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Politics Maunder, Laws Drag Behind

European Migration Policies: Reconciling National Sovereignty and Human Rights Commitments

Author: Leone Palmeri
Supervisor: Dirk Jacobs

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FORTITUDO ANIMI VICIT IMPOSSIBILIA

Abstract

The conceptual framework underlying this research is based on the premise that human rights are fundamental to the establishment of an equitable and fair society. However, very often, countries' migration policies actually violate some of the fundamental rights described in the Universal Declaration of Human Rights, and the other international covenants that have stemmed from it. The discrepancies between the agreed human rights frameworks and the national policies adopted with respect to migration have created significant contradictions within the various levels of the legal framework. Drawing attention to these contradictions, this research includes a critical analysis of the intersection between State commitments to human rights, local policies on migration and the integration of migrants. In considering the contradictions between the national and the international human rights law, this thesis highlights the importance of the issues related to the protection of migrants' human rights drawing from post-colonial, feminist and Marxist theory. In particular it examines the situations of Belgium and Italy with respect to family reunification and anti-discrimination policies with reference to the legal conditions. It highlights the impact of *de facto* implementation of legal frameworks in the context of the civil and political discourse that has emerged in the past decade during the so called "migration crisis".

Key Terms: Human Rights, Migration, Belgium, Italy, Anti-Discrimination, Family Reunification

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Acronyms and Abbreviations

CIDOB	Barcelona Centre for International Affairs
CoE	Council of Europe
CFREU	Charter of Fundamental Rights of the European Union
EC	European Commission
ECJ	European Court of Justice
ECtHR	European Court for Human Rights
ECHR	European Convention on Human Rights
EMN	European Migration Network
ICESCR	International Covenant Economic Social and Cultural Rights
EU	European Union
FRC	The Research Group Fundamental Rights & Constitutionalism
GCM	The Global Compact for Safe, Orderly and Regular Migration
GERME	Group for Research on Ethnic Relations, Migration & Equality
ICCPR	International Covenant on Civil and Political Rights
IOM	United Nations Organization for Migration
ISTAT	Italian National Institute of Statistics
LGBTQI	Lesbian, Gay, Bisexual, Transgender, Queer or Questioning, and Intersex
MIPEX	Migration Integration Policy Index
MPI	Migration Policy Institute
N-VA	Nieuw-Vlaamse Alliantie (New Flemish Alliance)
NGO	Non-Governmental Organization
OSCE	Organization for Security and Co-operation in Europe
TCN	Third Country Nationals
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNHCHR	United Nations High Commission for Human Rights
UNIA	Interfederal Centre for Equal Opportunities

Introduction

This study begins with a discussion on why human rights and formal commitments made to upholding human rights are so problematic in the context of migration. It then goes on to focus the specific issues relevant to current national migration policies and human rights law in Belgium and Italy, specifically in connection with family reunification and anti-discrimination. An analysis of the characteristics of the two national systems is followed by a discussion of whether these are in line with the human rights covenants that have been ratified by the two countries.

The study focuses on discrimination and family reunification as two of the eight policy areas that are covered by the Migration Integration Policy Index. Those eight policy areas are labor market mobility, education, political participation, health, access to nationality, permanent residence, family reunification, anti-discrimination (MIPEX, what-is-mipex). The MIPEX is a monitoring project on integration that has been set up by the European Commission to compare country performance in the European Union and nine other countries globally.[1]

The choice to focus on family reunification and discrimination alone amongst the eight indicators reflects a need to limit the scope of work. Family reunification is considered one of the most important policy areas given that family life is one of the most relevant pull factors for migration towards Europe. The fact that the enjoyment of family life has had and continues to have a crucial role within the migratory flows that pass through Europe is also one of the main reasons behind this choice.

The paradoxes and tensions that will emerge throughout this research in both the right to family life, to not be discriminated and the State's right to protect its borders are all at the center of my inquiry and are amongst the main reasons for choosing this topic. The current political context that has seen Europe progressively shift towards a Right wing populist agenda and that has seen the strengthening of nationalist feelings has also rendered these two human rights extremely important when considering the integration processes that migrants go through in their every day lives.

[1] Through 167 indicators used to measure the effectiveness of integration policies in eight different policy areas, MIPEX provides an online tool for its visitors with interactive and didactic information and "create[s] a rich, multi-dimensional picture of migrants' opportunities to participate in society" http://www.mipex.eu/what-is-mipex

With this research, in fact, I paint a picture of the Belgian and the Italian framework for anti-discrimination and family reunification as a way of aligning the political and legal discourses so to highlight the possible discrepancies and differences between the volatile political realm of rhetoric and power and the theoretically stable and rational framework of the rule of law.

The core sources from which this research draws information are UN declarations, European conventions, as well as national policy documents, and reports from the European institutions and civil society organizations.

Because this research is also aimed at contributing to the European discourse on migration and has the objective of integrating the information that is currently available on the MIPEX website there will also be a general focus on the period between 2015 and now.

The role of the State, even if one amongst many factors, "is vital because it sets the legal and political framework within which other aspects of integration occur" (MIPEX, methodology). This is because of the structural obstacles that are enshrined in the shape and material that constitutes the architecture of our society, and that produce complex relations of inequality.

In the first chapter I approach human right and migration in order to highlight the importance and relevance that these have, especially with the progressive shift to the Right that the European context has witnessed. I bring forth social theories in relation to the analysis of contemporary European context in order to show how fundamental the relationship is between migration and the enjoyment of human rights with regards to integration processes and the protection of vulnerable groups.

In the second chapter I consider the national legal frameworks with regards to family reunification and anti-discrimination of Italy and Belgium. In so doing, I contextualize the legal structure of both countries within the political and mainstream discourse in order to highlight the discrepancies and the issues that the contradictions between state sovereignty and the international human rights law have produced.

In the third chapter I propose the Migration Integration Policy Index's analysis of the two countries in relation to the policy areas of interest in order to provide a representation and a comparison of Belgian and Italian policy that has been proposed and used on institutional level both within the political and the academic realm. Because of its validity and relative neutrality, I use MIPEX's evaluations of the policy areas and of specific changes in legislation as a point of departure and benchmark against which to consider the various contradictions that emerge in the negotiation of power between the national legal framework and the human rights framework.

In the conclusion I highlight and expose the various degrees of contradiction and paradox that dominate in the relationship between State sovereignty and the international human rights framework in relation to the right to family life and family reunification and the right to not be discriminated. On the basis of the analysis of Belgium and Italy's policies that have been developed in the attempt to comply with the international and European human rights framework, I also highlight the internal tensions that are at play between the individual human rights that are discussed this research in order to show the complexity and the difficulty that can emerge in the negotiation between State power and the universality of the international human rights law.

Methodology

The methodology used in this research is that of a comparative study, focusing on two countries, their national legal frameworks and public discourse on the two selected topics, family reunification and discrimination. It is based on a desk study that has reviewed the literature, legal texts and official documents from Belgium, Italy, the European Union and selected United Nations institutions as well as from local NGOs and civil society organizations.

Data and information have been drawn from inter-governmental and government policy documents and official statistical sources including key UN declarations, and European reports and conventions. In particular, the research utilizes the data and draws extensively on the analysis from the Migration Integration Policy Index (MIPEX, methodology). The gathered data has also been corroborated with semistructured interviews with key informants from the GERME Institute and the Faculty of Sociology of the Université Libre de Bruxelles as well as visits to institutions such as UNIA and the European Parliament in the city of Brussels in order to ensure the correctness of the information compiled.

In order to insert this research within the broader context of migration, I use the MIPEX as a benchmark and standard setting tool in order to asses the validity of the Belgian and Italian legal body with respect to human rights and as a point of reference when critically analyzing the shortcomings of national policies. I also use and refer to the Universal Declaration of Human Rights and the European Convention on Human Rights as the two core bodies of international law that sustain the structure of the human rights framework in the contexts I consider.

This work is a continuation of activist research in the field of migration, and is intended as a way of contributing to the deepening of the human rights discourse within the European context. It also reflects a strong belief in the need for researchers to be actively involved in the field of study and to work along the Marxist model of praxis so to ensure that the articulation of ideas and the proposal of different layers of analysis may be used and may benefit those who are its subject.

I propose my research in the attempt to highlight two main issues. First, I submit this research as a testimony of the circumstances that deny migrants their fundamental human rights. And as a protest of

the conditions that coerce migrants within the margins of society, and that preclude benefits, rights, and respect that are granted to each citizen of this world, and that are defended by the UN Universal Declaration of Human rights (1948), and by the international covenants on civil, political, social, economic and cultural rights (ICCPR, ICESCR) that both Belgium and Italy have ratified.

Secondly, I present this research as an instrument of subversion with the objective of proposing its subject as one of paramount importance; one that challenges our ideas about civil, political and socioeconomic rights, about frontiers, and about the Nation State. With this research, I am in fact attempting to continue an existing conversation and dialogue that has been neglected and manipulated by the Italian, Belgian and European political reality for too long, and that in light of the current political developments in Europe is in great need to be renewed.

I also attempt to highlight the virtual exclusion of migrants from the local and international debates over the regulation of their own movements, of their access to civil, political, socioeconomic and cultural rights, and the modes in which their are allowed to integrate within their points of arrival. Without ever having the possibility of actively participating in the discussions and debates that determine the possibilities and the boundaries of their freedom and agency, migrants are in fact entitled to the emancipation of their voices and to finally gain access to decision making processes that directly impact their lives.

I hope this research will demonstrate the illusion behind national borders and the ties that the rise of the nation states and nationalism have created; binding its citizens within territories, demonizing movement across borders, and semantically transforming places of encounter and interaction – such as the Mediterranean – into deadly borders (Palmeri 2016).

In order to remain with the boundaries of this research project and of the European Master's in Human Rights and Democratization, I will let the reader further explore the particularities of the regional systems of Belgium and Italy autonomously if interested in further understanding the nuances of the two national systems. With this research – in fact – I propose a picture of the Belgian and the Italian framework for anti-discrimination and family reunification as a way of aligning the political and legal

discourses so to highlight the possible discrepancies and differences between the volatile political realm of rhetoric and power and the theoretically stable and rational framework.

Definitions of migrants and integration

According to the United Nations Organization for Migration (IOM), a migrant is "any person who is moving or has moved across an international border or within a State away from his/her habitual place of residence. This is regardless of (1) the person's legal status; (2) whether the movement is voluntary or involuntary; (3) what the causes for the movement are; or (4) what the length of the stay is" (IOM, who-is-a-migrant). Throughout the paper this basic definition of migrants holds, but for the most part, when referring to migrants it more specifically refers to migrants who do not have European citizenship. These are also referred to in the EU context as Third Country Nationals (TCN). That is, not to those who belong to a given European country or to another European country, but to a third country outside the European Community. This is because the purpose of this research is to focus on the conditions that non-European migrants face in their processes of integration and in the negotiations that occur between their needs, their human rights and the authorities of the States that are interested in monitoring and regulating the access to such rights.

With respect to integration and migration, the concept of integration applied is that used in the analytical framework of the Migration Integration Policy Index. That is, integration is reached when there are equal opportunities for all, both in social and civic terms. As stated in MIPEX reports by the Barcelona Centre for International Affairs (CIDOB), on behalf of the European Commission and others with funding from the Commission, "In socio-economic terms, migrants must have equal opportunities to lead just as dignified, independent and active lives as the rest of the population. In civic terms, all residents can commit themselves to mutual rights and responsibilities on the basis of equality" (MIPEX, methodology). In this context, the role of the State – even if one amongst many factors – "is vital because it sets the legal and political framework within which other aspects of integration occur" (MIPEX, methodology).

For a more detailed description of the standards for qualification of third country nationals, refugees, stateless people, beneficiaries of international protection or subsidiary protection I make reference to the *Directive 2011/95/EU of the European Parliament and of the Council* from December 13th 2011.[2]

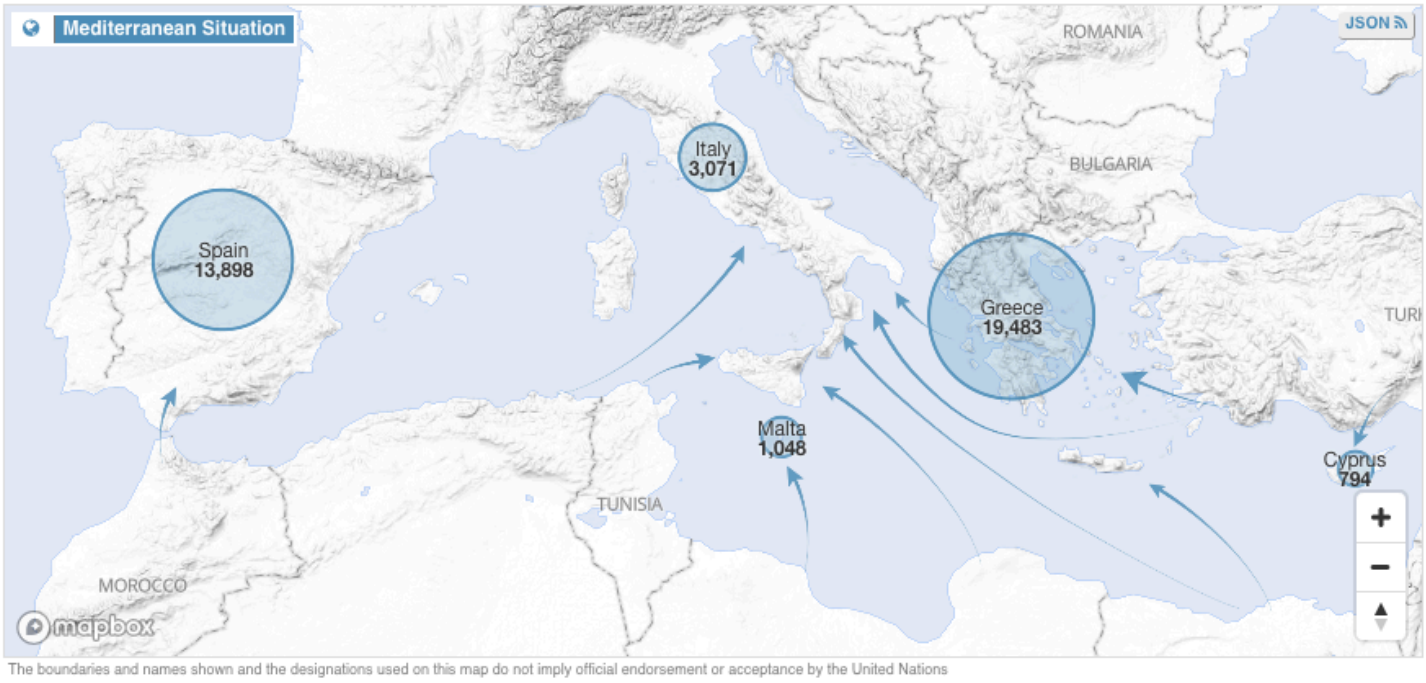

Figure 1. Situation in the Mediterranean. Arrivals by sea since January 2019. From UNHCR website: https://data2.unhcr.org/en/situations/mediterranean Accessed on July 12th 2019

[2] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32011L0095

Why are Human Rights for Migrants are So Problematic?

