

Editorial

Migration and Criminal Policy in the EU: the case of Italy

In the last two *Editorials* which appeared in the pages of this Review, a strong concern has been expressed for the growth of populist and anti-European movements in different EU countries as well as for the influence that these movements also exert on criminal politics, in a direction that clashes with the safeguards of European values and human rights.

In the last year, Italy – under the government of the coalition *Lega-Movimento 5 Stelle* – has presented a worrying test for the stability of the European policies, especially with reference to the crucial issue of migration. The Italian Minister of the Internal Affairs – the *Lega* leader Matteo Salvini – has pursued, since the beginning of his mandate, a harsh contrast with the European institutions, proclaiming the closure of Italian ports to NGO ships and refusing to give aid and reception to the masses of refugees arriving from the coasts of North Africa, who have been consequently forced to a grueling wait off the coasts of Sicily and Lampedusa; a wait that has been particularly long and dramatic in the cases of the *Diciotti* vessel of the Italian Coast Guard and of the NGOs boats *Sea Watch* and *Open Arms*.

From a criminal policy point of view, this policy of “closed ports” has led to the issuance of two Decrees on Security and Public Order aimed, among other things, at hitting “search and rescue” activities of the humanitarian NGOs with administrative and criminal sanctions, if these activities cause an “incentive for foreign citizens that do not comply with the rules on residence permits to cross the sea” and “objectively favor their illegal entry into the national territory”.

This Italian policy of “closed ports” has been severely criticized by the United Nations High Commissioner for Human Rights. In particular, a letter dated 15 May 2019 and signed by five *Special Rapporteurs* has highlighted its radical incompatibility with the obligations deriving from the UNCLOS, SOLAS and SAR Conventions on the International Law of the Sea, as well as with the principle of “non-refoulement”. The progressive inhibition of the rescue activities provided by the NGOs and other private ships in the central Mediterranean, in fact, creates very serious risks for the fundamental rights of the migrants, doomed – in a statistically increasing measure – to lose their lives in a shipwreck or to be recovered by the Libyan Coast Guard and brought back to a country with currently a shattered state organization, where arbitrary detentions, torture and sexual violence represent a tragic daily life¹.

1 Cf. S. ZIRULIA, *Decreto sicurezza-bis: novità e profili critici*, in www.penalecontemporaneo.it, 18 June 2019, and ID., *Soccorsi in mare e porti sicuri: pubblicate le raccomandazioni del Commissario per i diritti umani del Consiglio d'Europa*, in www.penalecontemporaneo.it, 20 June 2019.

A few days after the entry into force in Italy of the second “Security Decree” (D.l. 14 June 2019, nr. 53) and the immediate adoption of the first “Ministerial Entry Ban” in the Italian territorial waters according to the new Italian Migration Law, the Council of Europe Commissioner for Human Rights issued a recommendation with the eloquent title *“Lives Saved. Rights protected. Bridging the protection gap for refugees and migrants in the Mediterranean”*. It reads, among other things, that: *“Whilst states have the right to control their borders and ensure security while co-operating with neighbouring countries to this end, this cannot come at the expense of people’s human rights whether at sea or on land. Effectively protecting these rights requires the full implementation of member states’ obligations, under international maritime law, human rights law and refugee law, which should be read as being consistent with each other”* (p. 16).

Previously (12 November 2018), 10 United Nations Special Rapporteurs had already sent a communication to the Italian Government in which they had expressed concern about the situation of fundamental rights in Italy, asking in particular clarifications regarding the following questions: *i)* the criminalization of search and rescue activities of migrants carried out by NGOs in the Mediterranean; *ii)* the continued denials of landing in Italian ports for the ships of the same NGOs and for those belonging to the Italian Coast Guard (as in the mentioned case of *Diciotti*); and *iii)* the prejudice against the fundamental rights of migrants that could derive from the application of the first Decree on Security and Immigration (D.l. 4 October 2018, nr. 113). These policies produce, according to UN experts, particularly serious effects: they endanger thousands of lives, contribute to the stigmatization of foreigners, reinforce xenophobic feelings, increase the irregularity and vulnerability of migrants, the social tensions and insecurity².

This period of harsh “confrontation” between Italy and the European institutions – with dramatic repercussions on EU migration policies – seems to be finally coming to an end, with the change of government that took place during the month of August, which relegated *Lega* and its leader Salvini to the opposition party. However, the new rules (administrative and criminal) of dubious constitutional and international legitimacy remain alive, just as the damages caused by a political and media campaign that depicted the irregular migrant as a real enemy of society and public order, remain strong in the Italian public opinion. Only a European policy that finally tackles the migration problem in a global perspective with balanced collaboration between all the States of the Union, overcoming the logic of the Dublin Treaty, can – in Italy as well as in the other EU border-countries – cut the grass under the feet of a growing xenophobic and anti-European populism. This is a fundamental challenge for the new European Commission and for the Parliament just emerged from the European elections of May 26th, in order to overcome an era of *impasse* in the construction of Europe and to

2 Cf. F. CANCELLARO, *L'Italia è sotto osservazione dell'ONU con riferimento alla criminalizzazione del soccorso in mare, alla politica dei porti chiusi ed al decreto immigrazione e sicurezza*, in *www.penalecontemporaneo.it*, 12 March 2019.

ensure that the Mediterranean finally ceases to be the *via crucis* (and too many times the cemetery) of a desperate mass of people migrating from Africa to Europe.

On 23 September 2019, news was that, at the La Valletta summit, the Ministers of the Internal Affairs of Malta, Italy, Germany, France and Finland (the country currently holding the EU presidency) reached an agreement for the automatic redistribution, on a voluntary basis, of the refugees rescued by the coast guard and NGOs ships off the coast of Italy and Malta. This is a first step in the right direction, but it must be extended and made binding for all EU countries and for all landings, including those (which represent 91% of the total!) occurring through own means; without forgetting that – after the closure of the ports in Italy – over the last 9 months, the data collected by the UN Refugee Agency indicate that among the 57.800 landings registered by the sea 41.940 occurred in Greece and 19.782 in Spain, while Italy received only 6.844 arrivals and Malta 1.585.

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