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MIGRATION POLICIES: A SUBSIDIARITY APPROACH

Abstract: The answer to the demand for acquis communautaire, which arises from migration and mobility, should be found in a European subsidiarity approach at all levels. This involves: at the local level looking for solutions to the problems of integration and interculturalism; at the national level, the planning of legal flows; and at the supranational level, the political governance of migration movements including relations with the sending countries. The migration issue demands a multiple answer at both European and national level, but local governments also need to be involved, as they are the first to be exposed to the presence of migrants. Daily issues dealing with such problems as housing, school, jobs, health services, and mobility need the institutional presence of local governance, in symbiosis with the planning of national resources and the stability of accepted international relations between sending and receiving countries in the EU context.

Keywords: acquis communautaire, European subsidiarity approach, migration and mobility.

Overview

The principle of subsidiarity was formally introduced in the European Union with the Treaty of Maasticht (1992). According to this principle, "the Union shall act only and if in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at the regional and local level" and "decisions are taken as closely as possible to the citizen"(Article 5). However, this principle was introduced much earlier in the 1950s by Pope Pius XI.[1] It represented a pillar of the federalist approach to European integration, together with the principles of self-determination, participation and constitutional guarantees, which are deeply described in several textbooks of the European founding fathers.[2] The principle of subsidiarity has also inspired the so-called *acquis communautaire*, starting from the founding of the first European Institutions (1949-1951). It represents the sum of obligations embedded in the Treaties, regulations and protocols of the current European Union. The *acquis communautaire*, which inspired and was inspired by the principle of subsidiarity, measures European identity within the European Union's relations, as well as by individual citizenship of the Union. Non-European citizens recognize in the *acquis* the 'standard of civilization' of Europe and the basis of a common European identity. "The *acquis* as a proxy for European values": as the whole body of rules, political principles and judicial decisions which new Member States must adhere to, in their entirety from the very beginning of their membership.[3]

The *acquis communautaire* played a pivotal role in EU accession negotiations, since it represents a preliminary condition for the eventual inclusions of new member states and, at the same time, a source of penalties for those member states who may violate it. In particular, according to article 7 of the Treaty of Lisbon, the European Council can prevent an EU country from exercising certain voting rights in case of derogation of the fundamental principles of *acquis communautaire*.

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[1] Pio XI, Enciclica "Quadrigesimo anno", 15 maggio, 1931.
[2] See, among others, Heim, M. (2004), *Introduction au federalism global*, Aracne Editrice, Rome.
[3] Silvia J. S., Sampson A. B. (2003), A*cquis communautaire and European Exceptionalism: a Genealogy*, in *ACES Working Paper. 1*, Johns Hopkins University, Washington DC.

However, the *acquis communautaire* is not only the burden of obligations and duties that weighs on states applying for EU membership, it also means the chance to benefit from the guarantee of democracy, social stability and economic development and trade that the European Union offers to those who belong to it. As happened to South-European countries, who applied to be part of the Union, immediately after the fall of their military regimes, the collapse of the Berlin Wall and the dissolution of the Soviet bloc, the opportunity was also given to Central and Eastern European countries to access the European Union.

The *acquis communautaire* represents a new frontier (open or closed) to migrants and refugees according to the Dublin Agreements and their revisions. The external frontier of the European Union was primarily considered as a commercial frontier in the context of the development the European Common Market: today it makes access possible to the entire *acquis communautaire*, to European identity and to EU standards of civilization.

Therefore, Europe's borders are not geographical or physical boundaries, but essentially political borders, because the community project has become more and more political. In addition, the capacity for integration of the European Union does not depend on the geography of Europe, but on its ability to expand itself. Within this framework, the passport for countries asking to enter the European integration space and for people who want to enjoy the benefits of the free movement area is represented by the principles of the *acquis communautaire*. The European Union will be able to expand as far as the *acquis communautaire* is respected and only if it is incorporated effectively into national legal orders, but especially if it is integrated in a transparent and coherent way in the code of values of their people.

