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¿WHAT IS SPAIN'S ROLE IN THE DEVELOPMENT OF INTERNATIONAL GOOD PRACTICE?

The Spanish State has a very important role in the establishment of good practice at the International and European level in the area of International protection. For its political and economic weight, but at the same time, for its not-so-distant past, of exile which affected every aspect of the politics of the country.

It is especially in the European framework that this impact could be the greatest, as we are currently in the process of constructing a **Common European Asylum System**¹ which has as its aim to **establish high standards of protection and to ensure that similar cases will be treated in the same way and will have the same result, independently of the member state in which asylum is sought.**

The presentation will centre around presenting good practice in relation to the practices of other European partners. This exercise doesn't try to be exhaustive, but it has the intention to put forward the most relevant aspects to the whole process, according to the opinion of the Catalan Commission for Refugee Assistance: access to the procedure, procedure, and reception. In this way, throughout the presentation it will define certain challenges and opportunities that the Spanish State has in this area.

A paradigm example in the establishment of good practice at the international level on the part of

¹ El último paquete legislativo en materia de asilo adoptado en junio de 2013 marca el inicio de una nueva fase en el establecimiento del sistema europeo común de asilo. El paquete incluye una revisión de: la Directiva 2013/32/UE del Parlamento Europeo y del Consejo de 26 de junio de 2013 sobre procedimientos comunes para la concesión o la retirada de la protección internacional (refundición); Reglamento (UE) nº 603/2013 del Parlamento Europeo y del Consejo, de 26 de junio de 2013, relativo a la creación del sistema "Eurodac" para la comparación de las impresiones dactilares para la aplicación efectiva del Reglamento (UE) nº 604/2013, por el que se establecen los criterios y mecanismos de determinación del Estado miembro responsable del examen de una solicitud de protección internacional presentada en uno de los Estados miembros por un nacional de un tercer país o un apátrida, y a las solicitudes de comparación con los datos de Eurodac presentadas por los servicios de seguridad de los Estados miembros y Europol a efectos de aplicación de la ley, y por el que se modifica el Reglamento (UE) nº 1077/2011, por el que se crea una Agencia europea para la gestión operativa de sistemas informáticos de gran magnitud en el espacio de libertad, seguridad y justicia; Directiva 2003/9/CE del Consejo, de 27 de enero de 2003, por la que se establecen normas mínimas para la acogida de los solicitantes de asilo; y Reglamento (UE) nº 604/2013 del Parlamento Europeo y del Consejo, de 26 de junio de 2013, por el que se establecen los criterios y mecanismos de determinación del Estado miembro responsable del examen de una solicitud de protección internacional presentada en uno de los Estados miembros por un nacional de un tercer país o un apátrida.

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the Spanish state comes from the hat is included in the definition of a refugee from the law 12/2009, persecution on the basis of sexual orientation and gender identity and persecution on the basis of gender. Little by little this has also come to be adopted in other countries. In this sense, I insist on the need explicitly to recognise human trafficking when we consider that, currently, the treatment by the foreigners regime, is re-victimising the victims of a crime in which the threat does not end in the host country, but in a number of cases there is a risk to the victim and the families in the country of origin. Likewise, it also begins to be necessary to recognise the persecution of groups by organised gangs, a phenomenon that is particularly becoming apparent in Central America².

Spain also has an opportunity to establish good practice at the European level, facilitating access to the asylum procedure in diplomatic ways. Currently, to be able to access the asylum procedure in any of the member states of the EU, it is necessary to be in the territory of Europe.

The increase, the diversification and the externalization of the mechanisms of border control imposed by the governments of the European Union³ mean that thousands of people each year face despair and they put their need for a dignified life in the hands of human traffickers, putting their lives in grave danger. In this sense, it is important to emphasise the need to remove concertina calls, wire blades, in the fences of Ceuta and Melilla, the installation of which is inhuman and against human rights, threatening the physical integrity and human rights of migrants and refugees. Furthermore, this is a useless measure which does not discourage them from jumping the fence, from desperation, and only contributes to increasing the pain and suffering of migrants and refugees.