As noted by the Migration Policy Institute (MPI), "migration and human rights intersect at a number of points" (Grant 2005). By crossing international borders, as a response to push factors that create the conditions for their departure, migrants exit the state of protection that their citizenship allows them. They enter a legal middle ground in which the international and national legal frameworks intersect and often clash; creating gray zones in which migrants are uncovered and unprotected.

While human rights law allows for the free movement of people and the right to leave one's country of origin, "there is no corresponding right to enter another country […] without that state's permission" (Grant 2005). Immediately the tension between the international human rights legal framework and state sovereignty come into focus, and the conflict between national and international law becomes manifest.

The State has the authority to decide who can cross its borders; however, every State also has the obligation to protect the human rights of those people within its borders – regardless of their legal status and of the ways in which they have crossed the frontier. In fact, if a person enters and or remains in a country illegally this does not preclude the State's responsibility to protect the person's basic human rights.

Within the field of migration, human rights have gained particular relevance because of the vulnerability that migratory movements brings upon to those who decide to leave their points of origin. Violations of human rights are – in fact – much more prone to happen during a migratory experience due to the increased vulnerability that is involved in leaving one's point of origin, one's community and the protection that comes from the socioeconomic ties that characterize life in one's homeland.

It is also important to note that the vulnerability and the chances of being a victim of human rights violations are closely correlated to the socioeconomic status of the person in question. First of all, governments tend to look towards migrants that are not within the margins of poverty and that dispose of financial and socioeconomic capital with much more leniency and tend to facilitate their path of inclusion.

On the other hand, the fact that States are expected and required to protect and ensure the basic human rights of all the people living within their territory makes it so that those who are below the poverty line and that are potential burdens on the social welfare system are not as welcome. As a result their migratory path, their inclusion, and protection of their human rights is significantly harder.

Most push factors at migrants' points of origin are rooted in the violation of socio-economic, civil or political rights. Because these violations fall below the European "threshold needed for a successful asylum claim" (Grant 2005:2), migrants' vulnerability within international protection mechanisms is aggravated further. The vulnerability that characterizes migratory movements is increased by this lack of recognition by the European Union.

The narrow scope and downplay of the gravity and seriousness of migratory push factors by European countries reflects the influence of the political and socioeconomic relations that Europe, and generally what is referred to as the West, has inherited from its colonial past and continued through capitalist exploitation. In fact, as mentioned above, exclusion of migrants on the basis of economic status and on the basis of nationality are clear examples of discrimination. They reflect the intent and position that "developed countries" have with regards to allowing people to become part of their society.

Push factors need to be re-framed within a human rights perspective because, if seen through these lenses, the degree to which migratory movements are considered voluntary is significantly different (Grant 2005), as is the degree of responsibility for migration that European States receiving migrants must share.

The language that has been used and developed within human rights law is also an important factor that renders the struggles of those who decide to migrate invisible. The lack of a specific reference to migration and a generic vocabulary aimed at capturing the universal nature of human rights law are factors that impede the human rights of migrants from being considered at levels comparable to the treatment of refugees (Grant 2005). Migrants fall between the cracks of the human rights legal

framework because of the lack in specificity and the general absence of migrants from the protection mechanisms at the basis of the human rights system.

The Global Compact for Safe, Orderly and Regular Migration (GCM) was adopted by 164 Countries in December 2018. It is the first intergovernmentally negotiated agreement that comprehensively covers migration, and might eventually have an impact on States' migration policies. However it is non-binding and developed as a roadmap for the development of migration policies. While it finally provides a point of reference and more precise legal vocabulary on the subject, it has found also strong opposition and will probably have a very slow impact on State policies only through the progressive establishment of case law.

Crepeau (2014) has argued that migrant populations, and more specifically low skilled migrants, are amongst the most vulnerable people because of their invisibility within the political discourse that consistently positions them as passive objects and never as active subjects. Completely ignored in the processes of policy making, and their needs are absolutely neglected by the European polity. Migrants, in particularly acutely vulnerable groups amongst migrants such as undocumented people, low skilled workers, LGBTQI and women often have no protection from exploitation and abuse.

The neoliberal processes of globalization of the world economy have led people to move away from their points of origin and to separate from their family and community nuclei in search of employment. Such a condition further exposes the gravity of the contradictions that characterize the lived experiences of those who migrate. On the one hand the socio economic context seems to pull people apart from each other and impel economic migration patterns. On the other, the State tends to perform a selection of the types of migrants it is willing to accept and thus also chooses the type of economy to foster.

Bassel and Emejulu (2018) in their book on minority women and austerity in France and Britain, articulate the idea of invisibility into the concept of *hypervisibility*. While these authors mostly developed their argument in discussions on minority women, their analysis can be seamlessly applied to migrants.

Although rendered passive objects within the civil and political discourse that concerns their every day lives, minorities and migrants are kept within the spotlight by politicians seeking to grab attention, and by the media seeking sensationalist content. The political society is thus able to use migrants as a scapegoat and as political fuel for campaigns that are often based on fear and dichotomies of difference.

The resulting situation of migrants, simultaneously visible and invisible, is described by Bassel and Emejulu (2018) as *hypervisibility.* Such a condition confines migrants and minorities to a kind of glass case that precludes them any recognition of agency. Under glass, they are deprived of a voice and are dehumanized. Depicted as either desperate or criminal they are epistemologically denied any sort of agency, leaving them helpless in a representation in which they suffer passively the hardships of their experiences.

Belgium and Italy have not escaped the rise of populist movements that has swept across Europe over the past ten years. The consolidation of sentiments of resentment towards the political elites further increased by the 2008 economic crisis brought a progressive destabilization of the European lower classes; a situation that was aggravated by a drastic reduction of the welfare state through austerity measures that hit migrants and minorities the most (Bassel and Emejulu 2018). The mainstream narration of the European electorate which still heavily draws from its colonial past (Bassel and Emejulu 2018) creates a culture and a social discourse that epistemologically and empirically erases race by forgetting its own colonial history and postcolonial reality.

From this erasure comes the genderless and homogenized European identity that has been fabricated and instrumentalized by the far Right and populist movements in order to create for themselves a collective identity and a basis of consensus. Such an identity heavily relies on the construction of an Otherness, that in this context can be readily attributed to migrants. All of the fears and insecurities caused by political and economic instability are thus be readily discharged upon the outsiders. The outsiders become barbaric invaders, and the characteristics attributed to “the savage” from the colonial period are embodied for example in the Muslim men that assaulted European women during the New

Years Eve's celebrations in Cologne, 2015, or in those assaulting women in Tahir Square during the Arab Spring, 2011.

European political society has instrumentalized the debate over migration making it difficult for the Left to approach the subject while taking the side of migrants because these have been assigned the stereotyped identity of the uncivilized invaders. A pervading sense of nationalism and an acute attention to state sovereignty has pulled the European political discourse in a direction that locks itself in one of the most long lasting dichotomies that see the luminous West in opposition to a dark Oriental Other (Said 2003).

In a situation in which European citizens find themselves in socioeconomic difficulties that the neoliberal global economy and the exponentially increasing inequality have produced, it has become very difficult to draw on sentiments of solidarity. And, popular discourse often strays into discussions over the priority that national citizens should have over foreigners residing in a country.

By positioning migrants as the Other and making them the scapegoat for the progressive dismantling of the capitalist and Western model of the Nation State, the European polity has created, once again, a deep division within society, excluding an entire group on the basis of their identity.[3]

Crepeau (2016:117) correctly argues that, "all migrants, without discrimination, are protected by international human rights law". And while there are some exceptions based on the status of citizenship, "principles of *non-refoulement,* best interests of the child and family unity" are fundamental rights that cannot be denied on the basis of migrant status. Undocumented migrants are not excluded from the scope of human rights law and discrimination on the basis of nationality is prohibited by the International Convennant on Civil and Political Rights (ICCPR) and the International Covenant on Economic Social and Cultural Rights (ICESCR) (Crepeau 2016:117).

The issues within the European context with regards to the protection of human rights that Crepeau highlights are mostly related to the "absence or weakness of procedural guarantees, which are

[3] As it occurred in WWII

aggravated by migrants' economic and social marginalization" (Crepeau 2016:118). The absence of an effective and accessible human rights protection framework is aggravated by the fact that State sovereignty is held as more important and stronger than international obligations, and migration management as something that is within the jurisdiction of local governments as part of border control and national safety.

Within the European legal framework, human rights, migration and integration are connected and described as interrelated. The European Charter of Human Rights, legally binding to all members of the European Union since the Lisbon Treaty of 2009, is described as at the core of the EU founding values. As the some of the material from the 2014 Conference on Fundamental Rights (FRC) points out, "Fundamental Rights and the [European] Charter are mentioned ten times as underlining basis and concepts in the common basic principles on integration of migrants" (FRC 2014).

Yet many European countries like Belgium and Italy are limiting migrants' rights in spite of their adherence to international human right treaties and covenants. As Martin (2006) argues, migrants feel the impact of State policies in their daily life, but these policies and government programs are not always in line with international regulations and treaties. This situation is aggravated by the lack of strong legal tools for the implementation, monitoring and protection of human rights.

The "lack of coherence" (Crepeau 2016:119) of the normative framework that delineates the rights of migrants is also a central issue because it creates a substantial gap in the protection of some of the most vulnerable and exploited populations; leaving them in legal ambiguity that increases their exposure to various types and degrees of violence.

The fact that European Member States have jurisdiction over the decision on the number of non-EU citizens they wish to allow within their borders (Crepeau 2016:137) is an example of the contradictions in terms of the right to not be discriminated according to nationality, and the implications that it might have with regards to the protection of migrants' human rights. The lack of an "independent oversight mechanism" that could "ensure full compliance with international human rights law" is also as Crepeau

(2016:139) argues, a serious shortcoming in the European migration and human rights field and probably one of the main sources of the fragility of the human rights framework.

EU Member States have consciously tried to shield themselves from having to take on responsibilities with respect to migrants by adopting bland and broad definitions of protection mechanisms and migration policies. The regional tools for the protection of human rights in Europe, such as the European Court for Human Rights (ECtHR), the International Criminal Court (ICC) as well as the work of the UN Special Rapporteurs have been consistently underutilized and downplayed.

International migration, as Likić-Brborić (2018:762) has argued, is one of the most important and only ways to survive for people that are "struck by wars, poverty and precarity, brought by vagaries of neoliberal geopolitical and geo-economic restructuring, and the landscaping of free trade and free capital movement". Migration is likely to be increasingly important as a means of survival as the result of the progressive and exponential worsening of living conditions due to climate change that is particularly impacting South Asia, Subsaharan Africa and Latin America. According to the World Bank (2018) this will produce millions of internal and international climate migrants.[4] However, as Likić-Brborić (2018) continues, much overlooked is the fact that international migration is also a potential solution to the progressive aging of the population of what is referred to as the Global North, and is an important factor in maintaining and expanding the strength of the global economy.

While the majority of international migrants' movements are driven by labor related reasons, Europe and the international community, have consistently given priority to the mobility of capital, creating a "global labour market regime" (Likić-Brborić 2018:762) that is characterized by an asymmetrical relationship between migrant laborers and the capital they produce. Within such an unbalanced context, the prioritization of capital mobility and the benefits of having a "disposable labor force" (Woolfson and Likić-Brborić 2008) has rendered international migrants even more susceptible to violations of

[4] Rigaud, Kanta Kumari; de Sherbinin, Alex; Jones, Bryan; Bergmann, Jonas; Clement, Viviane; Ober, Kayly; Schewe, Jacob; Adamo, Susana; McCusker, Brent; Heuser, Silke; Midgley, Amelia. 2018. Groundswell : Preparing for Internal Climate Migration. World Bank, Washington, DC. © World Bank. https://openknowledge.worldbank.org/handle/10986/29461 License: CC BY 3.0 IGO.

their human rights, forcing them to the margins of lawfulness while maintaining them within the reservoir army of labor (Marx 1859).

By challenging the notion and boundaries of the Nation State, globalization has produced what Likić-Brborić refers to as a "crisis of multilateralism" (2018:765), in which the prioritization of corporate interest and business relations has pushed the legal and political framework towards a purely economic model. Responses to humanitarian crises, inequality, and the rise of irregular migration have consistently been geared towards the economy and have progressively adopted an approach of liberalization of capital as a solution (Likić-Brborić 2018).

The so called Global North has thus created a situation in which it continues to benefit from imperialist approaches to international relations by favoring economic rather than social and political development policies. As Faist and Ferrera (2018:8) argue, the European Union and its Member States "have the ability to exercise control over individuals from third states [because] they use migration control and sometimes also naturalization policies vis-à-vis third-country nationals to regulate their respective labour markets and, hence, labour conditions, wage costs and (social) citizenship".

People forced to seek labour and capital outside of their countries of origin thus arrive in places like Europe only to face various degrees of exploitation and human rights violations, without being included in the protection mechanisms that Nation States provide for their citizens. Instead, they are used by the political society and by the major economic players as low costing and disposable sources of profit.

Within this context, as a study conducted by Hafner-Burton and Tsutsui (2005) has shown, the fact that States ratify international treaties does not directly translate in their respect for human rights and no direct correlation has been found between the number of treaties ratified by one State and its respect for human rights. Paradoxically instead, the same study has found that "ratification is frequently coupled with non compliance behavior […] at times lead[ing] to radical decoupling, exacerbating human rights abuse" instead (2005:1395,1398).

