



## **The migrant crisis – thoughts and concerns\***

José de Faria Costa, *Provedor de Justiça*

Summary: 1. Introduction. 2. The migrant crisis – reality from which Europe can not escape. 3. The role of the Ombudsmen and National Human Rights Institutions. 4. Conclusion.

### *1. Introduction*

The hyper complexity of our time has been demonstrated throughout the last decades in various forms, shapes and sizes. We must recognize that the cultural and democratic pluralism in which we live in – expressed in different values, perceptions and visions of the society – enriches us as a person and, at the same time, as a community. But then again, that same diversity confronts us with challenges that not only we can not ignore, but, above all, challenges that we have to face, otherwise we put in danger the founding pillars of our community and our State.

In recent years, Europe has witnessed a constant and increasingly high number of persons that, putting at risk their own lives, seek, for themselves and for their families, peace, shelter and hope for a better present and a better future. Thousands – men, women, children, old people – have perished in their

---

\*This lecture was presented on December 11<sup>th</sup> at the *Annual Conference on Cultural Diplomacy*, organized by the Institute for Cultural Diplomacy in Berlin. The text had the collaboration of Ricardo Carvalho, legal adviser in the Cabinet of the Portuguese Ombudsman.



efforts to reach the Mediterranean shorelines, others had the fortune to stay alive, just to end up in a camp where, not infrequently, the respect for their dignity as human beings is not present.

In face of this reality, one thing is undeniable: in our Europe – a land of freedom, equality and solidarity – not only there are human rights that are not being protected, but, more than that, those same human rights are being violated and trampled, without any justification.

Let us take a moment to realize what we are talking about when we make a reference to human rights. As we know the endless and massive use of a concept or a value or even a word means that, after a while, its intrinsic and real value is reduced to zero. That is to say, this is what happens when an important value or concept that represents a deep meaning, proves to be indifferent, absolutely indifferent, to the community. This is the notion of “decay by excessive use” or, probably in a more raw wording, “decay by corruption or abuse”.

For varied reasons, the truest and complete meaning of human rights appears, sometimes, to be lost, leading to a kind of communitarian numbness, a certain kind of detachment from reality, only to find that these human rights – the fundamental building blocks of our society - are outrageously violated on our doorstep.

## *2. The migrant crisis – reality from which Europe can not escape*

A democratic and constitutional State, founded under the rule of law, has, as I already mentioned, its core foundations in human dignity and human rights. This is the rational that unites believers and non-believers, liberals or conservatives, people of all genders, races or opinions. Over the last years the migration issues have been very present in the concerns of those who like us,



have under our mandate and under our priorities, the responsibility to reach the highest possible state of wellbeing for the people. This means that the migration issues are not new. They have been existent in the borders of Europe in a very stressing way for a very long time. It is not difficult to recall the challenges faced – and please let me underline this – the challenges that still are being tackled by Greece, Italy and Spain, in the view of a massive pressure created by the necessity of receiving so many people that find in the Mediterranean route a way to reach security. Unfortunately, for many people that took this risk, the journey had the maximum price: their lives. Despite various efforts - it is fair to accentuate this - it is also clear that not enough has been put in practice in order to stop, or at least mitigate, the suffering of so many. The tragic events of Lampedusa in 2013 seem now very distant. It is impossible not to wonder how many lives could have been saved if only this great continent, with its various national diversities, could get more effective in designing common policies in order to better prevent the loss of lives and, at the same time, create conditions to accommodate these persons within its borders in a more humane and secure manner.

According to the United Nations reports we live in an era with the largest displacement of people since World War II. In fact, all over the world, more than fifty million people had to leave their homes or their countries of origin due to war, famine, disease or other circumstances that put in danger their security and wellbeing.

In this context, we can sustain that, in present days, Europe faces what we can call a perfect storm. On the one hand, the proliferation of conflicts in the basin of the Mediterranean, in the Middle East and in Africa led to a large displacement of people. On the other hand, Europe has not yet recovered from the financial, economic and social crisis that shook its foundations. In addition, the recent and tragic events occurred in Paris, placed on top of the social and political agenda the subjects of security and the fight against terrorism.



However, still, there are thousands of people that, every day, not only now through the Mediterranean route, but also from the east, reach the European Union's borders. Some have the possibility to enter, others do not, without any possibility of disclosing the criteria or the reasons for that difference in treatment.

