

## Thematic contribution

### **Asylum and migration in Europe: does the status quo have a future?**

#### **For a common vision of asylum policy**

*"Everything has to change so that nothing changes.* Giuseppe Tomasi di Lampedusa seems to be the inspiration behind the European migration pact proposed by Ursula Von der Leyen... What would be the point of abolishing the so-called Dublin Regulation in order to perpetuate the principles on which it is based? This is, however, what is being proposed to us.

It is necessary to find rules, in an area of free movement, to coordinate asylum applications that can be filed almost simultaneously in several countries. This regulation meets this requirement. Its limit? Putting in the front line the countries of first entry, which, since 2015, are solicited in unsustainable proportions, while countries without external borders could rely on the regulation to have no obligations. However, there are two things: either we lay down the **principle of the responsibility of the countries of first entry in the control of their part of the external border of the Schengen area**, or we lay down the **principle of a common control of the borders of the Schengen area by European border guards, with the consequence that any asylum application issued in the Schengen area must be able to be processed according to a procedure that does not depend on where it is issued, which implies a common vision of asylum policy but also of immigration policy.** This communitarized vision is the most coherent, stable and fair. But we must observe and note that even the countries that are today in the front line, at the external borders of the Schengen area, are not ready for a development that would amount to fully communitarizing the control of their own borders. Worse, with the return of internal borders following the Covid-19 crisis, the year 2020 will have made us "regress" on this point, since the European Commission has not managed during this period to make member states respect European law on the free movement of people. On the strength of these two observations, we should resolve to accept that things are evolving in an incomplete, unsatisfactory and unstable manner. **But there is no need to do so without vision.**

#### **Is the "Dublin procedure" the worst system?**

Its main problem consists in the way it is applied, in the most hypocritical way possible. Indeed, Article 17 of the Regulation explicitly provides for the possibility for Member States to examine any asylum application of a "dublinable" person and thus avoid sending him/her back to the country (of first entry) considered as "responsible" for processing the application. Among the so-called "dublinables", there are **real differences in situations** that should be taken into account upstream of the procedure: an asylum seeker who has managed to lodge an asylum application, for example in Germany, and who has been rejected, and a person who arrived in Europe via Greece or Italy (so-called "first entry" countries), who will be sent back

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to the country of first entry.

was then "registered" in the EURODAC database, but who has wanted to apply for asylum in France since the beginning of his or her migratory journey (for whatever reason: family ties, possibility of accommodation, mastery of the French language, etc.). In the first case, it is not unreasonable to consider that since Germany has investigated the asylum application and rejected the person concerned after a thorough study of the elements provided, a return to this country, with a view to possible removal to the last third country of residence, would make it possible to avoid multiplying the successive filing of asylum applications in several Member States and thus clogging up the asylum system and the processing of applications to the detriment of persons who have grounds considered as being able to justify protection and refugee status. In the second case, on the other hand, it is totally unacceptable to send the applicant back to Italy or Greece, under the pretext that he has "landed" in that country. In this hypothesis, the country of "first entry" is so for obvious geographical reasons, and the applicant may aspire to see it as a "transit" country. It is because countries such as Germany or France have refused to make use of this provision contained in Article <sup>171</sup> of the Dublin Regulation, and which could alleviate the responsibility of the country of first entry, that we have created inextricable and unworthy situations. Indeed, to no longer be "dublinable", one must have been present for at least six months in the country where one files an asylum application. This explains why a significant proportion of people, in situations of great distress, on the streets of Paris or other metropolises, wait until this period has elapsed to file their application in France. This is also what is happening in Ventimiglia, the Roya Valley. When the French government, in the last few weeks, tells the NGO boat Sea-Eye, that it is necessary to disembark in the nearest safe port, it is still related to that. This is the type of attitude that

The "gun" of all European solidarity. France was condemned on July 2 by the Court of Justice of the European Communities.

European Convention on Human Rights (ECHR) for inhuman and degrading treatment of asylum seekers, for leaving them without resources and without accommodation, contrary to its treaty commitments. France was also condemned on June 24, 2020 by the ECHR for the administrative detention and then "expeditious removal" to the Comoros of two children aged 3 and 5 years from the French department of Mayotte. France, which has been unable to effectively register asylum applications throughout the period of confinement related to the health crisis, and whose prefectures still fail to register asylum applications within the time limits set by European directives, not to mention the conditions of reception of applicants, even though for several years the number of applications has been of the same order of magnitude. France, which did not hesitate to keep people in administrative detention centers (CRA) for more than 60 days in the spring of 2020, even though no realistic prospect of removal existed for them, and health conditions were not guaranteed due to the pandemic (absence of hydro-alcoholic freezing, common water fountains without glass or bottles, imposed promiscuity, impossibility to carry out maintenance work during this period...), which the Council of State finally noted at the Vincennes CRA. France, whose government sought to make possible the systematic recourse to a single judge before the National Court of Asylum (CNDA), via an

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<sup>1</sup> "Any Member State should be able to derogate from the responsibility criteria, in particular on humanitarian and compassionate grounds, in order to allow for the reunification of close family members or any other relatives and to examine an application for international protection lodged on its territory or on the territory of another

Member State, even if this examination is not incumbent on it under the mandatory criteria laid down in this Regulation. »

order taken within the framework of the state of health emergency, an attempt fortunately "blocked".  
by the Council of State.