The variable that Hafner-Burton and Tsutsui's (2005) study has found to actually have an impact on a State's compliance with the international human right treaties is not in fact, international pressure, but rather the existence and strength of civil society organizations that are able to channel the attention of the State and to create enough internal pressure on the political society so to have an effect on the practices of the institutions.

With this in mind, the international framework for the protection of human rights can be seen as one that does not have an impact that trickles down from above. Rather, it is only able to truly impact national institutions and laws if used as a point of reference by grass roots and civil society organizations, and if used as a means to put pressure on institutions through an ascending momentum.

This said, civil disobedience, activism and organized resistance to government institutions seems to be the most viable path to create structural change, and the only way to inform the national and international legal framework regulating migration and the protection of human rights.

The Case of Belgium, Current Legal Framework and Public Discourse

Family Reunification

Before the second half of the 21st century, the shift in migratory flows across the Mediterranean, and the so called 'migration crisis' of 2015, Belgium's main source of migration was the influx of people arriving through family reunification procedures. With the end of the 1990s these numbers started to fade, leaving space to migration flows linked to labor.

Up to the 2015 migration crisis, the Belgian government typically considered the right to family reunification as a means to foster migrants' integration, using it – in the period following the Second World War– as a means to attract foreign laborers and employ them in industries such as coal through bilateral agreements with countries like Italy.[5] Today the situation has changed again, and politicians consider family reunification as a type of immigration to which the Belgian state is a passive subject, without much it can do in terms of limiting its dimension; especially because the standards that provide access to family reunification are "set in an instrument of international law (Directive 2003/86)" (EMN, Belgium 2017:11).

According to the European Migration Network's study (2017), family reunification is one of the "main ground[s] for legal migration" towards the country; over half (52%) of the first residence permits issued to third country nationals in 2015 being granted on such grounds (EMN, Belgium 2017:5).

However, the same study also finds that since 2011 with the Immigration Act, there have been some significant restrictions and reductions in the scope of the family reunification procedures with a resulting decrease by 27% of residency permits issued for family reasons between 2010 and 2013 (EMN, Belgium 2017). Such a drop in percentage is especially prominent with Moroccan and Turkish citizens joining a sponsor in Belgium that witnessed a decrease by 49% of the residency permits issued on the basis of family reunification during the same period (EMN, Belgium 2017).

[5] Atti Parlamentari dell'Assemblea Costituente Doc no 42, 22 Ottobre 1947

While a reduction in family reunifications can be determined by numerous variables that do not involve the State's direct or indirect discriminatory practices, the fact that such a reduction is so swift and so significantly high suggests that the change in legislation of 2011 has either directly or indirectly impacted Turkish and Moroccan citizens on the basis of their nationality. This significant reduction of residency permits issued for family reasons amongst Turkish and Moroccan people is evidence that the Belgian government is discriminating on the basis of national identity and is thus going against Art. 21, §2 of the European Charter of Fundamental Rights, which is legally binding to all Member States since the 2009 Lisbon treaty.

As the "migration crisis" swept across European politics, family reunification has continuously been under the spotlight of the Belgian state. The introduction of an income requirement in 2011, an increase in the efforts to uncover "partnerships of convenience", the institution of an application fee, and the institution of an integration requirement all highlight the extent to which the shift in attitude of the Belgian government has produced an immigration policy that is heavily geared towards the limitation and selection of arrivals.

The right to family reunification is described by Art.10 to 13 of the Belgian Immigration Act, by the Belgian Royal decree Implementing the Immigration Act, and by the Directive 2003/86 on the right to family reunification (EMN, Belgium 2017). On an international scale, Belgium's legal framework for family reunification is also determined by the European Convention on Human Rights and specifically by Art. 8 that describes the right to private and family life (EMN, Belgium 2017).

According to Art. 4 of the Family reunification Directive the "four categories of family members [that] are eligible to join a TCN sponsor in Belgium are: a spouse or registered partner, including same-sex partners, a minor child (below age 18) of the sponsor and/or of his/her spouse, a dependent, unmarried child aged 18 or older with a disability, the parents of an unaccompanied minor benefiting from protection status" (EMN, Belgium 2017:6).

Nationality is – however – a grounds on which Belgium differentiates the legal processes for family reunification. There are three different legal regimes: one for EU citizens, one for Belgian Citizens, and

a one for third country nationals; the first two categories enjoying a much easier access to family reunification.

The Belgian state further differentiates between sponsors that are in possession of an unlimited residence permit, that have refugee status, or that are in possession of a permit of residence based on subsidiary protection, and those who have limited residence permits, students with annually renewable permits, or "long-term residents according to Directive 2003/109/EC; and EU Blue Card holders" (EMN, Belgium 2017:18).

While as the European Migration Network report notes, there are cases in which according to Art.9 or Art.9bis of the Immigration Act, other dependent people can apply for family reunification, this can occur only as "a favor and not a right" that can be granted by the Belgian State (EMN, Belgium 2017:6).

Same sex partners are treated equally with no distinction from different sex couples, and non married partners are entitled to benefit from family reunification if a "registered partnership equivalent to marriage [or in a] legal cohabitation" is proven (Asylum Information Database, Belgium).

With regards to children that are not part of a European modeled monogamous relationship, it is noteworthy that, while only one spouse is eligible for reunification, children from polygamous marriages are eligible for reunification even if not direct descendants of both partners (EMN, Belgium 2017). Foster children need to apply for reunification through Art. 9 and 9bis of the Immigration Act in order to apply for long term visas if applying from abroad or – if in Belgium – from their municipality of residence. Notably however family reunifications that are considered on the basis of Art.9 and 9bis are also accompanied by a higher fee (350 Euro instead of 200 Euro) (EMN, Belgium 2017).

This said, the fact that polygamy is not allowed by the Belgian law and thus polygamous families are not entitled to family life and unity in Belgium is a clear imposition of the Christian and European modeled family. The normative power of the State is used in order to enforce a morality upon the

people that wish to live in the country and as a way of filtering and choosing which kind of people and relationships residents and citizens are allowed to engage with.

The prohibition of polygamous families is however potentially in violation both of Art.8 and Art. 14 of the European Charter on Human Rights which respectively protect the right to family life and the right to not be discriminated. A situation that highlights the extent to which the State is involved in the establishment of the norm and how morality is protected and constructed through legal texts.

The requirements that the Belgian government established for family reunification are as follows:

(i) Each procedure comes with a 200 Euro fee for each adult requesting a residency permit;

(ii) The sponsor must have and be able to provide to the coming family members with a "accommodation suitable for the size of the family" (EMN, Belgium 2017:6);

(iii) The sponsor must also have a health insurance that covers both them and their reuniting family members;

(iv) The sponsor must have and prove "sufficient, stable and regular means of subsistence" to ensure that the burden of the arriving family members will not be a responsibility the Belgian State. "[T]he level of income […] is set at 120% of the social assistance level" – about 1416 Euro (EMN, Belgium 2017:7).

Both the costs for the application and the integration requirements before and after admission do not apply if the reuniting family member is un unaccompanied minor, a beneficiary of international protection, unaccompanied minors that have gained the status of refugees or subsidiary protection, and those who have a EU blue Card and are long-term residents (EMN, Belgium 2017).

Since January 25th 2017, once in Belgium, beneficiaries of family reunification need to prove to the local authorities their "reasonable effort" (EMN, Belgium 2017:30) to integrate in Belgian society in order to maintain the validity their residence permit. The non-cumulative and non-exhaustive list of criteria that are used to establish ones' efforts to integrate are as follows: "participation in an integration course or studies, economic participation, knowledge of the language of the place of registration on the population register or the register of foreigners, judicial history and active participation in associative

life" (EMN, Belgium 2017:30).

Family members in the country of origin that want to apply for a family reunification need to submit their request to a "Belgian diplomatic or consular post in their country of residence" or in the closest competent Belgian diplomatic post (EMN, Belgium 2017:7).

While this requirement can be interpreted as legitimate and reasonable, it is also possible that people are unable to access the Belgian diplomatic posts closest to their point of origin. If this is the case, and people are unable to benefit from their right to family life and family unity because of the hardships or impossibility to arrive to a Belgian consulate or diplomatic post this could be considered as a violation of their rights enshrined in the Art. 8 of the European Convention on Human Rights. In fact, the absence of a mechanism that would ensure the possibility to benefit from family life is a violation of the Convention and is thus in violation of the human rights of those who wish to reunite with their family members.

To provide proof of family ties, third country nationals are required to submit marriage certificates or any other official documents proving the legal validity of their marriage. If these documents are unavailable, the "Belgian legislation foresees that 'other valid forms of proof" [can be produced. However] this is subject to the discretionary assessment of the Immigration Office" (EMN, Belgium 2017:8) and ultimately a DNA test can be used to verify the validity of the family ties.

The deadline for the authorities' decision regarding reunification applications is nine months. If the case is deemed to be sufficiently complex, or there are sufficient grounds for the suspicion of a marriage of convenience, authorities may extend this period by a maximum of six months (EMN, Belgium 2107).

Once authorized to stay in Belgium through family reunification, TCNs are required to register in the "municipal administration of the place of residence" (EMN, Belgium 2017:8) in order to be inserted in the National Register of foreign citizens. Upon their registration TCNs also receive a residence card (type A) that is valid for one year and can be renewed (EMN, Belgium 2017).

The residency permit for family reunification is conditional for the first five years, meaning that it can be suspended if the requirements that limit the access to the procedure are not met at any time during this period (EMN, Belgium 2017).

Obtaining an autonomous residency permit is possible but it depends on the status of the sponsor. If the sponsor has the authorization to reside in Belgium for a limited period of time, their family members will not have the right to an autonomous residency permit that is unlimited in duration. However, if the sponsor has an unlimited residency permit the family member can apply for an autonomous residency permit after they have lived in the country for at least five years.

Because autonomous residency permits are still subject to the requirements that apply to the family reunification from which they stem, if all the requirements are not met, the permit will be issued with a one year validity and the condition that the requirements "as to the means of subsistence, health insurance, and no offense to public order" be respected (EMN, Belgium 2017:9).

If compared to the procedures for Belgian and EU citizens, third country nationals have a more narrow definition of family that is applied and a less favorable procedural path to follow. While for TCN descendants the age limit is 18, for Belgian nationals the limit is 21 "or even later if dependent of the sponsor" (EMN, Belgium 2017:34). Belgian and EU citizens have shorter processing times (six months instead nine), there is less documentation that is required, they have the right to apply at their local municipality, they benefit from a temporary stay permit during the proceedings and they also benefit from the right to work during the examination period (EMN, Belgium 2017).

While it is legitimate to differentiate amongst EU and non-EU citizens on the basis of nationality, and that EU and Belgian citizens have an easier procedure to reunite with their family, the fact that the definition of a family unit and of its members is more restrictive in the case of TCNs is an example of how Belgium is interpreting the human right to family life within the most narrow definitions and with the least possible effort. This shows the extent to which Belgium considers family reunification as a

type of migration that the State is obliged to recognize, but does so passively within the limits of the European legal framework.

The Belgian State can discriminate on the grounds of protecting "public order or national security" (EMN, Belgium 2017:7). To this end, Belgium requires applicants to provide judicial records in order to monitor the legal history and status of those applying for family reunification (EMN, Belgium 2017). A similar ground on which the state can refuse to grant the right to family reunification is if it finds the applicants to suffer from illnesses that could endanger "public health" (EMN, Belgium 2017:7).

Discrimination

Belgium "is party to most of the important international agreements relevant for counteracting discrimination" (EU Commission Country Report Discrimination, Belgium 2018:6). However, Belgium has not ratified the Protocol no.12 of the European Convention on Human Rights "and the Council of Europe Framework Convention for the Protection of National Minorities" (EU Commission Country Report Discrimination, Belgium 2018:6).

The Belgian constitution prohibits discrimination in Articles 10 and 11. These articles are applicable "without any restriction", in terms of the grounds or situations in which such discrimination occurs (EU Commission Country Report Discrimination, Commission Report on discrimination 2018:6). Such regulations are however rarely applied to domestic and private contexts due to the vagueness, the broadness of the legal text and the delicateness of the issues at stake with respect to family and private relations. These provisions of the Belgian Constitution are –in fact – much more useful and applicable in cases in which there are issues related to "legislative norms or administrative acts" (EU Commission Country Report Discrimination, Belgium 2018:7).

The scope of the body of law that regulates and prohibits discrimination in Belgium is determined by the The Racial Equality Federal Act and the General Anti-Discrimination Federal Act that determine "the provision of goods or services when these are offered to the public" (EU Commission Country Report Discrimination, Belgium 2018:10).

The current legal framework for anti-discrimination in Belgium stems from a set of three Acts that were adopted on May 10th 2007. The first 2007 Act is one that amended 1981 Act and criminalizes actions inspired by racism and xenophobia. The second 2007 Act is more focused, and covers specific acts of discrimination based on "age, sexual orientation, civil status, birth, property, religious or philosophical belief, actual or future state of health, disability, physical characteristic, political opinion, trade union opinion, language, genetic characteristic and social origin." (EU Commission Country Report Discrimination, Belgium 2018:7). The third Act covers the fight against discrimination between men and women regulating matters such as "maternity, pregnancy and transgender" related issues (EU Commission Country Report Discrimination, Belgium 2018:7).

Because of such a categorization and division of types of discrimination, multiple discrimination is not included in the Belgian federal legal framework. However, despite this significant gap within the Belgian legal system, on a regional level local governments have adopted an equality Decree which includes all forms of discrimination in order to facilitate the protection and the legal action against multiple discrimination (EU Commission Country Report Discrimination, Belgium 2018:42).

The shape and function of the two Belgian equality bodies is also a contributing factor to the relative weakness in the Belgian law with regards to protection against multiple discrimination because the fight against discrimination is divided within the responsibilities of two separate organizations. Such a division of tasks and responsibilities might be a way of facilitating and distributing responsibilities in order to decentralize the anti-discrimination framework, however, such a fragmentation has the ultimate effect of dispersing the efforts and the structures that have been built to fight discrimination and often leaves areas of discrimination unprotected. For example, there is no governmental body in Belgium that is responsible for the protection against language based discrimination.

