

Outsourcing Asylum and Migration – chronicle of a predicted failure

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A Rome court has imposed a first slap on the government of Giorgia Meloni on Friday, October 18, 2024 (1). Italian judges ordered the return of the first 12 migrants detained in newly opened Italian law centers in Albania with maximum media coverage in Europe. The ten European leaders (Italian, Dutch, Danish, Greek, Austrian or Polish ...) gathered in Brussels on the previous day to discuss “innovative solutions” around the President of the European Commission (2) must not have appreciated this major political setback of their new “champion”. The same failure was experienced by the British conservative government of Rishi Sunak when it proposed outsourcing to Rwanda.

The “innovative solutions” consist of subcontracting or outsourcing the processing of asylum seekers by creating return centers outside the European territory. The Italian court’s decision is based on the fact that migrants, of Bengali and Egyptian nationality, have a right to claim asylum in Italy. Their home states are not considered as “safe” countries, without the necessary democratic guarantees. One condition for the mechanism to work is that the sending states agree to receive their nationals, it is not automatic. Detention may not exceed 4 weeks.

The countries of the European Union have two years to implement the Pact on Asylum and Migration, adopted in May 2024. Many called for an accelerated entry into force. They called for new partnerships with African countries, like those concluded with Tunisia, Egypt or Mauritania, or even with Libya, which are very controversial (2). They want to put pressure on the countries of origin of nationals by suggesting that visa issuance, the conclusion of trade agreements or the disbursement of development aid be made conditional on the commitment by the countries of origin to take back their nationals who have been refused asylum or do not meet the criteria for legal migration.

These outsourcing policies have been denounced by many associations since their introduction in the early 2000s, notably GISTI in France (3). This NGO sees them as a «logic of de-responsabilization». The term outsourcing is used “to refer to a process that consists, for the European Union, of performing or subcontracting out of its territory part of the control of its borders”. The EU delegates responsibility for managing the situation of migrants to “third country” authorities. It thus exposes them to “ill-treatment” and itself to “denial of these principles”. The ISWG recalls that the United Nations High Commissioner for Refugees (UNHCR) has indicated that populations who try at all costs to travel to Europe are composed of “mixed flows”, that is to say both migrants and asylum seekers whose files should have been examined on European soil (4).

The French Defender of Rights (public body), in 2016 (5), considers that “respect for foreigners’ rights is an essential marker of the degree of protection and effectiveness of rights and freedoms

in a country”. It emphasizes the “strong tension” between “proclamation and realization” of a “principle of equality” which leads to the elimination of “illegitimate differences in treatment” and “a realistic principle of state sovereignty” which leads to “creating and developing legal regimes and access to different rights based on nationality”. It admits that, in the domain of entry, residence and removal, positive law allows for differences in treatment based on the legal category of “foreigner”. In these areas, “the discretion of the State is important”. It added that it is “however not without limit and in no way discriminatory”. It is subject to the “respect of fundamental rights”.

One paragraph is of particular interest for the European Union in 2024 - “Far from being natural and immutable, the rules of law dedicated to foreigners (...) are so many choices made by the legislator and the regulatory power that sometimes rely on subjective considerations, fluctuating, borrowed from protectionism or even xenophobia”. The French Defender of Rights fears that «preconceived ideas, myths are developing, often fuelled by fear when we talk about foreigners». In 2016, after the migration crisis and the massive influx of Syrian refugees into Europe, some people spoke of a threat to our “national identities”. In 2024, some would be brandishing the theory of “great replacement”. The French Advocate for Law notes that “no period in immigration history has changed the foundation of common republican values”. Europe can still welcome many foreign nationals.”

The European Union has, at the same time as outsourcing strategies were discussed, in 2000 a powerful arsenal of anti-discrimination and diversity promotion to defend fundamental rights in Europe. Two major directives were adopted in 2000 (against sexism and then against all forms of racism). These fundamental principles have been inherent in the construction of Europe since the Treaty of Rome in 1957. European years have reminded them- 1997 Fight against racism and xenophobia, 2007 Equal opportunities, 2008 Intercultural dialogue... The Erasmus+ programme has as its transversal priority the defense of diversity and the fight against exclusion.

The “hub” strategies to externalize migration presented as “innovative solutions” are in fact very old and never worked. They have been confronted with fundamental rights, the European spirit of openness, inclusion and equal opportunities which is not dictated by a short-term political agenda but by a long, turbulent and eventful European history that has held until now. Outsourcing is a transactional approach, promoted by an unconcerned leader in the US. The fight is the same on both sides of the Atlantic, that of fundamental rights and freedoms, and therefore of democracy. A perpetual and existential struggle.

- (1) Allan Kaval Le Monde, dimanche 20 & lundi 21 octobre 2024
- (2) Virginie Malingre et Philippe Jacque, « UE : vers un durcissement sur l’immigration », Le Monde, samedi 19 octobre 2024
- (3) Claire Rodier « Externalisation du contrôle des flux migratoires : comment et avec qui l’Europe repousse ses frontières », Migrations Société, Vol 20, n°116- mars-avril 2008
- (4) UNHCR , Press release issued on October 9, 2007
- (5) Défenseur des droits (The French Defender of Rights) « Les droits fondamentaux des étrangers en France », Paris, mai 2016