European borders are also moral boundaries: the frontiers of justice and human dignity, the frontiers of freedom and recognition of diversity. Therefore, the political frontier of the European Union is the *acquis communautaire* and the enlargements of the European Union represent the opening of this border. The answer to the request of *acquis communautaire*, which arises from migrant mobility, should be found in a European subsidiarity approach: at the local level, the solutions to the problems of integration and interculturalism; at the national level, the planning of legal flows; and at the supranational level, the political governance of migration movements including the relations with the sending countries.

This recalls the idea of the European policy of proximity and neighborhood, correctly advocated in a very recent past and unfortunately too quickly neglected in the European Union. Access and entry to the Union is a choice and a priority for thousands of people coming from very different extreme situations of survival involving poverty, prosecution, war, ecological disaster, crude religious and political conflicts.

As a consequence of this process, "*La folie des frontières*"[4] described during the World War era has turned into the "*Eloge des frontières*", proposed as a loyal double-face system "attestant qu'aux yeux de chaque partie, l'autre existe pour de vrai".[5] According to Regis Debray, author of the "*Eloge des frontiers*", borders are not necessarily bad *per se*, but they are needed, in the extent they help to define, defend and reaffirm the identity of the other: in a globalized world with an absolute lack of frontiers, which are meant to act as definitions and signs of recognition, identities are more blurred and therefore less recognizable, compared to the past.

Currently, increasing numbers of refugees and migrants take their chances aboard unseaworthy boats and dinghies in a desperate bid to reach Europe. Every year these movements continue to exact a devastating toll of human life: around 30,000 deaths since 2000, many of them crossing the Mediterranean.[6] Five million refugees are currently living in the Mediterranean region: mostly in Turkey (2 million), Lebanon (1.2 million) and Jordan (0.7 million); around 300,000 in France and Egypt; 100,000 in Italy (source UNCHR). Asylum seekers are mostly directed to Germany, followed by Italy, France, Sweden and Hungary. People requesting international protection, mainly come to Italy from Nigeria, Pakistan, Gambia and Senegal.

The case of Syria is particularly emblematic. Until 2011, the number of people under international protection was very limited and equal to only 34,000 units. During the last five years, characterized by civil war, the number of people who have been forced to leave their homeland has sharply increased,

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[4] Chevalley C. and Glady M. (1934), *La folie des frontières*, in *Ordre nouveau*, vol. 1, Le Château, Paris.

[5] Debray R. (2010), *Éloge des frontières*, Gallimard, Paris.

[6] Wihtol de Wenden C. (2018), *Atlas des Migrations*, Edition Autrement, Paris.

reaching 11.7 million individuals at the end of 2015, representing more than half of the total Syrian population, equal to 20.7 million individuals in 2010.

These figures depend on various situations of war and as a consequence extreme poverty around the world, but they also reflect the inability of policy actors in finding effective solutions to stop conflicts and foster stable and lasting processes of peace. The magnitude of the phenomenon of forced migration makes any immigration policy a modest palliative. Instead, cooperating to prevent and reduce the causes of forced migration, in the light of the *acquis communautaire*, appears the only durable solution to reduce the number of people who leave their country to ask asylum elsewhere.

What happens today in the Mediterranean region, thus, is not only migration produced by the economic and political crisis in origin countries, but it is a structural mobility of persons demanding to enter the *acquis communautaire*, the values and the culture of the Union. This demand expresses a need for mobility, whose alternative is the "Europe forteresse" and the closing of European borders : «La seule frontière que trace l'Union Européenne est celle de la démocratie et des droits de l'homme» (Laeken Declaration, 2001). «L'Europe ne doit pas fermer ses frontières à l'immigration et prendre en compte cette réalité dans la définition de l'identité européenne en construction» claimed Kofi Annan in his speech to the European Parliament in July 2004; the same Kofi Annan who created the High Level Dialogue in 2006 and the World Forum on Migration and Development with Peter Sutherland as *General Representant.*