The Federal Institute for the Equality of Women and Men, also known as the Gender Institute, and the Inter Federal Center for Equal Opportunities, also known as UNIA,[6] have – in fact – the effect of

[6] Responsible for covering all other grounds except for language based discrimination

fragmenting discrimination in its definitions and in the actions to take in order to protect those that are affected by it and thus structurally interfere with the definition of multiple discrimination.

Since 2011 however, UNIA has managed to reform its complaint filing procedure and is able to encode cases on multiple grounds of discrimination and has proposed in many of its reports the importance of inserting multiple discrimination within the Anti-Discrimination Federal Act.

Despite efforts to stitch together the regional, the national and the international frameworks, another issue in Belgium is related to the punishment of victimization and the fact that it is only applied to victims as defined by Belgian law while not applicable to "all persons involved" as the EU directives describe. In fact, both "discriminations based on assumed characteristics and discriminations based on association […] are not expressly forbidden in the Racial Equality Federal Act and in the General Anti-Discrimination Federal Act. However, the preparatory works (*travaux préparatoires*) clearly specify that these Acts apply to such discriminations" (EU Commission Country Report Discrimination, Belgium 2018:9).

When considering access to employment with regards to discrimination, "genuine and determining occupational requirements" are considered protected grounds and can be used as reasons that allow employers to discriminate between candidates (EU Commission Country Report Discrimination, Belgium 2018:9).[7]

Despite the many controversies regarding whether the Federal State or the Communities are competent for regulating discrimination related to reasonable accommodation, "[t]he widespread opinion today is that, [..] the Federal State or the Regions [have the authority to provide] that denying reasonable accommodation to a person with a disability amounts to discrimination" (EU Commission Country Report Discrimination, Belgium 2018:9).

[7] Directive 2000/43/EC and Directive 2000/78/EC define the concept of "genuine and determining occupational requirements" (EU Commission Country Report Discrimination, Commission Report on discrimination 2018:9), yet it is up to the individual judge to determine the specificities of each case as the two directives only provide a general guideline for judgement.

The absence of a clear directive and mechanism to determine the responsibility to enforce such laws and policies, especially with respect to the question on wether they should be enforced on a local or on a federal level is one of the main issues the Belgian State faces (EU Commission Country Report Discrimination, Belgium 2018).

In terms of the modalities with which the anti-discrimination laws are enforced, the two Acts at the core of the Belgian law almost overlap in "provid[ing] for civil and criminal procedural protection of victims" (EU Commission Country Report Discrimination, Belgium 2018:10).

Any victim of a discrimination that falls within the scope of the two Acts is entitled to:

(i) " Seek a finding that discriminatory provisions in a contract are null and void;

(ii) Seek reparation (damages) according to the usual principles of civil liability (however, the victim may opt for a payment of the lump sums defined in the Act rather than for damages calculated on the basis of the 'effective' damage);

(iii) Seek from the judge an injunction imposing immediate cessation of the discriminatory practice, under the threat of financial penalties;

(iv) Seek from the judge publication of the judgment finding a discrimination, by the posting of the judicial decision on the premises where the discrimination occurred, or by the publication of the judicial decision in newspapers" (EU Commission Country Report Discrimination, Belgium 2018:10).

These proceedings are either heard by a civil court or, if the situation is pertinent to an employment relationship, the action is brought to a specialized labour court. (EU Commission Country Report Discrimination, Belgium 2018).

Despite the quality of the Belgian legal framework against discrimination, the Expert Commission for the assessment of the 2007 Anti-Discrimination Federal Acts in its 2017 report highlighted the need to asses the actual effectiveness of the sanctions that are foreseen in cases of discrimination "in order to truly assess the effective, proportionate and dissuasive character of the sanctions" (Commission

d'évaluation de la législation fédérale relative à la lutte contre les discriminations, Premier rapport d'évaluation 2017, § 341) (UNIA).

Because of its role in the protection against discrimination and in assisting victims of discrimination, UNIA has become a point of reference for issues related to discrimination and is where most victims seek help. Once the equality body receives the notice from the victim, the organization begins a negotiation period between the vicim an the perpetuator; if such negotiations do not have a positive outcome, UNIA – with the explicit and informed consent of the victim – proceeds along the legal route and files proceedings against the person or entity responsible for the discrimination (Notes from visit to UNIA headquarters, May 8th 2019).

Despite its strength in fighting discrimination, Belgium has not been immune to the rise of Right wing populism, nationalism and discriminatory sociopolitical groups. The progressively growing influence of the Nationalist Flemish Party – also knows as the N-VA – has brought within the Belgian discourse hateful and discriminatory rhetoric to justify conservative, nationalist and racist positions with respect to internal and foreign policy.

The general lack and inefficiency with regards to people with disability, their mobility and their employment and the unresolved issues with regards to religious symbols as for instance the islamic veil are some of the most clear examples of how in Belgium "there is still a noticeable lack of knowledge of the anti-discrimination law by the professionals in charge of its implementation, especially of the notion of indirect discrimination." (EU Commission Country Report Discrimination, Belgium 2018:15)

Belgian Media and Political Discourse on Migration

In December 2018, the N-VA Flemish Right wing party lead by Bart De Wever decided to quit the government as a sign of opposition to Belgium's participation in the Global compact for Migration (GCM). After one week in which prime minister Charles Michel was able to form a coalition government, on December 18th, the Belgian government collapsed and is yet to be re-established (Schreuer 2018).

The clamor and chaos that this government crisis created was immediately visible in the streets of Brussels where people demonstrated, inspired by the French Yellow Vest movement, asking the government for less taxation, more protection of national borders and the withdraw from the UN Global Compact on Migration.

Asking for support in order to create a stable government to survive his mandate and bring the country to the next national elections, Mr. Michel called upon the Left wing parties of the country in order to form a new alliance and continue governing together (Apuzzo and Schreuer 2018). However the Belgian Left was not ready to overcome the rivalry and long lasting tensions that have always been between the parties and did not answer the prime minister's call, preferring to wait for the next elections in the hope of gathering more support and the votes that Mr. Michel had lost.

The fight over the Global Compact and migration in general is to Koert Debeuf, a former advisor to the Belgian government, simply a fight over the access to power within the country and represents a proxy battle field where national parties can play out their strategies to gain the consensus they need for the European elections and the following national elections (Apuzzo and Schreuer 2018).

Martin Conway, interviewed by the New York Times (Apuzzo and Schreuer 2018), highlighted the fact that the Belgian crisis is not only an example of the shift towards a populist Europe and the danger that having the European capital under populist power would entail, but it also shows how difficult it is to host the political center of Europe and how destabilizing this can be; especially in a country like Belgium where national minorities divided by language and political borders have always been at the forefront of the political debate.

Before the government crisis, the discourse on migration pushed by the quickly rising N-VA followed the patterns set by other populist leaders in Europe like France's Le Pen, Hungary's Orbán and Italy's Salvini. Theo Francken, the former asylum and migration state secretary for Belgium argued in fact that "Europe applies humanitarian laws too broadly and people intercepted in the Mediterranean should be turned back, or disembarked in other African states like Morocco, Tunisia, Egypt and Algeria"(Bartunek and Baczynska 2017).

Johan Leman – a professor of anthropology at the Catholic University of Leuven – in an article from February 2018, describes the Belgian government as violating human rights by deporting people back to their country of origin, thus violating the right of non refoulement. Using "cleanup operations" to get the favor of the public opinion, the Belgian polity is described by Leman as instrumentalizing migrants' visibility and "hypervisibility" (Bassel and Emejulu 2018) within the urban public space in order to gain the political spotlight and to draw popular consensus (Schreuer 2018).

It is thus clear that even Belgium is not immune to the exploitation of the migration discourse that has revealed itself as a very effective coagulating factor in the consolidation of the populist electorate; an electorate that has come to find its identity in the individuation of the differences and separation that have been articulated by the political society and by the national and international media, and that have come to define the boundaries between insiders and outsiders.

Within such a context, a rising perception that national law should overcome the international framework seems to be justified by the apparent gravity of the situation and by the idea that the burden of humanitarian aid should not be on the shoulders of people that are already struggling to make ends meet. Instead the view that sees the countries of origin and of transit as responsible for the containment and the management of the migratory phenomenon justifies the will to deny responsibility to provide humanitarian aid and to welcome and integrate those arriving from non European countries.

With the results of the European elections of May 2019 that saw the N-VA as a major winner – especially in the north of the country – counting a 24,9% of the votes across the nation, Belgium is clearly feeling the populist wave that has hit Europe over the past five years. The *cordon sanitaire* that the Centrist parties established in the 1980s in order to not allow the ultra Right wing party Vlaams Belang (at the time called Vlaams Block) to come into power is probably one of the only obstacles that stands in front of the formation of an extreme Right wing government. In all of this, the N-VA seems to be gaining grounds thanks to its populist agenda that does not go as far Right as the Vlaams Belang but is still well within range of nationalist, racist and identitarian politics (Laurens Cerulus, Hanne Cokelaere and Simon Van Dorpe 2019).

While the debate over migration has inflamed the Belgian politics over the past yeas and has often become the scapegoat used by political parties to catalyze votes in their direction, the legal reality seems to have been vastly unchanged since 2011. Something that reveals the extent to which migration is consistently used as a way of a creating a reality through the media and political propaganda that however is only a shell and that has no immediate effect on the legal framework that regulates migration on a national and international framework.

The Case of Italy, Current Legal Framework and Public Discourse

Family reunification

The Italian legal framework with regards to national immigration policy emanates from the "*Testo unico delle deposizioni concernenti la disciplina dell'immigrazione e norme sulla condizione dello straniero*" also known as the "*Testo Unico*" or "*Testo Unico sulla migrazione*". Originally published on July 25th 1998, this legal text has been the point of reference for migration policy in Italy ever since and has been consistently updated throughout the years. Law number 132, was the latest change in the text and was introduced by the current Minister of Interior Mr. Salvini, on December 1st 2018.

The right to family life is protected and provided by the Italian Constitution and is thus applicable to all those residing in the country, regardless of their citizenship status. The section of the *Testo Unico* that deals with family reunification is Section IV, and more precisely Art.28 through Art.33. From an international stand point, Italy has ratified all instruments that guarantee the right to family life which are protected by Article 16 of the Universal Declaration of Human Rights, Article 23 of the International Covenant on Civil and Political Rights, and Article 8 of the European Charter on Human Rights.

Foreign nationals that are in possession of residence permits are eligible for the reunification procedure if they also meet living, income and status standards that are defined by the *Testo Unico*. The categories of permits that allow access to family reunification are those issued: for work, with at least one year of validity; for political asylum; for subsidiary protection; for study purposes or for religious reasons; for family reasons; for long term residents with a CE permit;[8] and for those with a residence permit issued while waiting for citizenship.

Family reunification procedures are articulated in two phases: the first is within the authority and responsibility of the Immigration Desk, an office within the Ministry of Interior that conducts verification procedures to ensure that all requirements and standards to obtain the authorization to

[8] A CE permit is a permanent residency permit that came into existence in 2007 and that can be obtained legally resident in Italy for a minimum of five consecutive years

apply have been met. Sponsors that wish to have family members rejoin them are – in fact – required to forward their application to the Immigration Desk.

The second phase involves the monitoring and administrative activities of the consular authorities that are in charge of verifying that the requirements with regards to demonstrating that the family ties have been met, and – if so – of issuing an authorization (*nullaosta*) to enter the Italian territory. TCNs that are being sponsored to reunite with family members in Italy are thus required to go to the consular authority or Italian embassy in their country of residence or in the closest Italian consular office in order to obtain a temporary entry visa for family reunification.

Because Italy does not have a clear and accessible set of official data, either regarding the number of family members that have benefited from family reunification or regarding the number applications that have been submitted, it is difficult to have a clear picture of the situation. The most recent report on family reunification national practices in Italy is the 2016 European Migration Network Report. There is however information regarding the number of permits that have been issued for 'family reasons' and this can provide a general idea of the nature and magnitude of the phenomenon.

Between 2011 and 2015 there has been a reduction of about 40.000 permits issued for family reasons showing a progressive closure of the State towards this particular migratory flow (EMN Italy 2016:1). According to the Italian National Institute of Statistics' (ISTAT) report on 2017 and 2018, in 2017 the number of residency permits released for family reunification was the most frequent in terms of reasons for arrivals, representing 43,2% of the newly issued residency permits (ISTAT 2018:3). The same study reports that in 2017 there has also been an increase by 11% of residency permits released for family reunification in comparison to 2016 (ISTAT 2018:3).

Notably there are differences in gender when considering the composition of TCNs arriving in Italy through family reunification. Women – in fact – represent 64% of the arrivals for family reunification, a statistic that is mirrored in terms of the numbers of men that arrive either for working reasons or more frequently (54,3%) through asylum procedures (ISTAT 2018:4).

Another aspect of the migratory phenomenon to consider is that in the South of the peninsula the migratory patterns are predominantly related to seasonal labor and emergency contexts while rarely for family reunification. Whereas in the North of the country migratory flows are more related to stability, and long term objectives, a phenomenon that can suggests a correlation with the growth in family reunification procedures (ISTAT 2018:6).

Despite the simplification of the procedure that occurred in 2008, there are still some significant obstacles that make the application process especially difficult for those attempting to join their family members in Italy. Amongst these, is the need to apply to a consular post or Italian embassy. This often entails going to a neighboring State or Country, rendering the process in some cases very difficult and demanding, if not merely impossible for the sponsored family members.

As in the case with Belgium, this obstacle is also a serious impediment to the possibility of Third country Nationals to enjoy the right to family life and family unity in Italy. Articles 29 through 31 of the Italian Constitution protect such rights and thus such an impediment is interpretable as in direct contrast and violation of the national legal system as well as of Art. 8 of the European Convention on Human Rights.

Amongst the limitations that the Italian State imposes with regards to the reunification with a spouse is the prohibition of polygamous family units; through Art.29 (1 ter) of Law 189/2002 the Italian State in fact prohibits polygamy, making it impossible to reunite with more than one spouse (EMN, Italy 2016:7). This has however been overridden in some cases when the reunification was requested by a child and was granted in order to conform to the ‘best interest of the child’ (EMN, Italy 2016:7).

As in the case with Belgium, this law can also potentially be seen as in violation of Art. 8 and Art. 14 of the European Convention on Human Rights because it imposes the model of the monogamous Christian Family upon all those who wish to live in Italy, and it precludes all those people that are involved in a polygamous union from benefitting from the right to family life and unity by discriminating against them by not recognizing of their concept of family.