### **The European Union must change its migration policy. Change radically. Not change the words that define it**

Salvini-Orban's approach dominates the European Commission's latest proposals on the migration pact. Beyond these two provocateurs, there are many who do not dare to express themselves as they do, but act in the same way, in the name of a public opinion ready to offer itself to the "populists". We hear this argument over and over again in the debate on these issues. This policy solves nothing. It does not respect any dignity. Nor does it respect the dignity of those who seek protection, or simply the opportunity for a better life for them or their families. Nor does it respect the dignity of Europeans, in that it disregards their values of hospitality, respect for human rights, and the lessons of their history. By **subcontracting our bad conscience to our neighbors**, we destabilize them by offering certain third countries that do not "want only good" to the European Union, the opportunity to get involved in their internal political life. **Morally damaged by the renunciation of its founding values, threatened by powers seeking influence at its borders, the European Union is durably weakened by the policy of so-called firmness pursued since 2015.**

The European Union is now talking about an asylum procedure at the border. Agreed in principle, but in practice wasn't this what was put in place since the EU-Turkey agreement in the Greek islands? Isn't this the policy whose failure can no longer be ignored since the tragedy witnessed by the fire in the camp of Moria? Nothing in the proposals made by the EU makes any significant difference to its current policy. Certainly, the affirmation of the possibility of seeking asylum in a European country with which the person has ties is good news, but it is far from being sufficient, and we will have to remain vigilant to other criteria and especially to the concrete implementation of these announcements.

### **Overcoming the differences in approaches within the European Union States themselves in order to best respond to asylum requests**

The fears and myths that paralyze us. It is unfortunately impossible to envisage a rapid and global agreement on the so-called "migration" subject. But if our differences do not generate a lively, healthy and respectful debate to build together a long-term policy, then we will not be able to remedy the current difficulties. These debates are not North-South or East-West debates, they are cross-cutting debates that affect all public opinion in all the countries of the European Union, and they must be approached in this way. By changing the vocabulary without changing the principles, the European Commission is probably not doing a useful job. It is better to express disagreement today, rather than an agreement that refuses the prospect of more solidarity, and does not create any credible dynamics of convergence. It would be better to

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work on several axes, even if it means initially working on only a few and with those who accept it, as soon as they are carriers of true convergences, in order to move forward:

- In the long term: to approach this issue with the certainty that there will be no significant evolution of this migration policy as long as we do not manage to convince a majority of Europeans that it should be changed. **The challenge is first of all political, because it is a question of changing a state of mind.**
  - In the medium term: do not institutionalize the blackmail of the issuance of consular laissez-passers by the authorities of the country of origin to persons in an irregular situation (passes that allow their removal), against the issuance of short-stay visas (known as Schengen) to nationals of that same country. While one should not be fooled by the attitude of certain states, it is never a good idea to penalize a citizen on principle for the policy pursued by his government. This is a government with which Europe often has a rich security and economic cooperation... For nationals of countries with a "proven migratory risk", the issuance of visas by the French authorities is in any case already excessively strict.
  - In the short term :
    - (1) **To converge asylum procedures in Europe**, by promoting cooperation between Member States allowing the respective recognition of asylum application procedures and the establishment of a judicial remedy before a single body, a kind of European Court of Asylum ("ECAS"). Wanting to move too fast in this area entails a serious risk of not respecting our conventional commitments, since we would have a European partner that does not respect the Geneva Convention. This is why it is preferable to go gradually with those member countries of the Union with which we could proceed to this harmonization without calling into question our conventional and constitutional commitments .
    - (2). To establish, as a principle of non-discrimination of persons living on the territory of the Union, the right for **any person who has obtained refugee status and protected by the Geneva Convention in a country of the Union, the right to move and settle in** all the states of the European Union in the same way as a national of the country that has granted protection.
    - (3) **Make effective the respect of fundamental rights and the right to asylum for any person filing an asylum application at the border.** Ensure solidarity, through support, to countries that are not able to process the first asylum applications within the time limits set by the directives, and, if the country is not a member of the cooperation mentioned in (1), and if the country's national appeal body is not able to cope, transfer to the new "CEDA" the competence to study the appeal and, if necessary, determine the host country.
    - (4) Provide **FRONTEX with sufficient means to evaluate and support the policies of the Member States and the Union, and to enforce compliance with European law.**
    - (5) **To generalize the EURODAC registration for each administrative decision concerning a foreigner in an irregular situation**, in order to better follow the evolution of the persons, to stop removals just for the purpose of "making a "false" decision.
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and to ensure that all the States comply with their obligations relating to the "figure", and to ensure that all the States respect their obligations relating to the Eurodac registration.

Only if the Socialist Party defends these conditions will Europe be able to get out of the inextricable migratory situation in which it has placed itself. It must therefore give priority to managing what can and must already be done, avoiding the status quo that only makes things worse and destabilizes the internal situation of some member states. It is not inevitable that there will be more and more xenophobic discourse. **Resolving to this leads to putting into power enemies of fundamental freedoms, of democracy, people who deny the uniqueness of the human race.**

**There is still time to act, but it is becoming urgent. It is a task that the Socialist Party must carry out with its allies in the Party of European Socialists.**