

EDITORIAL: MIGRAÇÃO, MOBILIDADE E DIREITOS HUMANOS

Catarina Sales Oliveira

A mobilidade é uma área de investigação emergente nas ciências sociais, fruto das alterações societais das últimas décadas. Os fluxos de mobilidade de pessoas e bens aumentaram exponencialmente no final do século passado, com forte impacto não só nas estruturas de transporte e reconfigurando espaços e lugares (Hannam, Sheller e Urry 2007; Urry 2010; Cresswell 2006; Hedberg e Carmo 2012; Sales Oliveira 2015a) como também na cultura e estilos de vida (Salazar 2010; Sales Oliveira 2015b)

Os motivos da mobilidade são diversos, mas de uma maneira geral são expressão fidedigna do mundo social contemporâneo. O desenvolvimento das infraestruturas de transporte e da sua acessibilidade ao indivíduo comum, com particular destaque para o automóvel (Sales Oliveira 2015) mas não esquecendo também a relevância neste processo do avião, aumentou de forma muito significativa o potencial de mobilidade individual que cresceu a par das solicitações quotidianas de deslocação do mercado de trabalho e da sociedade de consumo típicas do meio urbano ocidental. Assim na sociedade contemporânea ocidental pessoas e bens movem-se diariamente com facilidade e frequência tendo-se naturalizado e instituído a mobilidade como uma característica da (pós) modernidade atual muitas vezes negligenciando ou naturalizando os seus impactos negativos (Sales Oliveira 2011)

Neste processo global as migrações são alvo de uma maior atenção há mais tempo pelas ciências sociais pela mudança de padrão de vida que representam. Tratando-se de um fenómeno muito sedimentado na sociedade moderna, assistimos agora à sua representação social como um problema hiperbólico. A busca de melhores condições de vida, motivação sine qua non para os fluxos migratórios, adquiriu muito recentemente contornos dramáticos, com a problemática das pessoas refugiadas. A complexidade deste debate pede que o mesmo seja aprofundado de múltiplas formas e, a nosso ver, (re)inscrito simultaneamente nas duas outras problemáticas convocadas para esta edição: a mobilidade e os direitos humanos. A mobilidade é um direito humano, consagrado na carta de Atenas (in Sales Oliveira 2011) e

uma prática consagrada na sociedade ocidental atual. No entanto, simultaneamente mobilidade e migração são palco de múltiplas desigualdades (Ferreira, Beukers and Te Brömmelstroet 2012).

Ao mesmo tempo a migração nem sempre é equacionada como mobilidade e surge frequentemente discutida como se de uma área distinta se tratasse. Sem pôr em causa a pertinência de um debate autonomizado sobre o fenómeno migratório, uma das assunções de base desta edição é a de que a comunicação entre as duas temáticas, migração e mobilidade é profícua, particularmente quando se pretende ter uma perspectiva de género. Quer nos acessos aos meios de transporte, no potencial de mobilidade ou no protagonismo dos processos migratórios, o género configura-se como um diferencial importante na medida em que existem e persistem especificidades e duplas discriminações (Sales Oliveira e Jerónimo 2016; Lucas 2012).

Nesta edição especial da Género & Direito procurou-se abrir a porta a este debate cruzando as preocupações de género com a problemática das migrações, mobilidade e direitos humanos. De uma perspectiva ampla procura-se confrontar investigações e reflexões diferenciadas que tenham como palco de fundo as preocupações da mobilidade e das suas representações e vivências a partir de uma perspectiva de género, com a problemática das migrações e dos seus contornos atuais, com um enfoque dos direitos humanos.