The Italian State expects its applicants to provide proof of access to an accommodation that meets sanitary and livability standards set by municipalities,[9] the possession of a complete health care insurance or the inscription in the National Health Service and a sufficient amount of financial resources to provide for all family members (EMN, Italy 2016:7).

The fact that such standards are set within the domain of municipalities is quite problematic because it creates a situation in which the access to family reunification is not homogenous across the country due to the differences in standards that are set by the various municipalities. As Professor Tognetti Bordogna has argued, the heterogeneity of the procedures that is created by the fragmentation of the parameters in terms of the sanitary conditions and livability of the sponsors' homes create a situation in which the human right to family life is not equally guaranteed throughout the Italian territory (EMN, Italy 2016:12); a situation that highlights the unequal or discriminatory treatment of migrants in Italy.

In terms of the financial requirements, the Italian State has a system of reference that covers the entire country and that sets as minimum standard for those who wish to reunite with their family members. "[T]he yearly amount of the social allowance […] equivalent to € 5,825" makes it necessary to earn at least € 8,737 to reunite with one family member and about three thousand Euros extra for each additional family member (EMN, Italy 2016:7,8). When considering these income standards, the Italian State does however consider the income of the household as a whole and thus the economic burden is considered as both spouses' responsibility.[10]

Beneficiaries of refugee status, subsidiary protection, and those who are in possession of a residency permit for humanitarian reasons, or for protection, are exempt from the economic or living conditions requirements that otherwise apply to those demanding a reunification procedure.

If such beneficiaries are unable to provide valid and official documentation proving the family ties with whom they wish to reunite, the consular offices closest to the place of residence of the sponsored

[9] If there is a minor of less than 14 years of age, the burden of this requirement is voided and the only requirement is the consent of the holder of the accommodation (EMN, Italy 2016:7)

[10] A Judgement No 6938 of 8 April 2004 of the Supreme Court (*Corte di Cassazione*) establishes that the income to be considered is only that which can be earned over the coming year

person can produce the documentation that certifies the ties on the basis of DNA tests or on basis of documents that have been issued by international and intergovernmental institutions such as the International Organization for Migration (EMN, Italy 2016:10).

With respect to the protection of the Italian territory and society from socially dangerous subjects, in 2007 with the Legislative Decree No 5 and then in 2016 with the Directive 2003 /86 /EC, the Italian government has increased the level of security background checks that are performed in order to assess the "social dangerousness of incoming people" (EMN, Italy 2016:10).

Since 2014 with the entry into force of the Legislative Decree No 18, and thanks to the Legislative Decree No 251 from 2007 which broadens the scope of Directive 2003/86/EC foreign nationals that are beneficiaries of subsidiary protection are also entitled to family reunification and do not need to demonstrate their fulfillment of the housing and financial standards that apply to other foreigners (EMN, Italy 2016:10).

Integration measures such as "assistance services, enrollment at study or vocational training courses, and employment or self-employed work" (EMN, Italy 2016:19) are also left to the responsibility of the municipalities. This makes TCNs inclusion radically different depending on where they have arrived. Unfortunately, in most cases municipalities do not have the means and are not capable of maintaining the necessary standards that would allow for their services to have a positive impact in the insertion in Italian society of foreign nationals, and this has a very significant impact on the lives and the possibilities that reunited family members have within the Italian community and context (EMN, Italy 2016).

Another issue that is an important obstacle to the enjoyment of family life is the fact that there is no estimate average time for the duration of the procedure because it depends on the speed with which the consular authorities and the Police authorities are able to process the request. This in turn depends on a vast number of variables that can be related to staff availability, quantity of applications, and other contextual factors (EMN, Italy 2016:17).

The Immigration Desk within the Ministry of Interior is however obliged to approve or deny the family reunification application and communicate the outcome of its decision to the applicants and the Police and consular authorities within 180 days of receiving the electronic notification and of having checked that the requirements have been met (EMN, Italy 2016:17).

Judgement No. 7472 of the Supreme Court (*Corte di Cassazione*) from March 20th 2008, has decided that *kafalah,* a legal instrument within the Islamic law that provides for the protection of illegitimate children or abandoned orphans, is a valid ground for family reunification. Judgement No 21108 of September 16th 2013 established that there are no grounds for the refusal of the *nullaosta* "to a non-EU minor placed in the care of a third-country national (living in Italy) under a *kafalah"* (EMN, Italy 2016:16) even if this refusal has been passed by a foreign court.

Following the European Court of Justice' decision C-578/08, the nature and solidity of the family relationship, the length of the marriage, the length of the stay in the Country as well as family, social and cultural ties with the country of origin are factors that should be considered when evaluating the financial resources considered to be sufficient for family reunification.

From a sociological and anthropological perspective, such considerations on the nature and solidity of a family are a clear imposition of a European model. Such a situation in fact, produces a judgement that is highly subjective to the perceptions and internalized biases of the person in charge of the evaluation, and necessarily produces an outcome that will be heavily reliant on the cultural model in which such decisions are taken. Once again, we find a legalized cultural imposition aimed at maintaining society within the shape of the dominant European morality, and a further example of how States like Belgium and Italy use the law to influence the private lives of their citizens.

Anti-discrimination:

The core of the Italian legislation against discrimination can be found in Article 3 of the Italian Constitution which broadly forbids discrimination and any law that can be considered discriminatory in its nature and intent. The grounds on which discrimination is articulated in the Constitution are: sex,

race, language, religion, political views, social and personal conditions.[11] The State is also required by the same Article to remove the social and economic obstacles that impede the actual enjoyment of the freedom from discrimination and the equality of access to social and economic life. However as the European Commission's report (2018) highlights, the law is ambiguous in nature and it is still uncertain if "an individual who has faced discrimination" can use it as a grounds for legal action.

Italy is also part of all of "the major international treatise and conventions against discrimination […]. However, Protocol 12 to the European Convention on Human Rights has not yet been ratified by Italy, thus limiting the potential of the Convention as a tool for anti-discrimination litigation"(European Commission Report on discrimination 2018:4).

In Italy, according to ISTAT, the Italian National Institute for Statistics, 4.3% of the population is affected by some sort of disability, about one million people self identify as homosexual or bisexual and as of 2018 there where 5.026.153 foreign nationals[12] (European Commission Report on discrimination 2018:2). Similarly to France, the Italian Constitution prohibits any census that is aimed at measuring the ethnic diversity of the population as a way of protecting minorities from State discrimination and persecution.

With regards to the religious composition of the country, Italy is mostly catholic, with a 76.5% of the population being baptized, however only 25% of these people consider themselves as practicing catholics. "Muslims, [and Orthodox Christians] represent about 2% of the population" and the Jewish community counts about 35 000 members (European Commission Report on discrimination 2018:2).

The most recent change in legislation that involved the fight against discrimination occurred in 2016

[11] The Italian legal body that protects against discrimination and that stems from Article 3 of the constitution is further articulated by: the Legislative Decree 215/2003 on race and ethnic origin; legislative decree 216/2003 on age, disability religion and relief, sexual orientation; legislative decree 286/1998, Article 43 (1): on race, color, ancestry, national or ethnic origin religion and personal belief; and Act 300/1970: on political opinion, race religion, language, sex, disability, age, sexual orientation or personal belief. (EU Commission Country Report Discrimination, Italy 2018:28)

[12] (Istat (2016), https://www.istat.it/it/files/2016/12/Sintesi_ASI-_2016.pdf. Hyperlink accessed 27 March 2017. Istat (2010), *La disabilità in Italia (*The Disability in Italy), http://www3.istat.it/dati/catalogo/20100513_00/ arg_09_37_la_disabilita_in_Italia.pdf. Istat (2012), *La popolazione omosessuale nella società italiana – 2011* (Homosexual population in Italian society – 2011), http://www.istat.it/it/files/2012/05/report-omofobia_6giugno.pdf.)

with the recognition of the rights of same-sex couples (Law of 20 May 2016, No. 76) (European Commission Report on discrimination 2018:2). Thanks to this change in legislation Italy was finally able to allow for family reunification of people within a same sex union.

UNAR, the Italian equality body, depends directly on the Italian government, but has been consistently marginalized within the political and social discourse ever since its establishment in 2003. Such a condition has rendered its agency and capacity to influence the national context extremely weak with very few victims of discrimination applying for its support or even knowing of its existence (European Commission Report on discrimination 2018). The fact that the equality body is dependent and part of the Council of Ministers allows for no space to criticize the work of the Italian government or of its politicians.

Italian politicians along with the media have also been progressively and consistently building campaigns around dichotomies of difference, exclusion and hatred by targeting migrants and Roma as groups that are corrupting the Italian society, the way of life, and the local communities they are in contact with. Despite UNAR's efforts to curb such languages and tendencies to fade into hate speech, the fact that the equality body is directly attached to the Council of Ministers allows it no autonomy. When it reached out to those politicians that have been building their political identity and campaigns on racism and xenophobia UNAR's director was intimidated into resignation and accused of censorship and propaganda on "gender ideology" (Tiliacos 2014).

The hypocritical nature of the relationship between the government and UNAR can also be discerned when considering that the Body is closely and completely linked to the executive branch of the Italian government and the majority of its investigations and actions have been initiated only when pushed by media coverage of specific issues. With the renewal of the tenure of UNAR's director being in the hands of the Head of the Department and the Minister, the equality body's autonomy and agency and its vulnerability to censorship is further exposed; in fact in 2015 UNAR's director was removed after he had sent a letter to a MP "exhorting her to use non-discriminatory language" (European Commission Report on discrimination 2018:8).

As the European Commission's Report on Discrimination highlights, the situation is far from being bland and "several politicians [are] openly supporting policies of segregation in housing and education" for migrants and Roma, but in general for all those who fall outside of the boundaries of what has traditionally been considered to be an "Italian" citizen (European Commission Report on discrimination 2018:2).

Act 300/1970 of the Worker's Act protects workers against discrimination and provides "criminal legislation on 'hate speech' which included references to discriminatory acts of a different nature" (European Commission Report on discrimination 2018:3).

The 1998 Immigration Decree is however the "first enactment of advanced anti-discrimination regulations" as it protects against both indirect and direct discrimination by individuals and public authorities. The Decrees also provides definitions of discrimination that are generally in line with the European directives.

However the Italian law was adapted to fit the European Directives on discrimination only in 2003 with the institution of legislative decrees 215/2003 and 2016/2003 that allow discrimination to be reconsidered on the grounds of race and ethnic origin, and that apply discrimination in the context of employment with regards to religious belief, sexual orientation, age and disability. (European Commission Report on discrimination 2018)

In terms of the definitions of direct and indirect discrimination these are mostly drawn from the language and formulation of the European Directives. Victimization is protected to the same extent as discrimination while "discrimination by association is not explicitly covered" even though it can be interpreted as if it did, also because of the connection that can be made with freedom of expression and freedom of association (European Commission Report on discrimination 2018:4).

The grounds on which discrimination is tolerated within the Italian legal framework are when occupational requirements justify such a discrimination "within the limits of 'proportionality and reasonableness'. However, [as the European Commission's report (2018) argues] this unfortunately

cannot be said of the scope of application of the Decree provisions on 'work suitability' tests" (European Commission Report on discrimination 2018:4).

Churches, political parties and unions are allowed to discriminate following certain ad hoc rules on the basis of the fact that such institutions are founded on specific ideologies that characterize them and justify certain extents of discrimination (European Commission Report on discrimination 2018). Yet such a law potentially allows for organizations that are actually not based on specific ideologies or that are not justified to discriminate without incurring in legal sanctions.

A related issue that the European Commission's Report has also highlighted is the fact that religious institutions that "have not signed an agreement with the State" are not entitled to the recognition of their specific needs with regards to religious holidays and ritual obligations which for instance is the case for Islam; a situation that exposes to discrimination all the members of the Islamic community that reside in Italy.

However the Italian Constitution protects all religions, the people who are part of them, and their individual and collective right to "enjoy freedom of religion and the right to equality of churches" (European Commission Report on discrimination 2018:4). In fact, in 2016 the Court of Appeal of Milan decided that a woman that was discriminated in her workspace for wearing a headscarf was actually a victim of discrimination and was entitled receive non-pecuniary compensation for damages from the company she worked for (European Commission Report on discrimination 2018).

Within the Italian framework on discrimination there is no protection against multiple discrimination despite UNAR's report from 2014 highlighting the serious gap and shortcoming in the national legal framework; yet another example of the fragility and marginality of the Italian equality body and the habitual refusal by the government to consider UNAR's inputs as valid or even noteworthy.

With regards to the scope of the legislation on discrimination, the Italian laws broadly conform to the European directives. However, "discrimination on the ground of nationality is explicitly excluded from

the scope of application of Legislative Decree 215/2003, as are all legal provisions concerning the status of third-country nationals and stateless persons" (European Commission Report on discrimination 2018:5). While remaining within the legality of national and international law because of the uniformity with which it is applied, such a provision explicitly shows the intent of the Italian government to select the people it is willing to allow within its borders, discriminating in favor of Western and rich countries.

The fact that discrimination on the basis of nationality has been excluded form the Italian legal framework has however been addressed by "judges who apply the same legal framework, consisting of the 1998 Immigration Decree and Legislative Decree 215/2003, to every case of racial or nationality discrimination" (European Commission Report on Discrimination 2018:5). Thanks to this loophole in the Italian legal body, judges have been able to address cases of discrimination on the basis of nationality as direct rather than indirect discrimination.

Local and national authorities, and especially municipalities throughout the country are continuing to indirectly discriminate against groups of people like migrants and Roma that are perceived as different and dangerous for the cohesiveness of society on the basis of semi formal directives that have no legal value and that are actually in violation of human rights.

By setting standards that are not present in the national framework such as requirements on residence status and nationality, local authorities are effectively denying many people the right to renew their permit of stay and access to other documentation that is necessary for the participation in civil society. Municipal decisions and semi formal documents are used as pretexts to render access to residency permits virtually impossible for all those people that live on the margin of Italian society and do not have a legal residence (Palmeri 2016, European Commission Report on discrimination 2018:5).

Within such a context, the only way for there to be some sort of legal action against discrimination is if the alleged victim is able and willing to file a claim within the Italian court system. The procedure was rendered more agile and accessible by Art.28 of Legislative Decree 150/2011 which "revoked the special procedure for anti-discrimination cases provided by Legislative Decree 286/1998 on

Immigration" and by the Art.702-*bis* of the Civil Procedural Code which provides a "fast track procedure" (European Commission Report on discrimination 2018:5,6).

