

**Centro di ricerca
interuniversitario
su carcere, devianza,
marginalità e governo
delle migrazioni**

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Migrations and sovereignty

The States have the absolute control of their borders

They can decide who can enter and stay on their territories



**Economic migrants should be
authorized to enter in the States**

Visa for working

**Residence permit for
working**

**Every state is in theoretical
control of the economic migrants
present on its territory**



**Economic migrants should
be authorized by the state to
enter and to stay**

**They don't have any right to
be admit in a state or to
receive an staying permit**



**Forced migrations are
unrulable migrations**

**The State don't have the right
to control migrations**

**The migrants have the right to
enter and/or to stay in the
territories of the state**

Main types of forced migration

Asylum/international protection
(Europe)

Human trafficking

Who is a refugee?

- ▶ **Geneva convention: The Refugee convention of 1951 UN Article 1**
- ▶ **A refugee is any person who “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it”.**

Right to non refuoulement

Art. 33 Geneva convention

“1. No Contracting State shall expel or return (*‘refouler’*) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

Asylum: not a universal right

Geographical and temporal limitation:

**A person can be recognized as a
refugee only in relation to events
occurred in Europe before 1 January
1951**




The slow universalization of asylum

- ▶ Protocol 1967 abolish the temporal and geographical limitation
- ▶ Italy 1990
- ▶ Today: only few states maintains the reservation , the most important case is Turkey which maintains the geographical reservation



Rhetorical slippery slope West Europe the place of freedom

- ▶ Hungary 1956: The fact had the origin in Yalta then before 1951
- ▶ Berlin wall 1961: the walls were constructed to prevent people to go out, today to enter



1989 Italy killing of Jerry Masslo

- ▶ Black migrant from south Africa
- ▶ Irregular migrants: he couldn't get refugee status for his origin
- ▶ He was an worker in agricultural in south Italy in Castel Volturno near Caserta, area controlled by Camorra



Now asylum is a universal right

In Eu it is a very large right
asylum plus subsidiary protection
and a very powerful right in the greatest Europe
thanks to the jurisprudence of European Court of
Human Rights.



Terror of migration outside control

2006 were allowed 170.000 migrant workers plus a new quote 350.000 workers at the end of the year

2016 123.000 asylum seekers (record) for Italy


Invasion!!!

17.850 migrant allowed to receive the visa as workers

Walls to take people outside to prevent them to use the right of asylum



Usa - Mexico (1994) Hungary – Serbia (2015)
Ceuta and Melilla–Maroc (1989) Bulgaria-
Turkey (2014) Israel–Palestina (2002) India–
Bangladesh (1989)




New Walls to prevent afghani people to use the right of asylum

Poland double troupe numbers on Belaurus border

**Greece completes the wall at the boundaries with
Turkey (40 kms long 5 m high)**

**Turkey decide to build a new wall of 64 kms at the
boundaries with Iran (one of 149 kms already exists)**



The “greater Europe” (i.e. the forty-seven states that signed the European Convention on Human Rights) right to family reunion : another case in which state’s discretion, of if you like sovereignty, is reined in through the recognition of an immigrant’s right

- ▶ Article 8 of the Convention recognises the right to family life. The case law of the European Court of Human Rights makes very clear that immigrants residing in a signatory country have a right to reunite with family members living in the original country. Its scope can be reduced to the spouse and minor children (as it is the case in Italy), it can be balanced against other interests of the host state (such as national security), but the right exists and states are bound to respect it.



**According to EU directive (2003/86)
family reunion should be easier for
the refugees.**

**In 2016 Germany suspended family
reunification for refugees**


**In 2018 restarted the reunification
with a limit of 1000 visa per month**



Human trafficking Palermo protocol 2000

trafficking (forced migration) =>
migrants are victims

Smuggling illegal migration =>
migrants must be expelled



**Victims of trafficking
have the right to stay
(sometimes they are asked to
denounce the traffickers)**

**Trafficking traditionally was
conceived as finalized to
prostitution and sexual
exploitation**



Two important novelties

Today trafficking is increasingly perceived as finalized to labour exploitation

EcHR S.M. versus Croatia (25 June 2020) the Grand Chamber made it explicit that both national and transnational human trafficking fall within the definitional limits of Article 4



Consequences

the right to stay can be claimed
by every migrants victim of
sexual or labour exploitation
even if the exploitation is
organized within the state of
arrival



**Very important
exploitation must not be
based on violence or
menace**

**it can be based simply on
conditions of vulnerability**

Excluding democracy


- ▶ Welfare crisis – perception of the end of social progress (our sons and daughters will not stay better than us).
- ▶ Economic resources are not enough we need someone to produce them without using them: migrants and underserving people.
- ▶ Prison tool of exclusion against rhetoric of social reintegration
- ▶ Exclusion of migrants and their selection: discrimination in the access to social benefits
- ▶ Exclusion of undeserving citizens

Defending rights through law

- ▶ Legal counseling within prisons
- ▶ Legal counseling for migrant about defending their legal status and discrimination (access to social incomes)
- ▶ Second level of legal counseling with local administration
- ▶ Activity against labour exploitation with public prosecutors: defending victims
- ▶ Amicus curiae Human Rights European Court and Constitutional court
- ▶ Legal assistance to prisoners and migrants

Migrants's precarity of status

- ▶ Labour permit: impossible => Illegal staying
- ▶ EU long stay permit: very hard => precariousness of staying.
- ▶ Recognition of refugee status: very long (average 3/4 years, until 5/6) => precariousness of staying.
- ▶ Access to social income: very hard => vulnerability



Migrants' private troubles which must be transformed in legal problems.

- ▶ **Servile inclusion**
- ▶ **Legal and social precariousness**
- ▶ **Vulnerability => Labour exploitation**

Definition of vulnerability (Eu Directive 2011/36/EU against human trafficking Article 2, 2): "a position of vulnerability means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved".