibilities for what it calls a common asylum policy.

Article 78 (ex Articles 63, points 1 and 2, and 64(2) TEC)

1. The Union shall develop a common policy on asylum, subsidiary protection and temporary protection with a view to offering appropriate status to any third-country national requiring international protection and ensuring compliance with the principle of non-refoulement. This policy must be in accordance with the Geneva Convention of July 28, 1951 and the Protocol of January 31, 1967 relating to the status of refugees, and other relevant treaties.

2. For the purposes of paragraph 1, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures for a common European asylum system comprising:

(a) a uniform status of asylum for nationals of third countries, valid throughout the Union;

(b) a uniform status of subsidiary protection for nationals of third countries who, without obtaining European asylum, are in need of international protection;

(c) a common system of temporary protection for displaced persons in the event of a massive inflow;

(d) common procedures for the granting and withdrawing of uniform asylum or subsidiary protection status;

(e) criteria and mechanisms for determining which Member State is responsible for considering an application for asylum or subsidiary protection;

(f) standards concerning the conditions for the reception of applicants for asylum or subsidiary protection;

(g) partnership and cooperation with third countries for the purpose of managing inflows of people applying for asylum or subsidiary or temporary protection.

It is clear that the European Union is trying not only to establish a set of rights for third-country nationals, but also to set important parameters for a common European asylum system for the bloc. However, it is also clear that

le vicende esplosive del 2015 y del 2016 hanno messo in evidenza, non solo l'impreparazione dell'UE alla gestione di essa, ma soprattutto la presenza di un atteggiamento della maggior parte dei paesi dell'UE ad affrontare la questione in totale disprezzo dei principi fondamentali e delle linee d'azione concreta

(...)<sup>13</sup>.

Therefore, it is clear that the normative efforts to ensure that the values of the European Union are reflected, including in tackling the migratory crisis. However, the effectiveness of these efforts still lacks concreteness on the part of the member states, which sometimes seem to be moving in the opposite direction to the values that give meaning to their own notion of integration.

#### **4. Final considerations**

In the context of the migratory crisis that still exists, permeated by the intensification of relations and indifference to the non-place, the need for a concrete way to make solidarity effective, especially in the legal and political spheres, is urgent. What is clear is that both the problems and the possible solutions are up to the public administrators of the places where these migrant populations are being welcomed. In this sense, the way in which the set of structural public policies for the reception of migrants is possibly expressed should guarantee not only rights, but also the obligation of member states to effectively base themselves on the values of the European Union.

Pending this effective reality, there is a risk that the member states of the European Union, where the principle of Solidarity should be consolidated alongside the fundamental values of the bloc, will become even more of a non-place for individuals, especially migrants, rather than an environment where rights flourish.

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<sup>13</sup> CIRAVEGNA, Daniele. *European Union: Divergence between principles and political management*. Istituto Universitario di Studi Europei Working Papers Series. 2016-2/22-LBE, p. 4.

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