Besides the success of the *acquis communautaire* as the substantial frontier of the European Union over the years, it is important to emphasize an important element that links the *acquis communautaire* to the concept of sovereignty. The progressive formation of the *acquis communautaire* has been associated with the gradual reduction in the sovereignty of nation states. This decrease in sovereignty, however, has not always been directly transformed into something equivalent at the supranational level – as should have been in compliance with the principle of subsidiarity, which is one of the fundamental principles of the European integration process. This is likely to be the origin of the political and economic crisis affecting Europe today: the dominance of the markets and the inability of European institutions to implement a multi-level or federalist approach.

According to Otto Schmuck, multi-level governance can be described as the dispersion of authority away from central government, upwards to the supranational level, downwards to subnational jurisdictions, and sideways to public/private networks. [7] It is the reorganization of authority in the European Union, an important policy-creating process in which authority and policy-making influences are shared across multiple levels of government: subnational, national and supranational. While national governments remain predominant participants in EU policy making, control in various policy fields has slipped away from them. This readjustment of the distribution of authority is supposed to be assured by a participation process at different levels of government, and by an "*exacte adéquation*" of competences and responsibilities of the different levels.[8]

In this context, if the community is willing to share the burden of setup, cultural and economic subsidization applied to migration implies that attention should not be placed on either the destination countries or the migrants themselves. They are simply actors in the tension which is generated and are at times susceptible to criminality, exploitation of labor, ignorance, and to the distorted communication which has a tendency to spread false hopes. Subsidiarization means seeing compatibility as a way to resolve conflicts. A Muslim will remain as such, just as a Christian will remain as such until there is a process of comparison and of exchange through which elements of compatibility are recognized and are superimposed over the motives for incompatibility. This transition is also possible and enforceable in the societal scope. It is not illusory to affirm the role of migrants as actors in this process; actors who could bring social and cultural compatibility. Migrations are an important growth phase in the process of subsidization between

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[7] Schmuck, O. (2018), *Multi-level governance: a method to solve problems and to minimize conflicts*, in *The Federalist Debate*, n. 2, Einstein Center for International Studies, Turin.

[8] Marc, A. (1996), *Europa e federalismo globale*, in Raimondo Cagiano de Azevedo (ed*.), Il federalismo globale,* Il Ventilabro Ed., Firenze.

different cultures and economies, some already fundamental in the European community, while others are undergoing constructive dialogue.

European society has changed deeply in the past century: two world wars, the cold war and post-1989 marked a continent with no real attraction for migrants. frontiers began to evolve with the open exchange of people, ideas and commerce. In an expanding EU, citizens from Bulgaria, Italy, Portugal, Poland, Romania, Spain are no longer considered migrants but rather European citizens in the regime of free mobility. It now appears necessary to regulate frontiers in view of the regulation of migration.

In the contemporary history of global development, the EU has changed its political and economic geography, more than its physical one. The so-called European model will return to probably expand even more, despite the current difficulties. Its rules must evolve in a more complex direction both from the institutional point of view and the economic and social one, that is a subsidiarity, constitutional approach as previously described.

The migration issue demands a multiple answer, at European and national levels, but local governments also need to be included, being the first dimension exposed to the presence of migrants. Daily life issues such as housing, school, job, health services, mobility, need the institutional presence of the local powers; and at the same time the planning of national resources and the stability of accepted international relations between sending and receiving countries in the context of the EU.

This approach implies a concept of multiple level citizenship, today formally recognized in a very asymmetrical way in each single European country. However, even in this case the position of migrants is a very explicit example of what is, under a theoretical point of view, logical and what is, under a political point of view viable. A genuine motion to reduce this distance is the way forward for new migration policies in Europe.