

Admission Policies in Europe

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Everywhere in Europe, the right to migrate is threatened : pressures of the public opinion, :racist violence in Germany, debate on identity in France, fears of southern European countries towards their extra-European neighbours. So, tougher decision-making processes have been decided and implemented :reform of asylum right in Germany (1993), Pasqua and Debre laws in France (1993 and 1997), followed by the so-called consensual Chevènement law (1998), visa system and expulsions of illegals in all European countries, undocumented problems in France, Spain, Italy and Portugal.

I - BORDER CONTROL :

Border control is a very unclear notion and it raises the contradiction between States and Markets. According to historical and geographical specificities proper to each country, to the interpretation of the UN Convention on asylum of 1951, to the variations of nationality rights, admission policies strongly differ in spite of a consensus on border control.

Most European countries have decided to stop their immigration flows of labour force in 1973-1974, preceded by the United Kingdom in 1962. Most new immigration countries like Italy, Spain Portugal and Greece have adopted immigration policies during the eighties. They are all differing so with the United, Canada and Australia which are combining an incitement to selective or family immigration with repression at entrance.

In Europe, the selection at entrance has been mostly decided before crossing the borders : the visas system implemented since 1986, the carriers sanctions are reinforcing the fortress in a period when paradoxically tourism and travel are encouraged. Most illegals are entering legally and become overstayers since the generalisation of passport holding has been spread in former communist and in Third World countries.

Moreover, the crisis has changed the types of immigration wanted : brain drain more than workforce and selected categories who are submitted to the opposability of employment. While one can observe a diversification of categories of immigrants (family reunification, asylum seekers, students, ethnic migration, qualified workers, Europeans, seasonal workers), the access to membership is tightening : debated on nationality codes, access to welfare states, opening or closing local political rights to extra-Europeans. The more the welfare is opened, the stricter the control to entrance becomes.

However, the legitimacy of control is not so strong as it may seem, in spite of the converging European positions on it. It may appear as an illusion in a context of free exchanges, of globalisation and of transnational networking. Control has a cost, economic but also political. Alternative policies, proposed or implemented are often an underground practice (quotas, bilateral agreements, legalisation processes) hardly announced to public opinions. The philosophy of control is not debated, because it may bring some unexpected effects like long term settlement if immigrants are losing the freedom to enter, come back and enter again. It is also a selection of populations by money, networks or colour of the skin ;

Most European countries are now progressively abandoning the objective of zero immigration because they know that it is impossible, due to Human Rights Conventions, asylum right, family reunification principles and labour markets needs, but they do not dare to recognise it frankly facing with public opinion. In spite of border closure, the flows are lasting and European responses are mostly dissuasive, reactive and repressive, even now if there are some hesitations or confusion.

Everywhere in Europe, mass migration is considered as an historical exception, with a provisional stay and which can be easily expelled. The abandon of nation-states sovereignty on a European border control is not always easily accepted. The logic of economics is stronger than the logic of politics. Perhaps it would sometimes be wiser to open than to close, and return policies have largely failed since mid 70's. There is always some illusion to think that immigration can be totally controlled, even if the principle of control is scarcely contested in Europe.

Facing with such a situation, harmonising procedures of entrance and stay is a necessity in Europe, because the absence of harmonisation is a strong pull factor from a country to one another : legalisations in southern Europe, discrepancies between asylum procedures and nationality codes, diversity of concern about Mediterranean or eastern Europe : each country in Europe has its extra-European neighbour and its attractiveness due to its labour market, its salaries and its welfare. Some countries, like Germany are victims of the prosperous image they give of themselves out of Europe, and other images, like Human Rights or culture can be also attractive. So, burden sharing has been proposed by Germany and Austria. The main obstacles to more harmonisation is the diplomacy of Nation-States, their growing dependence towards public opinion, the discrepancies between nationality codes and the strength of national sovereignty in a field so rich in symbols : the

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intergovernmental policy at European level is still up-to-date in spite of the Treaty of Amsterdam.

II - EUROPEAN TOOLS :

Immigration policies are part of the intergovernmental disposal issues from European agreements, adopted first with Schengen and then by all European countries (Trevi and Dublin), before the transition from the Third pillar of Maastricht (intergovernmental) to the first one (communitary). But this harmonisation policy is challenged by the interests of each European State, by the existence or not of a colonial past, by the identification of an immigration risk by the public opinion.