No primeiro artigo, **Refúgio por orientação sexual no Brasil** de Vítor Lopes Andrade o processo de mobilidade/migração adquire caráter de fuga. Uma fuga que tem na sua génese um processo de discriminação e na qual domina a invisibilidade: invisibilidade de quem foge que tem que optar por sair quando é vítima, mas também invisibilidade do processo de deslocação e de acolhimento, visto que não há dados oficiais sobre o Brasil enquanto local de acolhimento destas situações. No artigo seguinte, **Vivências de conciliação pessoal, familiar e profissional de mulheres brasileiras em Portugal** de Estefânia Gonçalves Silva, Conceição Nogueira, Sofia Neves analisam o quotidiano e o modo como mulheres imigrantes em Portugal procuram conciliar os seus espaços pessoal, familiar e profissional face à insuficiência de políticas de apoio à conciliação e à distância das suas redes de apoio familiar. O artigo de Alethia Fernandez de la Reguera, **Entre la “madre” y la “prostituta”: una aproximación a la autonomía de trabajadoras**

migrantes mexicanas de retorno de Estados Unidos vai, de uma perspectiva qualitativa, explorar a representação que têm do seu papel de companheiras e mães mulheres mexicanas que foram imigrantes nos EUA e estão agora de regresso à sua terra natal e se representam a partir do seu processo migratório. Em, **Escape ao destino social**, Janylle Rebouças Ouverney-King problematiza a questão da espacialização do destino social em que a migração é refletida como uma forma híbrida de mobilidade a partir de histórias de vida que consubstanciam diferentes perspectivas e vivências sobre os processos de deslocamento e onde emerge a subjetividade dos diferentes posicionamentos no espaço que os protagonistas experienciam. No artigo **A mulher empreendedora na diáspora do Algarve**, Elsa Vieira reflete sobre a importância do lugar na atividade empreendedora e a forma como um grupo de mulheres que têm em comum este perfil escolheram a região do Algarve para se estabelecer e sobre que processos identitários construíram a sua deslocação e permanência. Já em **Vivências de mulheres brasileiras nos serviços de saúde materna** de Joana Bessa Topa, Conceição Nogueira, Sofia Neves procura-se dar a conhecer qualidade e da eficácia do acesso das imigrantes aos cuidados de saúde porque se a vivência da maternidade em contexto multicultural e migratório é já, uma realidade com uma expressão reconhecida, a investigação sobre esta realidade em Portugal é ainda escassa.

EDITORIAL: MIGRATION, MOBILITY AND HUMAN RIGHTS

Mobility is an emerging research area in the social sciences due to societal changes of recent decades. The flows of people and goods increased exponentially at the end of the last century, with a strong impact not only in transport infrastructure and reconfiguration of spaces and places (Hannam, Sheller and Urry 2007; Urry 2010; Cresswell 2006; Hedberg and Carmo 2012; Sales Oliveira 2015a) but also in the culture and lifestyles (Salazar 2010; Sales Oliveira 2015b).

Mobility motivations and causes are diverse but generally are reliable expression of the contemporary social world. The development of transport infrastructure and its accessibility to the common individual, with particular emphasis to the automobile (Sales Oliveira 2015b) but also not forgetting the importance of flying has increased very

significantly the individual mobility potential. At the same time the demand for mobility from the the labor market and the consumer society in western urban areas pressures people to move. Thus in contemporary Western society people and goods move daily with ease and having established mobility as a feature of the current post modernity often neglecting its negative impacts (Sales Oliveira 2011)

In this global process migration is subject to greater and older attention from the social sciences by the changing pattern of life they represent. Being a very sedimented phenomenon since centuries, we are witnessing in recent years to its social construction as a hyperbolic problem. The search for better living conditions, motivation sine qua non for migration, acquired recently dramatic contours with the problem of refugees. The complexity of this debate asks that it be deepened in many ways and in our view (re) inscribed simultaneously on two other themes of this special issue: mobility and human rights. Mobility is a human right enshrined in the letter of Athens (in Sales Oliveira, 2011) and a standard practice in today's Western society. However, both mobility and migration are stage of multiple inequalities (Ferreira Beukers and Te Brömmelstroet 2012)

At the same time migration is rarely conceived as mobility and is more often discussed as a distinct area. Without questioning the relevance of a debate focused solely on the migration phenomenon, one of the basic assumptions of this special issue is that communication between the two issues - migration and mobility is fruitful, particularly when a gender perspective is intended. Whether the access to transport, the potential of mobility or the role of migration processes, gender appears as an important differential with persistent inequalities and double discrimination (Sales Oliveira and Jerónimo 2016; Lucas 2012).