However, the almost complete lack of knowledge and information that members of civil society and in particular migrants have on what discrimination looks like and the protection mechanisms that are theoretically in place to protect them from such forms of violence renders the Italian anti-discrimination legal framework and protection body obsolete, unused and incapable of addressing the forms of racism, homophobia, sexism and xenophobia that run deep within Italian civil and political society.

The extension of Decree 216/2003 allows for the pre trial mediation to apply to all cases of discrimination and is not limited to cases of discrimination within the area of employment and the workspace. (European Commission Report on discrimination 2018).

Because surveys designed to provide an image regarding "perceptions of discrimination are very rare" (European Commission Report on discrimination 2018:2) and the results coming from these surveys are often unreliable, any effort to measure and understand the extent of the discrimination that occurs in the Italian peninsula is rendered very difficult (European Commission Report on discrimination 2018:2); not to mention any plan of action to contrast the phenomenon**.**

The most relevant issues with regards to discrimination legislation in Italy are thus related to the marginality that the subject has within the Italian civil and political discourse. As the European Commission reports highlights, the fact that there is no Ministry for Integration and the fact that UNAR is absolutely isolated and powerless to contradict the politicians in the government it belongs are evidence of this significant lack within the Italian legal framework. The fact that there are almost no actions in favor of vulnerable groups and minorities and the pervasive dismissal of discrimination as an important issue both by civil and political society is further evidence of the fragility of the legal framework protecting people against direct and indirect discrimination in Italy.

Italian Media and Political Discourse on Migration

The absence – since the end of the 1980s – of a credible Left that can provide alternatives to the Right has created the space for the rise of very strong populist Right wing movements that have emerged from the remains of the extreme Right groups that terrorized the country in the 1970s,[13] and that are now coming back into the social and political arena proudly claiming the title of Fascists. Within such a context the political discourse has left enough space for the establishment of a language, ideology and political action that is used to express nationalism, racism and xenophobia.

The rise in populist Right wing ideals has pushed the political and social discourse away from what could be called a "politically correct" model that emerged in the US and in Western democracies in the late 1980s. Unregulated freedom of speech has taken the place of the awareness addressing the structural violence of the postcolonial capitalist model of society and "politicians and opinion-makers tend to critically comment judgment[s on cases of discrimination], arguing for freedom of speech or economic choice"[14] (European Commission Report on discrimination 2018:2).

The spacial segregation of both migrant and Roma communities within the Italian territory fosters high drop-out rates for pupils of these communities that often living in marginalized areas where the access to civil society and basic government services is rendered extremely difficult, if not impossible. These people have become outsiders within the Italian social milieu and are very often forgotten and ignored by government authorities when they are not being targeted as enemies of the State and of society.

In a rather perverse manner, this marginalization, lack of access to basic hygiene services, and the absolute alienation from the mainstream Italian civil society, fostered by Italian political society's intentional negligence, is then used as a justification for discriminatory positions based on ethnic-religious difference and ideas of "otherness" that find justification in the inhumane conditions that these people live in.

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[13] Infamously referred to as the *anni di piombo* or led years in which people like Roberto Fiore who is now the leader of the political party Forza Nuova were actively planning and participating in terrorist attacks such as the bombing of the Bologna station of August 2nd, 1980

[14]"This was even the case regarding UNAR sending a letter to Giorgia Meloni, an Italian MP, following her hate speech against Muslim migrants; http://www.giorgiameloni.it/2015/09/02/lettera-a-renzi-dopo-nota-formale-ricevuta-dall-unar/

The political party *Lega* – once known as *Lega Nord* – has found new momentum under its most recent leader Mr. Salvini. While widely problematic and involved in various scandals, judiciary proceedings and possible connections to organized crime, his person and his political party are still able to maintain their grip on Italian voters. With his inflammatory rhetoric and leniency towards neo-fascist organizations he has helped dissolve the taboos once associated with Fascism, and the Italian extreme Right movements have come to see an ally in his persona.

Having based his political campaign almost entirely on a populist anti-immigration and anti-European stance, he is now Minister of Interior and has issued orders to not allow NGO boats to disembark migrants rescued at sea if they were not found within Italian national waters (N. 14100/141(8) Rome, May 15th 2019).

Within the current political and mainstream discourse on migration, the Minister of Interior Mr. Salvini has managed to stay at the center of the spotlight thanks to his loudness and his inflammatory anti-immigration positions. While the *mise en scène*[15] of the Minister of Interior asking to "close the ports" has generated flagrant opposition by municipalities and local authorities as well as other members of the coalition government, Salvini's apparent strong stance against the inflow of migrants on Italian coasts has created in his electorate the impression that he is the strong man that Italy needs to face the tyranny of the European Union and the migrant invasion.

Despite the lack of actual authority and power that would allow the Minister of Interior to control the infrastructure and the ports of the country, Mr. Salvini has used security reasons and the protection of national territory from criminality, terrorism and undocumented migration as a way of fabricating a state of emergency (Agamben 2005) that allows him to take the strong and absolute stance in the issue, echoing moves made by United State's current president. The fact that since the European elections in May 2019 the Lega has won the upper hand in the country, and its partners in government – the Five Star Movement – have lost the majority of their support, is also an important element that contributes to the power and influence that Salvini has gained within the Italian political arena.

[15] It is in fact responsibility of the minister of infrastructure and transportation to decide matters on this subject

The *Sea Watch 3,* a NGO boat that rescued 47 people at sea on the 13th of June 2019 was once again denied access to Italian ports to disembark the people on board as a direct decision of the Minister of Interior. In an attempt to convince the Italian government to allow the ship to dock and disembark without facing the sanctions that the Italian authorities threaten to impose on the NGO, the members of the crew filed a petition to the Court of Strasbourg to ask for support and assistance that was however rejected *(Repubblica* 24/06/2019 2019). The negotiations between the NGO and the Italian government are thus a clear example of how of national authorities deny their responsibility in the fulfillment and protection of migrants' human rights based on the assumption that it is other state's responsibility.

Such a situation fits what Faist has described as the *liberal paradox,* which sees the State as struggling between "adhering to human rights on one hand and […] controlling the migrant population on the other hand" (Ferrera and Faist 2018:2). As a way of reducing this tension, the externalization of migration control, in this case EU States openly working with controversial countries such as Turkey and Libya to contain the number of arrivals, creates a paradoxical situation in which liberal countries serve themselves of authoritarian and non democratic powers to reduce the amount of pressure they have to withstand.

Such an externalization of responsibilities and control also establishes the grounds for the State's dismissal of the unwanted and unwelcome migrants that are unable to make it across international borders or can be expelled "because their human rights cane be taken care of someplace else" (Ferrera and Faist 2018:2), either in the countries of transit or in their points of origin. As Faist explains, the effects of such a paradoxical situation "feed the culturalization of forced migration, defining forced migrants as 'the other'" (Ferrera and Faist 2018:4) while leading asylum-seekers, and migrants in general, within the semantics of "underserving recipients of social rights" (Ferrera and Faist 2018:4).

Within a post-truth European and Global context that Matteo Villa in an article for Politico describes as one where "the facts no longer matter" (Villa 2018), Salvini – with the tacit consent of his partners from the Five Star Movement – has thus managed to harness the wrongful impression that the Italian people have with regards to migration and use it to gain support. Despite the radical decline in numbers

of those arriving by sea, the Italian population continues to perceive migration as an emergency and as an ever growing phenomenon that needs to be controlled (Villa 2018).

Within this context however, the Italian Minister of Interior has been violating national and international laws, not to mention human rights agreements to which his country adheres. In January 2019 the minister reportedly "abused of his powers, violating the international conventions and depriving 174 people of their liberty" (*Repubblica*, 24/01/19) by not allowing them to disembark after their rescue.

The Italian Senate however voted against the prosecution that the Italian judicial body had filed against Mr. Salvini (*Il Fatto Quotidiano* 20/03/2019). This illustrates not only how the international human rights framework is often overwritten for political reasons, but also national law is bent to the political will of the government that uses states of emergency (Agamben 2005) and the imagined need to protect its citizens as excuses for violating its own national laws. In this case legislative bodies are being used to protect a Minister of Interior from suffering the legal consequences of a serious violation of human rights, national and international law.

Within this climate of dismissal and neglect for the various layers of the legal system, Salvini and the Italian government have also been investigated by the special rapporteurs of the United Nations Commission for Human Rights because the changes in the *Testo Unico* that Minister introduced include "[t]he abolition of humanitarian protection status, the exclusion of asylum seekers from access to reception centers focusing on social inclusion, and the extended duration of detention in return centers and hotspots" things that according to the UNHCHR "fundamentally undermine international human rights principles, and will certainly lead to violations of international human rights law"(UNHCHR 21/11/2018).

Findings of the Migration Integration Policy Index (MIPEX)

As the Index's website states, the Migrant Integration Policy Index is a "tool which measures [national] policies to integrate migrants in all EU Member States, Australia, Canada, Iceland, Japan, South Korea, New Zealand, Norway, Switzerland, Turkey and the USA" (MIPEX, what-is-mipex). It was created within the project *Integration policies: Who benefits? The development and use of indicators in integration debates* by the Barcelona Center for International Affairs (CIDOB) and the Migration Policy Group (MPG). The European Fund for the integration of Third Country Nationals is a co-finding partner for the analysis of the EU member states, except for Denmark. Some other co-funding partners are the International Organization for Migration (IOM), the DG SANTE (Directorate-General for Health and Food Safety) and the CHAFEA (Consumers, Health, Agriculture and Food Executive Agency) of the European Commission.

In order to assess the scores of each country and to create the dataset that allows MIPEX users to compare and analyze the integration policies, the Index has been developed along eight policy areas. Namely: labor market mobility, education, political participation, health, access to nationality, family reunion, anti-discrimination and permanent residence (MIPEX, what-is-mipex).

It covers a total of 38 countries, and uses 167 indicators to qualify and quantify the characteristics and effectiveness of each migrant integration policy within the eight policy areas. An indicator is defined as a "a question relating to a specific policy component" (MIPEX, methodology) that allows to consider the characteristics, scope and implications that a policy might have. In order to empirically measure the answers to the questions that make up the indicators, the MIPEX project developed a ranking from one to three where three is the highest score and one is the lowest.

By creating a detailed image of the migration policy framework of each country, the Index thus provides its users with a multidimensional perspective on migrants' access and possibility to participate in society.

Through its interactive layout and the possibility to utilize the data according to the users' needs to compare countries and policy areas, the index provides a detailed and nuanced image of integration policies of the countries it considers. This effectively puts together an informational fabric that unifies the otherwise fragmented data on migrant integration policies of the countries the Index analyzes.

The non-European countries that the MIPEX considers are fairly well distributed around the globe, however they are also amongst the most powerful Western States and the Eurocentric genesis and identity of the project is evident. Especially because the highest standards that MIPEX and the human rights international discourse consider are set by the international human rights framework that is heavily reliant on a worldview that emerged from the Enlightenment, the post World War II period and the democratic and humanist world view that Europe inherited from its past and that struggles to extricate from its colonial inheritance.

Through the material and the information that the Index provides, the MIPEX is intended to engage and inform "key policy actors about how to use indicators to improve integration governance and policy effectiveness" (MIPEX, what-is-mipex). Its characteristics in fact, allow policy makes and political society as a whole to have some points of reference that condense the international human rights standards and the international law regarding migration. To this end, the Index identifies and describes "integration outcomes, integration policies, and other contextual factors that can impact policy effectiveness" in order to provide "high-quality evaluations" of the effects of integration policies (MIPEX, what-is-mipex).

The rigor of the research and methodology behind the project makes it quite a relevant database and "reference guide" in terms of migration, especially in the European context (MIPEX, what-is-mipex). The fact that the Index also ranks the different countries according to the quality of their migration and integration policies is also quite useful in providing a factual basis for debate in which countries and governments can compare each others methods of dealing with migrants' integration and from which they can learn from.

The standards that the Index uses in order to rank and classify the integration policies it considers are the “highest European and international standards aimed at achieving equal rights, responsibilities and opportunities for all residents” (MIPEX, methodology).

More specifically, these standards are based on the European and International conventions that are at the core of the international human rights legal framework such as the International Labour Organization conventions on migration and labor, The United Nations Covenants on civil, political, economic, social and political rights as well as the UN International Convention on the Rights of the Child, the UN International Convention on the Protection of All Migrant Workers and the Members of Their Families, and the International Convention on the Elimination of All Forms of Racial Discrimination (MIPEX, methodology).

Within the field of migration and integration there are not many examples of tools that compare and analyze the migration integration policies of one or more countries. The MIPEX is thus a way to provide civil and political society with a far-reaching tool that can help gain access to such type of information and move consciously within the policy areas in order to assess their validity and address the issues that emerge during the analysis. For the same reasons I use the MIPEX as a point of reference and a benchmarking tool in order to assess the policy areas of family reunification and anti-discrimination of Belgium and Italy.

The Index also has the objective of stimulating both action and “debate via the media” within the ranks of civil society, and thus has the possibility of establishing itself as a point of reference and a bridge between civil actors and political society. Through its work, it allows and empowers civil actors to engage and participate in an informed way in the discourse surrounding migrant integration; which to date is monopolized and instrumentalized in order to channel the fear and anxiety that the progressive and exponential increase in inequality has created.

In spite of the amount of circulation of information that has sprouted thanks to the exponential increase in communication technology, the MIPEX is an example of the necessity to develop other informational tools like it. The development of information composing instruments is in fact possibly one of the most effective ways of allowing civil society to hold its policy makers accountable for their

choices, and to consciously work towards the improvement of the legal frameworks that regulate access to society and its resources.

Belgium

Amongst the 38 countries that are examined by the Index, Belgium ranks 7th with an overall score of 67 out of 100. Of the eight policy areas, Belgium is strongest in the area of permanent residence, followed by anti-discrimination and family reunification. In the post WWII period, Belgium has become an important country of immigration "with an estimated 11% of the population [being] foreign born and 8% [of] second generation" (MIPEX, Belgium).