1) Agreements and treaties :

According to the Schengen agreements (June, 14th, 1985), France, Germany and Benelux have defined the notion of common external borders and have decided of the suppression of internal border control while implementing a policiary and judicial co-operation towards people entered illegally and overstayers. On June 19th, 1990, a convention of implementation is settled, framing a kind of European laboratory for border control, circulation, computerised system of information on illegals (SIS) and international judiciary co-operation. Italy (on november 1990), Spain and Portugal (June 1991), followed by Greece have joined then the Schengen club, then Austria and Finland (1995). Readmission agreements have been added to the disposal between European countries and extra-European ones : they oblige the State by which illegals have entered in the Schengen area to take them again.

Since March 1996, European citizens are not submitted to internal border control in the Schengen space. But it brings another internal border : the one between extra-European residents, obliged to hold visas, and europeans, beneficiary of the freedom of circulation, settlement and work.

The Dublin Convention, signed on June 1990, determines the state responsible for the examination of asylum seekers. It tries to fight against two types of situations : multiple asylum seekers, applying to several countries and asylum seekers sent back from a country to another one, when no country considers itself responsible for the application.. It reasserts the principles of the Geneva Convention of 1951 and its enlargement (1967) and its implementation by each country's national law.

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Other notions have been added to this disposal : that of safe country of origin, from where nobody can ask for asylum, and that of manifestly unfounded demand. Sanctions can be delivered to air companies carrying illegals. The treatment of asylum has been fastened to avoid a long term settlement of potentially refused applicants. The Dublin agreements have been implemented since 1997.

2) Other resolutions have been adopted for admission policies, such as harmonisation of family reunification (June 1993), employment (1994), long term residents status (1995). But some discrepancies are still alive, such as humanitarian situations (decided in each country with discretionary solutions), as well as some professional categories forgotten. The effectiveness of resolutions and criteria is problematic according to some states and such policies are overall inspired from restrictive positions. The European frame exists, but each state has the mastership on its implementation.

3) Fighting against illegal migration :

According to the CIREA (on asylum) and CIREFI (on trafficking and expulsion practices), the Home ministries of European countries have adopted computerised information systems of control since 1991. Since October 1994, readmission agreements have been signed. But there too, some fields have been forgotten, such as illegal work, expulsion decisions, choice of the country of destination. The absence of any communitary frame for such policies, the existence of practical obstacles to more harmonisation let a large autonomy to the states.

A paradox arises in most European countries. Inside the nation states, the most opposed opinion groups to the europeanisation of police and control are also the strongest supporters of national security policies, stressing on the challenges to sovereignty brought by Europe. Between the nation states on the contrary, the co-operation of police escapes from any democratic control. The internal and external order are so in conflict.

III- NATIONAL POLICIES :

Some trends are appearing :

- the strength of restrictive policies inspired from public opinions which are hostile to alternative immigration policies (about border control, quotas, co-operation with the South) and to more europeanisation ;

- the effect of restrictive policies in western European countries which lead to a decrease of regular entrance and to asylum applications since 1993.

1) A decrease of legal entrance :

a) France :

In France since 1974, the immigration mastership has been a major concern in decision-making process. Several categories are involved :

- economic migration which only involves Europeans, seasonal workers and qualified people escaping from the opposability of employment ;
- family reunification for people married with foreigners or with French and their children
- asylum seekers, students and trainees.

All these flows have represented a stable figure of entrances since mid eighties (100 000 per year : 95 000 in 1995). They are unavoidable in spite of the stop of 1974 because they are protected by the law and by international agreements.

Other flows are considered as undesirable, even if they are pulled by the labour market attractiveness : the illegals for entrance, for stay or for work.

The legal flows are compensating the new French figure (100 000 per year : 92 500 in 1995, children born in France from Algerian parents, children of other origins becoming French at 18 years, people married with French, naturalisation and reintegration in French citizenship).

For twenty years, the French immigration policy has produced a plenty of legislation (laws of 1981 on entrance and stay, law of 1984 on the ten years residence card, law of 1986 (« Pasqua law ») on entrance and stay, law of 1989 (« Joxe law »), law of 1993 (« new Pasqua law »), law of 1997 (« Debré law ») and law of 1998 (« Chevènement law », all on entrance and stay, coupled with several measures against illegal migration and work (1989) and legalisation of illegals (1982 and 1998), as well as with the reform on asylum (OFPRA reform of 1989 and constitutional reform of 1993 to include the Schengen principles).