In this special issue of Gender & Law we tried to open the door to this debate crossing gender concerns with the questions of migration, mobility and human rights. From a broad perspective that seeks to confront different researches and reflections that have in common mobility concerns and their representations and experiences from a gender perspective, or the problem of migration and the current constraints with a focus in human rights.

In the first article, **Refuge due to sexual orientation in Brazil** from Vítor Lopes Andrade the process of mobility / migration acquires escape character. A trail has its genesis

in a process of discrimination and which dominates the Invisibility: Invisibility fleeing to have to opt out when the victim, but also invisibility of the process of displacement and host, since there is no official data on Brazil as host venue of these situations. At **Personal Balance of Family and Work experiences of Brazilian Women in Portugal** Estefânia Gonçalves Silva, Conceição Nogueira, Sofia Neves analyzes the daily life and how immigrant women in Portugal seek to reconcile their personal, family and professional spaces due to the failure of conciliation support policies and the distance of their networks family support. In **Between "mother" and "whore": an approach to autonomy processes of returned women Mexican migrants**, Alethia Fernandez de la Reguera uses a qualitative perspective to explore the representation they have of their role as companions and mothers Mexican women who were immigrants in the uS and are now back to their homeland and represent from their migratory process. In Janylle Rebouças Ouverney-King discusses the issue of spatialization of **social destination** where migration is reflected as a hybrid form of mobility from life stories that embody different perspectives and experiences of the displacement process and which emerges the subjectivity of different positions in space that the protagonists experience. In **Women entrepreneurs in the Algarve diaspora**, Elsa Vieira reflects on the importance of place in entrepreneurial activity and how a group of women who share this profile have chosen the Algarve region to settle and on that identity processes built the his movement and residence. In the last article **Experiences of Brazilian Women in Maternal Health Services** from Joana Bessa Topa, Conceição Nogueira, Sofia Neves seeks to make known the quality and effectiveness of the access of immigrants to health care because the maternity experience in multicultural and migratory context is already a reality with a recognized expression, research on this reality in Portugal is still scarce.

Referências/References

- Cresswell, T. (2006). *On the move: Mobility in the modern western world*. New Yourk: Routledge
- Ferreira, A., Beukers, E., & Te Brömmelstroet, M. (2012). Accessibility is gold, mobility is not: A proposal for the improvement of Dutch transport-related cost-benefit analysis. *Environment and Planning B: Planning and Design*, 39(4), 683-697.

- Hannam, K., Sheller, M., & Urry, J. (2006). Editorial: Mobilities, immobilities and moorings. *Mobilities*, 1(1), 1-22.
- Hedberg, C., and Carmo, R. M. (2012). Translocal ruralism: mobility and connectivity in European rural spaces. In *Translocal ruralism* (pp. 1-9). Netherlands: Springer.
- Lucas, K. (2012). Transport and social exclusion: Where are we now?. *Transport policy*, 20, 105-113.
- Salazar, N. B. (2010). Towards an anthropology of cultural mobilities. *Crossings: Journal of Migration & Culture*, 1(1), 53-68.
- Sales Oliveira, C. (2015a). (Auto) Mobilities and social identities in Portugal. *Sociologia, Problemas e Práticas*, (77), 137-151.
- Sales Oliveira, C. (2015b). In the meantime or the (ab) use of online accessing during mobility. *Comunicação e Sociedade*, 28, 251-270
- Sales Oliveira, C., & Jerónimo, N. A. (2016). Small but Focused: Women (Self) Empowerment. *Overcoming Gender Inequalities through Technology Integration*, 93-122. Hershey, PA: Information Science Reference
- Urry, J. (2007). *Mobilities*. Cambridge: Polity.

EDITORIAL: THE EUROPE FORTRESS

Enzo Rossi

The peculiarity of migration as a mobility phenomenon lies in the fact that it is a transnational process. And the peculiarity of migration as a transnational phenomenon is that, unlike other similar processes – international trade, for example, or even matters of climate – it involves directly and primarily human rights.

Consequently, managing and regulating migration entail addressing issues typically arising with international agreements, which also makes management and regulation more complicated at the national level.