As we have said, the closure, militarization, and the externalization of borders is preventing thousands of persons from accessing the international protection procedure, especially in the

² *Nota de orientación sobre las solicitudes de la condición de refugiado relacionadas con las víctimas de pandillas organizadas*, marzo 2010, ACNUR. Disponible en <http://www.refworld.org/pdfid/4bf4e2232.pdf>

³ Dispositivos FRONTEX, políticas restrictivas de visados, sanciones a los transportistas, ausencia de canales de entrada legales y seguros para las personas que quieren solicitar la protección internacional, entre otros.

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southern border of the EU. This has seen a reduction in the number of asylum seekers dramatically, while the needs for international protection in the world, and particularly in the Mediterranean Region, have not decreased, indeed, to the contrary, they have increased (Tunisia, Libya, Egypt, Syria, without forgetting that it is the passageway for the most vulnerable migrants and refugees coming from Sub-Saharan Africa).

We find an Italy that has reduced the number of applicants for International protection in 2012 (compared to 2011) by 53% and Spain by 25%. This year, Spain reached a record low, with only 2,565 applications received for International protection.

Given this scenario, marked by human dramas like those in Lampedusa (we cannot forget that in the last 10 years it is calculated that 17,300 people have died in the Mediterranean⁴); the Spanish state, as a country of the southern border of the EU, has a fundamental role in this question and has the opportunity to establish a series of good practice, resuming the possibility of seeking international protection by diplomatic channels through the regulation of the 12/2009 Law, as this leaves open the door to the possibility of establishing identification of refugees in their first ports of entry, which could be airports, sea ports, and the land border posts of Ceuta, Melilla, CETIS and CIEs. With respect to these last, CCAR advocates that they must close, as their existence is incompatible with the democratic state which respects rights. It is a grave violation of human rights, you cannot deprive persons of their liberty just for being in an irregular situation according to administrative regulations.

Also, an alternative to these particularly ferocious policies of control of migration flows in which refugees return once more to be victims, needs to be established, specially for the afore-mentioned measures, especially for the most vulnerable groups, increasing the commitment with the resettlement programme progressively increasing the number of refugees resettled in line with the economic and political weight of the Spanish state in the international community (Germany this same year has committed to resettle 5,000 Syrian refugees). It is noted that the resettlement is not

4 <http://mondediplo.com/blogs/mapping-europe-s-war-on-immigration>

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a political substitute for current policy, but an alternative more to guarantee human rights to refugees.

Despite these low figures in the number of applications made for international protection in 2012, it is necessary to recognise Spanish good practice, compared to Germany, France and Italy in the reception of applicants for international protection in the territory in a decentralised manner and not within a single or few offices in the territory as may be the case in Great Britain or Ireland⁵.

However, in the process at the border, we consider that there is the possibility to establish procedures and guaranteed measures that facilitate the access of international NGOs to the detention centres and ships in cases where they detect stowaways, in compliance with article 19.4 of the Asylum Law, in order to facilitate the detection and assessment of susceptible persons to seek international protection in the Spanish state.

There are European countries like France, Italy, Bulgaria or Great Britain in which, for various reasons, principally administrative, persons which seek international protection are delayed filing their application for asylum, adding further obstacle to accessing their rights as asylum seekers. For example, in France, before submitting the application, the applicant must obtain a temporary residency permit for the 'prefecture'. In the case of Spain, there is no mechanism of this nature⁶.

One element that, in our opinion, is damaging to the image of the Spanish state is that it is unacceptable, from the point of view of human rights, and that Spain could correct and establish good practice in respect to the situation of asylum seekers in Ceuta and Melilla who are restricted in their freedom of movement from these territories to the Peninsula. You cannot use applicants for international protection as further mechanisms in the politics of control of migration flows as in this practice, denounced by the Ombudsman and by the Special Rapporteur of the United Nations on contemporary forms of racism, racial discrimination, xenophobia and other related intolerances.