In spite of recurring debates on uncontrolled migration, the foreign population in France is stabilised around 3,6 millions (6,3% of the total population). Half of entrances are provided by family reunifications, but we are observing, but we are observing a fall of immigration flows and asylum seekers entrances (these ones from 28 000 to hardly 20 000 from the beginning to the end of the eighties). However, the « zero immigration » objective (according to Pasqua's formula) is a misleading scope.

b) Germany :

Like most European countries, Germany has stopped its migration of workers in 1973. But it has lately recognised itself as an immigration country and it has tried to use return as a tool for flows mastership.

After the peak of entrances, due namely to asylum seekers until 1993 and to aussiedler, Germany has passed from 5 to 7 millions foreigners, without including 2,5 millions of aussiedler settled since 1989. Since the reform of 1993 on asylum right (article 18 of the Fundamental Law), asylum flows are reaching 125 000 per year, out of 800 000 annual entrances. The most represented nationalities are Turks (2 millions), former Yugoslavs (one million), Italians (500 000), Greeks (350 000) and Polish (250 000).

c) United Kingdom :

Since 1962, The United Kingdom has closed its borders to applicants to settlement. The majority of its immigrants are providing from Commonwealth countries and the law of 1948 has facilitated their access to entrance and stay. Among the 3 millions of so-called « non whites » living in the United Kingdom, there are almost 500 000 Pakistanis, 850 000 Indians, 163 000 Bangladeshis. The 1981 reform on citizenship has put an end to the automatic access to citizenship opened to them. But Commonwealth members have a better status than other foreigners, excepted for Europeans, even if this status is highly hierarchised. Asylum entrances are higher than in France (81 000 in 1995). The last White Book of 1998 of the Home Office (« Fairer, Faster and Firmer. A modern Approach to Immigration and Asylum ») reinforces the restrictive trend.

d) Benelux :

In Belgium, foreigners represent 9 % of the total population and are reaching one million, with a majority of Italians (25%), Moroccans (16%). In the Netherlands, the flows are reaching 80 000 per year in a stock of 850 000, with a decrease of asylum seekers applications(21 000 in 1996). In Luxembourg, foreigners represent 33 % of the total population (150 000 settled) with a majority of Portuguese, followed by Italians in a country which is strongly dependent from foreign labour force.

e) Southern Europe :

All former emigration countries have become immigration ones. Since the end of the eighties, Italy counts one million foreigners with a very diversified population : Europeans (15 %) and the so-called extra-community ones among whom Moroccans is the biggest group. Two laws (1986 and the « Martelli law » of 1990), followed by the legalisations of illegals and the delayed implementation of the Schengen agreements (September 1997)

characterise the Italian framework. Asylum has strongly decreased since 1991 (from 25 000 to 17 00 per year to-day).

Spain, with half a million of settled foreigners and a majority of Europeans and Latin Americans and Moroccans (75 000 in 1996) has a very attractive labour market, like Italy, in spite of the progressive settlement of its immigration policy and the implementation of the Schengen disposal (1996).. Massive legalisations, bilateral agreements of readmissions with Morocco and the new status of foreigners (1996) have rapidly increased the consciousness of the immigration question.

Portugal has met, like Spain, a large decrease of its emigration since 1974. The freedom of circulation of Portuguese, set up with the its entrance with Spain in the European Union in 1992 has changed the image of Portuguese immigrants in Europe, formerly viewed as illegals. Portugal has become an immigration country with 170 000 persons in 1995 and a majority from its former colonies (PALOP : « pays de langue et d'origine portugaise »), 30 % Europeans and 25 % from Latin America. Several legalisations have occurred like in Spain and Italy in the 1990's and a law of 1993 rules entrance and stay.

Greece, with 300 000 foreigners and a tradition of emigration, is confronted with a large migration pressure (80 000 entrances per year and a higher rate of foreigners (10%), coupled with repatriations of Greeks from abroad (Russia, Albania). Since 1991, it has adopted a very restrictive policy including repatriations of illegals, expulsions, repression of illegal work, implementation of a police co-operation with other European partners, justified by its isolation with European borders and its geographic position of buffer zone.

f) Switzerland and Austria :

Like Luxembourg , Switzerland is a country in Europe where the proportion of foreigners is very high : 18 % of the total population, with an important volume of annual and seasonal entrances, due to the attractiveness of the labour market and to the structural place of immigrant workers.

Traditionally, this country is also a welcome place for asylum seekers with 17 000 applications in 1995. In spite of the refusal of Switzerland to enter in the EU in 1993, its admission policies has several convergences with other European countries : liberalisation of entries for qualified and highly skilled workers and suppression of the opposability of employment for them, facilities offered to people who cross the border every day, annual authorisations for family reunifications.

