

Humanitarian corridors

A safe and legal response to the refugee crisis

Protected entry procedures

According to reports from the most recent data of the International Organization for Migration (IOM), the number of arrivals in Italy alone equals 106,889 individuals. 2542 of them have disappeared or died. This is very discouraging data. Unfortunately, this information reveals to us the total failure of a policy based on building "walls" and the legal impossibility of the arrival, initiated by Europe. In addition to risking their lives in an effort to reach our coasts, these individuals are also often victims of violence and abuse in transit countries. Many of the arrivals stated that they were forced to work, even without being paid. They added that they were held against their will in detention centers. These statements do not astonish us at all.

These individuals are compelled to speak to the smugglers, putting their lives at risk, because until recently there were no laws that provided protected entry procedures that guarantee a legal and safe entry.

Yet these protected entry procedures allow the examination of the application for international protection in the consulate of the country of destination in the third country of which the foreigner has the citizenship or in which he resides temporarily.

In the event of a positive outcome, an entry visa will then be issued, otherwise a visa for humanitarian reasons will be issued and then it will be examined in the country of destination. The two memoranda of understanding are signed between the two involved ministries, mainly the Ministry of the Interior and the Ministry of Foreign Affairs.

The first memorandum has been signed in December 15, 2015, with the Community of Sant' Egidio, the federation of Evangelical Churches and the Tavola valdese. The second memorandum has been instead signed in January 12, 2017, with the Italian Bishops' Conference and the Community of Sant'Egidio. The two memoranda of understanding implied the arrival in Italy, by December 2017, of 1500 refugees (1000 coming mainly from Lebanon - of which 550 already have been received by now - and 500 coming from Ethiopian refugee camps).

Admission to the project is managed on the ground by the volunteers of the sponsoring institutions who are not only responsible for the travel expenses, but also for the subsequent reception expenses. It is useful to highlight the fact that the submission of the application to the consular offices is not the initial phase of the participation to the project. Rather, the initial phase, also the most important and the most delicate involves the identification phase of potential beneficiaries, reserved to the operators on the ground. The ability of the refugees to participate is strongly conditioned by the proper understanding of what awaits them in the country of destination. As C. Hein states: "it is natural and understandable that the asylum seeker does not only seek a safe country, but also the closeness of what is familiar".¹ This explains why the relocation operations, where the destination is "imposed", are more and more difficult to enforce, also due to the fact that the refugees who arrive in Italy always try to reach other countries, where they have major family, social and community connections. That is why access to humanitarian corridors is characterized by the commitment on the part of the sponsoring institutions to guarantee to the beneficiaries a horizon of acceptance that offers immediate employability in a context of community.

It is from this perspective that special attention is given to those who have "stable family or social connections in Italy and have voluntarily asked to settle and integrate in our country", as specified in Article 3 of both memoranda.

Therefore C. Hein and M. de Donato, *Viaggio e arrivo. Quale accesso alla protezione?* in *Rifugiati. Vent'anni di storia del diritto d'asilo in Italia*, a cura di C. Hein, Roma, Donzelli, p. 274.

The origin of the name

"Corridors" are commonly referred to as safe passageways through combat zones, for the displacement of the population and for the transfer of aid. To characterize such a noun, it was not possible to get immediately to the term "humanitarian". History shows us that in the course of the various humanitarian actions which included the opening of a corridor, as safe passage, several adjectives were chosen. For Operation "Lifeline Sudan", in order to save Sudan's population from famine, during the conflict from 1987 to 1991, the definition "corridors of tranquility" was chosen. On the contrary, the expression chosen by the Security Council Resolution No. 2165 of July 14, 2014, whose aim was to impose to the Syrian Government the opening of four different gates in the frontline for the delivery of aid to the exhausted population is "humanitarian relief". The "humanitarian corridors", were insistently and vainly invoked in favor of the Syrian population of Aleppo. These humanitarian corridors would have played a dual role: to subtract the population from the continuation of the conflict and allow it to escape towards the Turkish-Syrian border. Besides, this corridor would also have guaranteed a safe travel, avoiding the deaths that occurred at sea.

Humanitarian crises

War has already caused 7 million internally displaced persons and at least 5 million refugees across Syrian national borders. This number includes more than 2 million children. Therefore, there is much to be done in order to improve the reception in countries where there are more refugees from Syria (Turkey, Lebanon, Jordan, Egypt). The hope is that these countries will be able to provide adequate reception and protection standards. However, being able to implement the principle of solidarity and fully implementing a fair distribution of asylum applications would be even more effective, especially in countries with greater reception capacities.

According to the United Nations High Commissioner for Refugees, the persons in need of protection have access to three different legal options: social integration in the place of refuge, repatriation to the country of origin once it is safe again, or relocation in a country other than the country of first asylum. These options are available when the country is not able to provide the refugee with social integration in its territory. Today it is widely known that the possibilities of a real relocation are very little. This leads many refugees to try and cross illegally the borders of other countries in an attempt to reach Europe, even risking their lives.

Failure to comply with the obligation of international protection through two tools, either the decent integration in the country of first asylum or the relocation in a third country, is the main cause of the numerous deaths at sea in recent years.