According to the Index, in recent years Belgians have maintained favorable attitudes towards immigrants in comparison to other European countries. One out of two foreign people living in Belgium are from the EU, and 22% non-EU born foreigners are from "low-developed countries" (MIPEX, Belgium). This situation is changing since the most recent data included in the index, as the mainstream discourse and the rise of Right wing populist and ultra nationalist parties has gained momentum. With the increase in presence of the far Right, Belgium is also starting to change and to feel the wave of xenophobia that is gaining momentum across Europe.

From a political point of view Belgium reflects quite similarly the situation in Italy and in the countries where the rise of the nationalist and populist Right wing parties have destabilized the Central coalitions that have characterized most European countries since the 1990's and that are progressively starting to collapse. The government crisis of December 2018 resulting from a confrontation over the Global compact on Migration, is a clear symptom of this gradual shift towards nationalist and identity politics that claim the role of protecting the people from the bureaucratic and political machines that are exhausting the population and allowing for the "migrant invasion".

Family Reunification

According to MIPEX, in Belgium only 3.1% of non-European residents are newly arrived family members (MIPEX, Belgium). The most visible changes in the Belgian legislation with respect to family reunification were made in 2011 when the country adopted restrictive requirements being used in

Austria and France. The 2011 law that determined the conditions for family reunification in terms of economic status and that required that a sponsor's economic resources be at 120% of the minimum income for social integration, is a clear example of progressive tightening of family reunification procedures. This change in legislation in fact highlights how the State is progressively moving into a neoliberal model in which the State's welfare program and its responsibilities towards its citizens shrink while the private sector expands filling the gaps that such a reductions have created.

The financial limitations that sponsors are faced with effectively restrict the access to the right to family reunification by a very significant extent; especially if considering that the vast majority of migrants that attempt to reunite with their families are non EU citizens that often live within the margins of poverty and are unable to reach such economic standards because of the structural exclusion they suffer from the European market and society that sees the characteristics of xenophobia, racism classism and sexism enshrined in the architectures of power that regulate the access to social and economic development of Old Continent.

Since the 2011 change in policy, Belgium has "lowered the benchmark of equal treatment" (MIPEX, Belgium) and has instituted paradigms for family reunification that even its own nationals are often not able to achieve; showing an attitude that is clearly defined by double standards and that is explicitly and implicitly aimed at allowing the State to choose which kind of migrants it is willing to admit within its borders by institutionalizing a migration that is based on income, nationality and social status.

Within this context, Belgium further aggravates the condition of uncertainty that migrant families face in the country. While on paper Belgium is sightly better than most European countries, the reality is that the implementation of the 2011 law on family reunification has lead to a disproportionate negative impact on minorities and vulnerable groups. In fact, by setting a minimum income level, the Belgian State directly excluded all low income groups and indirectly excluded all those people coming from what is generally referred to as "developing countries" from benefiting from the right to family life; a violation of the universality of human rights and a discrimination that is aimed and based on class, identity and income.

In terms of the conditions that are required for family reunification, Belgium demands that sponsors have secured an accommodation that respects the "general health and safety standards" (MIPEX, Belgium) of the country, and that is adequate to host the number of people that would live in it if the reunification occurred. This requirement, while intended to ensure that people live in conditions that are dignified and reach the minimum standards set by national law, effectively brushes aside the State's responsibility to provide and facilitate access to family life for those that are unable to secure an accommodation that meets the national standards of for living conditions.

Following the EU Chakroun case of 2011 in which a Moroccan citizen was denied family reunification on the basis of insufficient income to sustain his family members, the Belgian procedures for family reunification have shortened in length "and individually asses the […] circumstances with the conditions used as reference points and not as fixed levels" (MIPEX, Belgium). However the same law has also widened the grounds on which the state can reject an application, also extending the "period of possible withdraw" granting a much broader range of action and grounds on which to deny reunification (MIPEX, Belgium).

The 2011 law has resulted in a drastic diminishing of the number of petitions by non-European sponsors, especially because of the rise in the minimum income requirement, but also because of the discouraging effect of the increased length of the procedures and the increase of rejected applications.

In cases of rejection, families have the right to know the reasons and to challenge them in court if needed. However this is a marginal concession and effectively no more than a token gesture as the cost and time involved in the process, make it extremely difficult if not virtually impossible to successfully challenge such refusals given the socio economic conditions of the most applicants.

The data with regards to which people are benefitting from the right to family reunification shows in fact, that most often those migrating to join EU and non-EU citizens are children, and not spouses. Amongst reunification of spouses, women are the vast majority of incoming migrants. Hardly any parents of non-EU citizens are accepted for reunification (MIPEX, Belgium). As this data shows it is evident how the Belgian State continues to do all that is possible to limit the number of people it would

be required to assist through its welfare programs and thus continues to systematically discriminate people along the lines of income, nationality, health, age and social status.

Anti-Discrimination

Belgium has progressively increased its efforts in order to monitor and implement anti-discrimination laws in accordance to European and international standards and its Interfederal Centre for Equal Opportunities (UNIA) has been of fundamental importance in the process. UNIA has in fact managed to cover most of the country and its communities through a network of offices and points of reference across the national territory and across the ethnolinguistic differences that characterize the country (MIPEX, Belgium).

Belgium's anti-discrimination policies are its strongest amongst the eight policy areas considered by the MIPEX project, ranking ninth out of the 38 countries analyzed by the Index. While having "[r]ather strong anti-discrimination laws and body informing the public" the country is still – however – lacking in areas related to discrimination in the work space and in accessing the job market.

The definitions that Belgium uses to outline the shape and substance of discrimination are defined by the MIPEX as "rather comprehensive" and do not leave out any person that is living in the country (MIPEX, Belgium). The large spectrum of definitions that Belgium has developed to outline discrimination allows a "wide range of actors in society" to be considered as potentially discriminating against someone on the grounds of "race, ethnicity, religion or nationality" (MIPEX, Belgium). Such a spectrum also includes "discrimination by association" and protections against discrimination within the education sector.

One of the main faults in the Belgian policy framework on discrimination is however the lack in legislation against either "multiple discrimination or racial profiling by police" (MIPEX, Beglium). With regards to multiple discrimination there have been efforts by the individual municipalities and the Regions to address such a lack, but there is however still a strong need to bring such a legislation within the Federal framework in order for it to be fully effective and able to protect those who are victims of this kind of discrimination.

The fact that racial profiling by the police is not considered discrimination is an extremely serious fault because of the clear and stark uneven power relations that characterizes the interaction between the police and civil society, especially when considering minorities and vulnerable groups. Such a gap in the legal framework in fact, further exposes groups and individuals that already experience multiple levels of hardship in their everyday experiences, either because of the color of their skin or of their appearance and puts them in a vulnerability that is clearly in violation of their human right to not be discriminated against.

If one then considers that in most cases, discrimination is not only based on one characteristic of a person but is often linked to the intersection of differences and qualities that make up one's identity, the need to address discrimination along different axes and the weakness in addressing one discrimination at a time becomes self-evident.

In an article of Politico following an Amnesty International report on the issue, an officer is quoted saying that "without discriminating, we could never stop anyone" (Hervey 5/9/18); a claim that ostensibly highlights the deeply rooted bias that equalizes a stigmatized and visualized difference with criminality, and that perpetuates an enforcement of the law that is specifically aimed at policing stigmatized groups.

The mechanisms of enforcement for this policy area are however quite robust and are supported by actors such as NGOs and civil society organizations that provide free assistance to victims. According to the Index, "situation testing and statistics are strong but under-used tools as potential evidence in court" (MIPEX, Belgium).

Amongst the people living in Belgium, 40% say they are aware of their rights and the protection mechanisms with regards to discrimination (MIPEX, Belgium). According to the MIPEX In the country there is also a quite high level of trust in public authorities, police and the judicial system; which is particularly interesting especially when considering the lack of a framework for the protection against racial profiling by police officers.

Such a level of trust can –in fact – be connected to the lack of regulation with regards to discrimination and police officials, but it also can suggest that the voices and concerns of undocumented migrants and members of minority communities that are non EU citizens find no representation in this picture. A situation that is also confirmed by the fact that the majority of people that are not born in the EU but live in Belgium are also long settled and are thus more aware of the civil and judicial systems of the country, thus being more likely to report the incidents of discrimination they experience (MIPEX, Belgium).

Findings from the analysis done of the Belgian situation in connection with MIPEX relate that there is still much to do in terms of leadership and affirmative action as well as the legal protection of people against all forms of discrimination. Similarly, there is still much to do with regards to the 'public dialogue' and the promotion of anti-discrimination through the work of service-providers. (MIPEX, Belgium)

Notwithstanding the complex and well-developed policy system that Belgium has instituted to combat discrimination, there are still "few complaints" in comparison "to the large number of people reportedly experiencing incidents of […] discrimination" (MIPEX, Belgium). This aspect of the issue is probably the most problematic and fundamentally distorted because it highlights the paradoxical nature of a situation in which minorities, which by definition are more prone to experience various degrees of discrimination, are the least protected and informed about the legal framework that is supposedly in place to safeguard them from this kind of violence.

Italy

Amongst the 38 countries that are examined by the Index, Italy ranks 13th with an overall score of 59 out of 100. Within the eight policy areas, family reunification ranks the highest scoring 72; followed by labour market mobility at 66, health at 65, and with anti-discrimination ranking fifth with a score of 61.

Up to the mid 1970s Italy was a country from which people migrated and had very few numbers of people arriving on its coasts with the intent of settling in the peninsula. The start of the 1990s marked a shift in its role towards becoming a country that receives significant numbers of migrants who settle there in the long term (MIPEX, Italy).

Today Italy is one of the main points of arrival for the migratory flows that cross the Mediterranean Sea leaving from the Libyan, Tunisian, Greek and Turkish coasts. While arrivals through the Sea have created a sense of emergency within the country, the children of those arrived in the 1990s are hybridizing the Italian civil society from within and radically changing the perspectives that Italians have of themselves. Starting to challenge and destabilize the concept of what an Italian looks like and what it means to be Italian the children of those arrived in the 1990s – even if born in Italy – are still not recognized as Italian citizens because of the *ius sanguinis* legal regime which confines them in the gap between identity and nationality.

The Italian economy has also been heavily impacted by the shift in migratory flows and has incorporated migrants in the sectors of construction, agriculture and domestic work; which once were sectors of the economy in which the lowest classes of Italian society were employed. Today the social and institutional structures that once exploited the poorest of the Italians are transposed onto migrants who now make up the vast majority of the work force in these sectors. The hardships related to such jobs, and the vulnerability that characterizes the position that migrants hold within Italian society further foster such a shift in the composition of the labor body, and allows for easier, structural and unpunished exploitation (Palmeri 2016).

The majority of the people arriving by boat are young men that intend to start new lives in Europe or to support their families through remittances that they are able to send, thanks to low skilled and seasonal work (MIPEX, Italy; Palmeri 2016).

Within the Italian public discourse the MIPEX research found that Italy has leaned towards a positive attitude with respect to migrants even though in the country there is a minority (albeit vocal) with anti-immigration sentiments. As the current developments of Italian politics and civil society highlight however, things are rapidly changing with a significant increase of episodes of racism, xenophobia and a progressive mainstreaming of fascism, along with its language symbols and rhetoric.

As the documented by the Index, policies in Italy have not changed much over the ten years leading up to 2015. More recently however, with a progressive shift towards more conservative and right wing politics, Italy is simultaneously seeing its own youth diversify while political debate becomes increasingly nationalist and opposed to diversity.

The progressive settling in of regularized migrants, and the continuous – even if not homogenous – number of arrivals, coupled with the geo-political position of the peninsula within the European geography and polity render Italy one of the most important countries in terms of migration control and one of the main points of arrival for the European Union. The current international legal framework determined by the Dublin regulation[16] is also a crucially significant factor that forces those who have registered within the Italian bureaucratic system to stay within its borders.

The closing down of migratory flows across the Mediterranean started with the Minister of Interior Minniti, in office between 2016 and 2018, and his expedition to make a deal with the tribal leaders still fighting over the control of the Libyan territory which brought to a drastic fall in numbers of boats leaving the Libyan coasts.[17]

[16] Also known as Regulation No. 604/2013

[17] Such a decrease in numbers of boats departing from Libya also coincided with an increase of people held in detention centers in Libya, and the uncovering of dehumanizing conditions that migrants faced while being imprisoned in the country. (Nima Elbagir, Raja Razek, Alex Platt and Bryony Jones 2017)

The current Minister of Interior Salvini and his complete closure of Italian ports to migrants saved in international waters is the culmination of the Italian position towards migration and a direct result of the European Union's mismanagement of the "migration crisis". Italy has thus moved into an identity that is far from the tolerant and open country that is described by the MIPEX. Instead it shows its European neighbors a violent and hateful face that draws heavily on its dark past and on the insecurities of its people in order to channel an anger that can be traceable to the fear and insecurity produced by the exponential rise in inequality and the neoliberal answers that are continuously given to solve this situation but actually do nothing but exacerbate it.

Despite its important role, Italy has yet to reach the standard that the Index has set as "favorable for integration" (MIPEX, Italy), ranking only 13th amongst the considered countries. While on paper, Italy has achieved the capacity to legally integrate migrants within civil society, it is still to provide them with access to "equal opportunities in practice" (MIPEX, Italy). In fact, as many studies have showed, the every day lived experiences of migrants in Italy are light years away from being adequate to the international human rights standards in terms of protection and access to civil society.

Access to the labor market has been a key feature in allowing regularized migrants the possibility to find employment, and a favorable family reunification policy has allowed many people to reunite with their family members. However, as the Index shows, these people and their children are far from being able to fully integrate within civil society and are frequently left without substantial support (MIPEX, Italy). The fact that the procedures linked to obtaining residency permits are dependent on the Regional system further complicates the situation, and creates significant discrepancies and differences in the possibility to obtain such permits.

As a result, the numbers of those that linger within the grey zones of legality and that oscillate between short periods of being documented and long waiting times during which they result undocumented is often unnoticed by the official studies and statistics. Vast numbers of people – in fact – live in precarious situations of semi-legality that expose them to various degrees of exploitation and abuse and preclude their actual access to a stable and viable job, a house, and protection by the social welfare.

Amongst the factors at play within this context, as the Index suggests, the difficulties that the "restrictive, discretionary and bureaucratic paths to citizenship" present to those attempting to become Italian citizens are some of the most impactful (MIPEX, Italy).