Austria has been for a long time considered as a « second choice » immigration country. But, since the fall of the Berlin wall in 1989, it has become an entrance door from East to West. The number of foreigners has doubled between 1989 and 1993 and now represents 9% of the total population. This former welcome country for eastern refugees has also received refugees from overseas according to a visa system settled since 1972. In spite of a strong decrease of refugee status recognition since 1990, transitory refugees and migrants have increased since 1989. The foreign population is made of 1/3 western and American citizens, 1/3 eastern Europeans, 1/3 foreigners from the Balkans. Contrarily with Germany, Austria has no equivalent to « Aussiedler » and it has led a very dissuasive policy along its eastern borders. It is also the first European country to have adopted explicitly a quota policy (from 20 000 to 25 000 entries per year, among which the number of refugees accepted is deducted. After its entrance in the European Union, Austria has entered in the Schengen system since 1997.

g) Nordic countries : Finland, Sweden, Denmark

With the lowest proportion of foreigners of all European countries (1,3%), Finland (68 000 foreigners in 1995) is mostly a welcome country for former - USSR citizens (16 000), Baltic and Swedish people who are often themselves former Fins having emigrated and who are to-day returnees to Sweden. Since the 90's, this former emigration country towards the New World has had to face with a very strong migration pressure, namely due to refugees and to returnees. A new training policy with former skilled USSR citizens has been implemented, as well as visas towards former Yugoslavs asylum seekers. The Schengen agreements have been signed by the six countries of the Nordic free market on December 1996.

With more than 1,6 million foreigners (1995), Sweden is an important immigration country for Nordic citizens and refugees. Since 1989, its foreign population has been strongly diversified, due to asylum seekers and family reunifications. Sweden has to conciliate its entrance in the European Union, like Finland, with its belonging to the Nordic free labour market which also includes Norway and Island. Fins are the most important group. The Swedish immigration policy now develops bilateral agreements with Baltic States.

Denmark, a former emigration country during the XIXth century has become an immigration one for seasonals, border workers and refugees. In 1970, it has stopped its foreign labour market, excepted for Europeans and members of the Nordic free labour market.. With 222 000 foreigners in 1995, Denmark has

also be confronted with a remigration of Danish from Greenland and Feroe Islands. Asylum seekers (5 900 in 1995, out of 50 000 statutory refugees) are decreasing now.

CONCLUSION

In spite of specificities due to history and geography of each European State, the trend of admission policies is convergence :

- everywhere in Europe, the border control is considered like a priority objective and the principle of closure to salaried foreigners entrance is maintained, except for Europeans. The right to entrance for family reunification, students, highly skilled workers, asylum seekers, tourists for countries submitted to visas and people dependant from health care has become increasingly restrictive ;
- as for the residence right, it is generally linked more to the length of the former stay than to work, even if this new legitimacy founded on residence is now challenged by the new distinction between Europeans and extra-Europeans. But, in spite of the similarity of principles between European states, discrepancies are maintained between the rights granted : right to stay, residence, social rights, access to work and to citizenship ;

But many divergences are still existing :

- as for the right to entrance, according to the various implementation of asylum rights and interpretations of the Geneva Convention of 1951
- as for the right to stay, there is no homogeneisation of the length of residence cards between European countries, nor of conditions of access to citizenship, to welfare, to work for families entered in the reunification procedure
- the tools fighting against illegals also differ : sanctions against employers, career sanctions, legalisations of illegals, selected categories for entrance, visa practices
- there remain divergences between the europeanisation process and the strong dependance of each state to national policies due to a growing pressure of the national public opinion.

But convergence seems to dominate, in its strong trends (dissuasion strategies) as well as in its weak ones (employers sanctions, illegals and asylum seekers police networking, visa system, expulsions and repatriations, with a rapid increase of europeanisation in the decision-making process.

The Amsterdam treaty of 1997 raises new questions such as the decline of Nation State sovereignty with the transition from the third pillar

(intergovernmental decision making process for immigration and asylum) to the first one (comunitarisation of the decision on this matter) after a five year transitory period. Perhaps it leads to the end of European national immigration policies and thus to the end of citizens' control on decisions in this field. For several years, immigration flows have challenged the traditional categories of public policies and Nation State order : transnational networks, minorities, diasporas, europeanisation of decisions and globalisation of various flows, illegals. Immigration and asylum seekers questions have increased the tension between Human Rights and national sovereignty with minority rights, right to family reunification, asylum and extra-Europeans status, due to some international organisations like the Council of Europe and the UNHCR which are limiting the states autonomy. For how much time sovereignty will resist ? An underground policy may bring many unexpected effects, while a probable depoliticisation of this question may bring some hope.

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