5 Not there Yet: an NGO Perspective on Challenges to Fair and Effective Common European Asylum System. Annual Report 2012/2013; elaborado por Asylum Information Database. Disponible en: <http://www.asylumineurope.org/>

6 Ibid

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The number of applications has suffered an alarming decline: in Melilla 42 applications were made in 2011, 22 in 2012, and in Ceuta, from 505 in 2011 to 184 in 2012⁷.

Likewise, we believe that another good practice would be the creation of a mechanism for hearing the NGOs in the study of cases submitted for study by the Inter-ministerial Commission of Asylum and Refuge.

On the other hand, it should be stressed, as a Spanish good practice, the access to free legal assistance of the applicant for international protection. This access is absolutely essential, especially when the procedures are gaining complexity and the European jurisprudence is going to increase. It is really worrying that countries like Germany, Austria, Italy, Poland or UK, among others, are not guaranteeing this assistance and it has to be NGOs who assume this responsibility⁸.

On the reception conditions, which include housing, meals, and access to the work market, we must affirm that in the context of Europe, the Spanish state has a good model and we can define it as good practice. However, we need to strengthen it, improve it and consolidate it, so that the standards will not reduce as a consequence of policies to restrict public spending and high unemployment affecting the country, and obviously affecting the process of social inclusion of asylum seekers and refugees. However, it is our concern that the reduction in the number of places available, in the past two years, have reduced by 250 places⁹.

It is also our worry that the number of months spent in the welcome places has reduced from 12 months to 6 months, by the Ministry of Employment and Social Security, as well as the denial of requests for extensions of stay in exceptional cases and people denied international protection.

7 Informe 2013 sobre la situación de las personas refugiadas en España, elaborado por la Comisión Española de Ayuda al Refugiado CEAR. Disponible en <http://www.ccar.cat/publicacions-i-recursos/informes-ccar/>

8 Op Cit.

9 Número de plazas de acogida para solicitantes de protección internacional incluyendo los Centros de Acogida a Refugiados (CAR) y los centros gestionados por entidades sociales fue en 2011 de 1132; 1039 en enero de 2012 que a partir de junio de 2012 pasó a 909 y en 2013 es de 882 plazas.

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This situation is very worrying.

Regarding access to the labour market, for asylum seekers, this is determined principally by work permits. Directive 2013/33 provides a period of nine months before being granted. In the Spanish state it is 6 months. In Sweden the day after the application for international protection. In Germany, France or Hungary, it is given at 12 months. So, we are within what could be called European good practice, although taking into account that in fact, asylum seekers who reside in welcome centres can only be there 6 months with no possibility of extension. It is necessary to consider facilitating temporary authorisation to work at the moment of their application, which would allow an improvement in their living conditions when they leave the welcome centre.

Also, we cannot forget that applicants for international protection have to face a series of additional difficulties like: that their residency permits and work permits are provisional and temporary; that in the majority of cases they have a limited understanding of the language or languages of the receiving society; that they must face the validation of their diplomas and professional qualifications (something for which, in the majority, contact with the country authorities is impossibly truncated), and as people of foreign origin unfortunately in many cases face discrimination in the selection process for finding employment.

In conclusion, the Spanish state has a very important role in the establishment of good practice at the international level, but particularly at the European level. The Common European Asylum System tries to harmonize national asylum policies. However, it has started to establish a series of minimal norms which, in many cases, if they are compared with Spanish minimal norms and practice, are below the Spanish national standards. The two key challenges which the Spanish state needs to meet in this area are: on the one hand, that its policies of border control respect and guarantee human rights and the right to asylum and the maintenance, consolidation and increase of its policies in the area of reception of applicants for international protection, refugees and stateless persons in a period of economic recession in which the principle 'mantra' is the control and reduction of public spending.

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