The relatively young legislative framework and policy body against discrimination is also lacking in strength; a situation that brings many people that experience discrimination to not even take the first step of reporting the incidents. In order to ensure that those who suffer from discrimination are able, not only to report but also to act through legal proceedings, it is necessary to reform the Italian legislation. However, it is of most paramount importance to create a situation in which those who are now alienated within the outskirts of Italian society and are precluded from any substantial participation can feel entitled and allowed to participate as equals and thus feel entitled to a protection against discrimination.

Family reunification:

Family reunification procedures have allowed many non-EU nationals to reunite with their family members in Italy, however there is a significant level of discrimination with regards to which families Italian policies are favorable to reunite.

Some of the restrictions that are the root causes of the discrimination within the access to family life are, as is the case with Belgium, linked to the model of the family that is expected and required in order to obtain approval for the reunification.

While the ECJ's decision C-578/08 that requires authorities to evaluate the economic resources that are considered to be sufficient for the reunification process seems to be one that opens the decision to contextual factors on a broader ground, if considered from the cultural perspective of the authorities that are in charge of undertaking this analysis, the situation is not as obvious.

The "nature and stability of the family relationship, the length of the marriage, [as well as] the social and cultural ties with the country of origin" are considered in the ruling as factors that play a role in the economic capacity of a family. However these are also characteristics that heavily depend on the type

of family model, the cultural and geographic context and the morality of the person or group of people that are in charge of taking the decision; it is a meter of judgement that is – in fact – embedded in social and cultural consciousness. As a result, if this person is a European man for instance, the family that is "authentic" in his mind will most probably be one based on a christian and monogamous modeled marriage that fits the capitalist, patriarchic and Eurocentric worldview.

To further exposes the tendency of the government to discriminate with regards to whom is an acceptable subject for reunification, is the fact that, despite the multigenerational model that the Italian family is based on, the government has made it "nearly impossible" to reunite with one's parents, even if fully able to provide for them economically.

The attitude of closure that the Italian government has towards those who it might have to sustain and that are not considered as socially productive is thus clearly visible in the implications of the government's position and is actually explicitly stated by the "160/2008 decree [that] presents immigrants' elderly parents as unwanted burdens on the welfare state" (MIPEX, Italy).

The restrictive controls that the State has over reunification procedures is also confirmed when considering the composition of those successfully benefitting from reunification procedures as it emerges that, in the period between 2008-2013, about half of the people arriving in Italy through this channel are mostly women spouses, with a remaining one third being children and about 20% being other family members (MIPEX, Italy).[18]

Because of the critical conditions that have characterized the Italian economy over the past ten years, and in particular that have drastically limited the access to the job market, the actual working conditions and possibilities to find a documented and fairly remunerated employment for a non EU national are very scarce and the majority of the time the only solution is undocumented and underpaid manual labor (Palmeri 2016).

[18] To this there is to add that most of he people arriving in Italy by sea are young men, therefore the fact that the majority of spouses that arrive through the reunification channel are women is also related to the gendered composition of the migratory flows crossing the mediterranean.

While in theory the requirements set for family reunification can be interpreted as reasonable and effectively ensuring that those benefitting from reunifications do not live in degrading and dehumanizing conditions, the reality is that these standards are extremely difficult for most migrants to achieve, and thus preclude them from the possibility to enjoy the right to family life (MIPEX, Italy).

The fact that such standards are set by Regional authorities and are not homogeneously applied across the national territory further complicates the access to family reunification procedures and allows for a greater possibility of discrepancies and biased judgements by local authorities; something that is not only a possibility but also a documented reality, especially with regards to the renewal of residency permits.

The costs of the procedure, in terms of time and money that are necessary for the successful application of the procedure are also quite high, especially since 2009 when they were increased to € 200 (the average cost in the countries that the MIPEX considers being about € 120).

Applying for family reunification might imply as well other great sacrifices also because of the bureaucratic proceedings require people to spend many hours in offices that are often sparsely distributed across the national territory. Because the offices that are responsible for the proceedings often work during morning hours and require the applicants to spend most of the day traveling there and back, these procedures are also very costly in terms of time and in terms of financial cost spent for tickets and time not spent at work (Personal experience as member of the IOM family reunification team).

Even though the processes to reunite with family members can be very long and costly, in terms of eligibility, Italy's policy body is "rather inclusive" ranking 9th in the Index. Having a one year residency permit – in fact – allows one to apply for family reunification, and the permits that are issued within the reunification regime are renewable and last as long as the sponsor's permit (MIPEX, Italy).

As in the majority of countries analyzed by the Index, adult family members enjoy the same socio-economic rights as their sponsor and they can gain a autonomous residency permit without too many

difficulties, especially if considerable as part of vulnerable groups such as widowhood or divorced (MIPEX, Italy).

Anti-Discrimination

Italy has a very recent and fragile anti-discrimination policy framework that does not have a substantial and effective structure that allows for the necessary protection and prevention mechanisms. For this reasons the MIPEX has defined the country's anti-discrimination laws as the weakest in the developed world and well below the Wester European average (MIPEX, Italy).

There is in in fact, close to no awareness amongst the local or foreign population residing in the country related to the issue or to the legal frameworks that are supposed to protect people from discrimination. The few people that are aware of these mechanisms of protection are unable to fully benefit from their existence because of the weakness of such tools, because of the authorities' unwillingness to act upon complaints, and because of the closely dependent relationship between the UNAR equality body and the government, which renders the body virtually ineffective and bland in its power to influence.

Within such a context, in 2012 Italy has experienced reported episodes of discrimination that are "slightly above the EU average" (MIPEX, Italy) with rates of 4.2%. However the lack in information and accessibility to the anti-discrimination policy framework does not allow for a clear picture of the actual discrimination that people face in the country. There is – in fact – a pervasive racist and xenophobic attitude that covers the entire State and that segregates both from a spacial and a social dimension those that are not phenotypically recognizable in the white Italian model and that are often non-EU citizens arrived through migration.

One of the most disconcerting and serious issues is that authorities and police officers are also frequently reported as racist and discriminatory in their words and actions. Examples of this can be found in the refusal of certain municipalities to renew residency permits on the false ground of inadmissibility because of a lack of proof of a legal residence, something that has been repeatedly proven to be illegal but that continues to happen in many Regions and municipalities (Palmeri 2016).

Another example that illustrates the gravity of the situation is the fact that, very often police officers are blatantly negligent and racist towards migrants that seek their help, not to mention the pervasive racial profiling that Italian police officers perform on a daily basis. During my field work in Southern Italy, I interviewed many people telling me how if they called the police to file a complaint against an employer that refused to pay them, the police officers that arrived had nothing to say except:"it's not our problem, deal with it yourself" when the officers were polite (Palmeri 2016) .

As seen earlier, the definitions of discrimination that Italy propose are rather incomplete in comparison to other European countries; a condition that positions the country at the 20th place in the Index (MIPEX, Italy). Because of the weakness in the policy body on discrimination "Certain victims may not be covered" and "definitions on discrimination based on association/assumed characteristics, multiple discrimination or racial profiling" are amiss. (MIPEX, Italy).

The enforcement mechanisms are quite recent and within the limits of acceptability with respect to the rest of Europe (MIPEX, Italy). The 2008 law has in fact, improved the policy body bringing it closer to the European standards by lifting victims from the entire weight "of proof throughout the legal proceedings" (MIPEX, Italy).

Italy remains one of the countries that promote diversity the least, the "diversity charter for business" it created has had no real impact in promoting equality and the office for Racial Discrimination (UNAR) is not independent and is unable to actually help victims of discrimination. The UNAR is in fact not even quasi judicial body and its main functions are those of bringing discrimination cases to court on behalf of victims, to "bring discrimination complaints ex officio to court", and to provide aid in discrimination cases as for instance through the provision of an *amicus curiae* (EU Commission Country Report Discrimination, Italy 2018:82).

The fact that UNAR does not even have any "publicly visible office", does not have any significant contact with communities in the national territory and does not have any special procedures that allow

potential victims to access their services makes the Italian equality body almost impossible to reach and access in cases of need (EU Commission Country Report Discrimination, Italy 2018:83).

The amount of complaints filed for cases of racial, ethnic and/or religious discrimination can be drawn from the number of claims the UNAR has received. While the numbers are quite low (in 2013 the Office only received 812 requests for help) (MIPEX, Italy), it is clear that in a country as large and as uneducated on the topic of discrimination as Italy, there is bound to be a great amount of discrimination that is unaccounted for and that goes unpunished.

Within this picture it is clear that Italy's anti-discrimination framework is virtually ineffective and obsolete in tackling the issues related to discrimination that unfold within Italian society. As mentioned earlier, the fact that UNAR is part of the Department for Equal Opportunities and of the Council of Ministers making it absolutely dependent and subject to the political will of the government is probably one of the most serious issues.

The fact that, as the EU Report on discrimination from 2018 highlights, most of the litigations that concern discrimination are linked to discrimination that is based on nationality and that is "perpetrated by local and regional authorities" also highlights how discrimination is enshrined the structures of Italian society and the State, which should be the entity protecting against these types of violence is actually the main perpetrator.

The Muslim community not having any sort of formal recognition of its entitlement to exist within the national territory further confirms this image of structural and aimed discrimination. The absence of an official agreement between the Italian State and the Muslim community makes it so there are continuous tensions and debates over the presence, the institution, or the removal of places of worship.

Finally the seriousness of the shortcomings and ineptness of the Italian State is exemplified by the absolute lack of any notion or program with provisions for affirmative action, the lack of a framework for compensations, the failure of local and Regional authorities to implement correctly, if at all, the

national strategies, and the lack of data regarding the levels of discrimination, inequality and diversity in the country.

Conclusion

The first most important point with respect to migrants and human rights presented in this study is that while human rights law allows for the free movement of people and while migrants have the right to leave their country of origin, they have no corresponding right to enter another country without that State's permission. As noted, this has put the tension between the international human rights legal framework and State sovereignty into focus and was discussed to be a manifestation of the conflict between national and international law.

The structural discrimination based on nationality and socio-economic status that States exercise over migrants in terms of who they allow within their borders further exposes and endangers people that are already vulnerable due to the general lack of protection mechanisms for people transiting between Nation States.

While States have the authority to decide who can cross their borders, every State also has the obligation to protect the human rights of those people within its borders – regardless of their legal status and of the ways in which they have crossed the frontier. In fact, if a person enters and or remains in a country illegally this does not preclude the State's responsibility to protect the person's basic human rights.

This research has revealed that this responsibility is not always upheld, as illustrated by the case of Belgium and Italy. Moreover, looking at the subjects of family reunification and anti-discrimination laws, this research has shown how the formulation of selected government policies applied to migrants has, in some cases, actually infringed on their human rights.

In connection with migration, and in particular in family reunification policies, both Belgium and Italy explicitly discriminate against who may legally enter their country on the basis of income level, nationality, marital status, education, age and health conditions. This research has also shown how the procedures used to administer family reunification discriminate further with: (i) the introduction of minimum income requirements for those who sponsor the migrant; (ii) the requirement that the migrant

present the reunification request in person to consular offices; and, (iii) the unwillingness to recognize the marriage definition of the applicant for certain religions.

Both Belgium and Italy were found to have made efforts to monitor and implement anti-discrimination laws in accordance with European and international commitments to human rights. The institutional arrangements made by the Italian government for the accountability and operations of the institutional body responsible for protecting the right to be free from discrimination were seen to be weak and almost ineffective. Whereas Belgian policies, its institutions, and their outreach were found to be generally strong and effective.

The complete lack of protection against police racial profiling is a serious issues within both the Belgian and the Italian legislation on discrimination. As a form of discrimination that police openly admit to practicing, and to which migrants remain particularly vulnerable, such an absence highlights how Belgian and Italian authorities have left a serious gap within the protection mechanisms against discrimination. Especially because of the role that police officers have as intermediaries between civil society and the governing authorities.

More importantly, in both countries migrants lack effective access to their right to protection by anti-discrimination laws because they are not aware of their rights and because they tend to lack the means to access services and procedures to take legal recourse. It was also observed that migrants often lack the financial means to do file claims and follow up.

Ample evidence was found of discourse by national politicians and the media using the issue of migration to grab attention. A review of media reports has found that migrants have been made to blame for the inability of governments to cope with migration and the integration of new comers. Moreover, the research revealed no trace - in public discourse - of the recognition that State's have undertaken international commitments to protect the human rights of all.

The study found that over time, since 2015, discourse related to migrants has become increasingly inflammatory. As a result the administration mechanisms for accessing rights have effectively

narrowed. Fortunately, legal frameworks and explicit legal commitments to human rights for migrants appear to generally remain unchanged. Yet no hint was found in public discourse in either Belgium or Italy that countries could benefit from expanding access to rights, or from allowing people the same rights of movement across borders that States allow to capital and services.

It thus seems of paramount importance to strengthen the enforcing mechanisms that the EU has with regards to the protection of human rights. But, as the new president of the European Parliament David Sassoli has said (Rubino 3/07/19), the structure and mechanisms that regulate migration in Europe need to be remodeled and adapted to the actual shape of the migratory flow crossing the Mediterranean.

Appendix:

Ratified Human Right Treaties and Optional Protocols[19]

Belgium

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment
CCPR - International Covenant on Civil and Political Rights

CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty
CED - Convention for the Protection of All Persons from Enforced Disappearance

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CESCR - International Covenant on Economic, Social and Cultural Rights

CRC - Convention on the Rights of the Child

CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography
CRPD - Convention on the Rights of Persons with Disabilities

Italy

CAT - Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment

CAT-OP - Optional Protocol of the Convention against Torture

CCPR - International Covenant on Civil and Political Rights

CCPR-OP2-DP - Second Optional Protocol to the International Covenant on Civil and Political Rights aiming to the abolition of the death penalty

CED - Convention for the Protection of All Persons from Enforced Disappearance

CEDAW - Convention on the Elimination of All Forms of Discrimination against Women

CERD - International Convention on the Elimination of All Forms of Racial Discrimination

CESCR - International Covenant on Economic, Social and Cultural Rights

[19] OHCHR Website, accessed on June 26th 2019

CRC - Convention on the Rights of the Child

CRC-OP-AC - Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict

CRC-OP-SC - Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography

CRPD - Convention on the Rights of Persons with Disabilities

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