In accordance with what is set out by article 78 of the TFEU, the European Union offers asylum and other forms of protection only to those who reach its borders or flood in at the EU borders. I wanted to change it this way: However, the greatest limit of the right of asylum as laid down in article 78 is the territorial limit; it is impossible to reach EU borders legally without an entry visa, which is not granted for most asylum seekers, thus replacing the ban on refoulement by the impossibility of legal arrival at the borders. To have no provision for any duty to protect outside national borders, actually means to betray the spirit of the Geneva convention

The European Union with a view to creating a secure channel of arrival for the citizens from third countries, but also in order to fight illegal immigration, approved Regulation 516 in 2014 Article 2: «relocation»: the process by which, at the request of the United Nations High Commissioner for Refugees ("UNHCR") motivated by the need for international protection, citizens of third countries are transferred from a third country to a member State that has agreed to receive them and offer them protection. This

regulation, being non-binding for member States, has unfortunately not been implemented. The attempt by the Union to open a secure and legal channel for the flow of refugees responds to its willingness to pursue three different purposes. The first consisting of the creation of a channel of "escape" for the refugees who are in the countries of first asylum, whose precarious conditions are not sufficient to ensure adequate protection standards. The second purpose can be identified in the will to lighten the burden of the reception on the countries of first asylum, to prevent them from collapsing. The third purpose is linked to the desire to strengthen cooperation with regard to the fight against illegal immigration and to readmission policies in the "safe" countries of first asylum, along the lines of the 2016 EU-Turkey agreement. This proposal of regulation plans to assign the largest number of relocations to those third countries which have adjusted their domestic legislation in the field of international protection in such a way as to make themselves "safe countries". Thanks to this measure, all the applications for international protection submitted in a European Union member State following an illegal journey will be delegitimized.

Legal basis for Humanitarian corridors

The visa represents the authorization to enter a country or a common area as far as the Schengen area is concerned. So, the visa allows the person in need of international protection to travel legally and safely. The legal authorization to enter a country entails different scenarios: resettlement, humanitarian admission and sponsorship. As far as the long-term visa is concerned, a country has vast and limitless latitude for decision-making in issuing these visas, while it needs to observe an iron discipline in issuing short-term visas. As an alternative to long-term national visas, member states can opt for the issuance of a visa pursuant to art 25th ²of the European visa regulation No 810/2009. This regulation grants the chance for member states to issue limited territorial validity visas on humanitarian grounds or for national interest reasons, notwithstanding the entry conditions of Schengen Borders Code (adequate documents indicating the purpose of your journey and documents indicating that the applicant possesses sufficient means of subsistence both for the duration of the intended stay and for the return to his country of origin or residence).³ The human corridors are legally based on the possibility of issuing this type of visas. This measure is not only helpful to circumvent the principle of territoriality imposed by Art 78, but it could also regulate the right to diplomatic asylum, which will be carried out in two different administrative phases, one inside and the other outside the country.

Legal effectiveness and discipline of the European regulation 810/2009 Art 25

The humanitarian corridors were inaugurated right when the debate on the legal effectiveness and discipline of humanitarian visa was becoming rather heated. The debate was made more popular and relevant by the *sentence X and X, against Belgium, C-638/16*.

The plaintiff in this case was a Syrian family with three children, residing in Aleppo, who appeared at the Belgian embassy in Lebanon to apply for the humanitarian visa under Article 25(1) of the community code on visas.

During the visa application process, the Syrian family pointed out their intention to apply for asylum once in Belgium. The asylum seekers justified their intention by remarking that they had suffered torture, abduction and violence. The family highlighted also the well-founded reason of being subjected to religious persecution, because of their Christian orthodox faith. Throughout the appeal that resulted in the rejection of the humanitarian visa in question, two different and opposite interpretations of prohibition of torture and inhumane treatment collided. The Syrian family believed that this prohibition could only be effective if the member states were obliged to issue the humanitarian visa to those who could be subjected

² European council and Parliament Regulation N. 810 of July 13rd 2009, which establishes an European visa code.

³ Art. 25th of Regulation 810/2009 refers to Art. 5 of the European regulation N. 562/2006 (Schengen Border code), today replaced by the European Regulation n. 399 of March 9th2009.

to torture and degrading treatment. On the other hand, the Belgian government claimed that member states had to refrain from refugee refoulement to countries where they may be subjected to this treatment, but they were not committed to facilitate the person's escape from such a country. The Belgian court was asked to settle the affair and decided to refer a question to the European court of justice, with the objective to have a clarification regarding the Art 25 of the community code on visas.

The court asked the European judges to clarify *If the member state who receives a limited territorial validity visa application was obliged to issue it when risks of prohibited treatment or any other violation of the international obligations are demonstrable.*

The court decided not to enter into discussion of the field of application of Art 25, and it limited itself to declaring:

- The visa code establishes and governs the conditions for the issuing of short-term visas.
- The Syrian family, in applying for the humanitarian visa at the Belgian embassy, frankly pointed out the intention to apply for asylum as soon as they arrive in this member state and, consequently, obtain a residence permit, the validity of which is not limited to 90 days.
- The current European regulation includes no laws regarding the granting of long-term permits and visas on humanitarian grounds.

Hence, the court states that the humanitarian visa application submitted by the Syrian family falls solely "within the field of application of the national member state law" (par. 44) and it cannot be considered as a short-term visa application.

A different conclusion could permit third country citizens to choose the diplomatic institution where they request the humanitarian visa with the objective to apply for asylum once they enter this member state's territory, which can jeopardize the mechanism established by the Dublin regulation".

This regulation does not allow the asylum seeker to choose the member state where they will apply for asylum.

In conclusion, it is appropriate to highlight what emerges from the interpretation of the visas code regulation endorsed by the court of Justice. According to this interpretation, a person who has been forced to flee his or her country because of the risk of suffering torture, persecution and/or degrading inhumane treatment, has no choice but to turn to smugglers and undertake a long life-threatening journey. This interpretation, on one hand, disappoints those who hope that the court interpretation could lead to a modification of the European regulation under Art 25, but also that this modification could govern the diplomatic asylum. On the other hand, it is in stark contrast to the main objectives of this regulation. Which, as the regulation preamble recalls, are to discourage the illegal immigration and facilitate legal and safe journeys.