It is clear that the system that presently is in place does not give the adequate answer to several key issues: preservation of life and respect for the human rights of migrants; security; sustainability.

Regarding the first – preservation of life and respect for human rights – it is impossible to overlook the fact that the lack of legal entry channels to the European Union, even in the case of asylum seekers, has doomed those seeking to reach safety to the vile appetite of human traffickers. In most cases the absurd irony of this is expressed in the fact that a simple (and secure, I might add) airplane, boat or train ticket is much less expensive than the price that people in an extreme situation of need have to pay to someone that takes advantage of their situation. To address this issue it is imperative that the European Union establishes strong links of cooperation with the United Nations and with third countries in order to combat human trafficking, providing safer and legal ways through which people can submit their case.

Another key issue is security. In face of the chaos and drama lived in presently in camps and in our borders, it is not possible to assess in a secure and effective way all the claims of asylum filed. It is quite paradoxical that those who more strongly contest the creation of humane conditions to receive migrants and to assess their situation are the same ones who have the more security focused speech. As we all know, chaos and disorder do not provide the adequate conditions to reveal the true motivations of a person.

Finally, in regard to sustainability, it is obvious that the international community needs to fight the root causes that are creating this large displacement of people, because, otherwise, not only the problems will escalate,



but also the resources needed to cope with them will be much higher. Issues like war and conflict, famine, terrorism and climate change are redesigning the world map with consequences not full yet known or even anticipated. For this reason it is vital that Europe assumes a leading role in addressing these fundamental problems of our time and of our future.

In conclusion of this point of discussion I would like to stress that it is almost self-evident that, despite the complexity of Europe's challenges, the answer can be found in having a human rights approach to the issues underlying them. The respect that we all must have for our common cultural heritage – anchored in the respect for human dignity – will provide us with better paths, better policies and better strategies, not only treat people with respect for their fundamental rights, but also to provide a more secure environment for all citizens.

### *3. The role of the Ombudsman and National Human Rights Institutions*

Assuming my condition of Ombudsman and, at the same time, the Portuguese National Human Rights Institution, allow me express my views on the role that these institutions may play in the work that all the communities and all the States have to undertake to solve the pressing matter of migration.

The international community recognizes the National Human Rights Institutions accredited with A status a key role in the effectiveness of national, regional and international systems for the promotion and protection of human rights, recognizing them as essential partners in international organizations. This importance is especially evident in the United Nations, where, increasingly, has been recognized a specific set of prerogatives that National Human Rights Institutions have and may use in order to achieve a better standard of living for all citizens.



Under the Law, the Constitution or under International Treaties, the Ombudsmen and other National Human Rights Institutions may take a significant part in the fulfilment, by the States and the international institutions, of their obligations regarding the respect of migrant's human rights, and simultaneously, contribute to safer and stable community.

In fact, the wide capacity of intervention – nationally, regionally and internationally – combined with the essential features present in the creation of the Ombudsman's institutions and National Human Rights Institutions like their autonomy and independence, set a scenery that can prove to be very relevant in the shaping of new policies and practices. The work developed in close proximity with the people that reach our borders and suffer, and with non-governmental organizations that try to ease their pain, is extremely important to point out the failures of the system and to demand from the authorities a correct behaviour that respects human rights. On the other hand, the regional and international representation provided to the Ombudsmen and National Human Rights Institutions, signifies that, either individually or jointly, these independent State based institutions have the possibility to encourage policy makers in having a human rights approach to these stressing issues.

#### *4. Conclusion*

In conclusion, I would like to end this conference with a final thought and, if I may, a strong appeal.

It is true that we live in a time where the absolute many times takes over the rational reasoning regarding the complexity of life. Too many times the reactions or answers given to hard and dense questions are simple, or simplistic, and, therefore, tend to be unfruitful, or, even worse, tend to intensify the problems. It is crystal clear that the migrant crisis that Europe is facing will not



**O PROVIDOR DE JUSTIÇA**

Na defesa do Cidadão: perceber para prover.

be solved with walls of barbed wire surrounding our borders. It is crystal clear that the security of our homes will not be obtained at the expense of crushing other people's or even our own fundamental rights.

In the face of so much pain, in the face of the anguish of thousands and thousands of people fleeing war, hunger and certain death, those, like me, who assume public and political responsibilities, have to reaffirm, by our actions, the strong ethical commitment that is the anchor of our oath: the protection of human rights and the preservation of human dignity.