All transnational phenomena must necessarily be addressed in terms of international treaties or intergovernmental agreements defining the responsibilities of the countries involved. Moreover, enforcement of these commitments is necessarily transferred to the

national laws, for it is the States themselves that have the political power to ensure that the law is applied. As for all the major international issues, when the issue of migration is addressed the problem emerges of clashes of interest between the States. Hence the agreements are often based on compromise and the resulting regulations insufficiently clear, leaving discretionary scope for the national legislations, and all too often to such an extent as to leave the goals set out in the treaties or governmental agreements as mere wishful thinking. In the case of migration, this is particularly true of the declarations regarding the migrants' human rights.

With regard to migration, the problem looms particularly large when migrants flows are massive, especially in the case of forced migration (generally of refugees) from areas of war and political persecution. In this case, in fact, migration entails to a greater degree an aspect that makes agreement more difficult, namely rivalry between States. Obviously, whenever interests clash there is indirect rivalry. And yet migration implies this rivalry in a particular way since the migrants/refugees pushed back by one State go directly to increase the direct migratory pressure on other States, particularly if they hold attraction for the migrants, are geographically close and have similar socio-economic characteristics. This phenomenon is often referred to as the 'spatial dimension' of migration¹. It is Europe's great problem.

The second aspect – the impact of regulation on the migrants' human rights – is a further factor of tension between states, since their attitudes vary. Sweden, Germany and Italy, for example, show a more permissive attitude towards migrants/refugees than do Spain or the countries of Eastern Europe. These differences are in part connected with interests of an economic nature, but above all they derive from the traditions of humanitarianism inherent to the national cultures, and also reflected in the respective constitutions. When it comes to signing an agreement or treaty, therefore, the governments must take into account their voters' 'sentiments'². The resulting regulations are the eventual outcome of this interaction

¹ Barthel F. & Eric Neumayer E. (2015) 'Spatial Dependence in Asylum Migration' *Journal of Ethnic and Migration Studies*, 41:7, 1131-1151

² Halla, M, AF Wagner, and J Zweimüller (2012), '[Does Immigration Into Their Neighborhoods Incline Voters Toward the Extreme Right? The Case of the Freedom Party of Austria](#)' *CEPR Discussion Papers 9102*

between international tensions and domestic policies – what Putnam³ refers to as the ‘two-level game’ underlying international agreements.

The fact that for a great many reasons – economic crisis, globalisation, crisis of the political élites – xenophobia is on the increase obviously creates greater difficulty for the process of compliance (Chayes and Chayes⁴), which leads to mediation amongst the various positions. The results of the process thus translate increasingly into disorganised, adversarial management leading, in turn, to widespread violation of the migrants’ human rights.

In this collection of three articles we address these issues, confining attention to certain important aspects among the many characterising the whole phenomenon of migration. The common methodological approach is to deduce from critical examination of the international and national regulations the scope that States exploit to perpetrate policies of *refoulement* and discrimination, neglecting respect of such fundamental rights as decent living conditions, social inclusion and respect for the person.

The first article, Iafrate and Ricci (**Conciliating National provisions with international regulations. The case of unaccompanied minors in the EU and in Italy**) deals with a sensitive and significant case, namely unaccompanied minors. Here, again, we see how the intentions of the legislator do not meet with satisfactory results. On examining the regulations in comparison with the facts, the system for protection of minors in Italy is found to be insufficient. The standards of assistance are mediocre and the minors are often encouraged to leave Italy and migrate to other European countries. Here the focus of analysis is on the internal problems of a State in view of respect of rights. The protection system has insufficient funding and response is found to be poorly coordinated despite detailed legislation showing respect of rights but lacking a clear design. The reasons for this are found to lie in a tangle of political problems – as usual, involving the hostility of part of the population to migrants – and extraneous economic interests, again connected with politics, entailing dispersion and unproductive use of the funds.

³ Putnam D.R . (1988), ‘Diplomacy and Domestic Politics: The Logic of Two-Level Games’ *International Organization*, Vol. 42, No. 3. pp. 427-460

⁴ Chayes, A. and Chayes A. H. (1993) ‘On Compliance’ *International Organization* 47(2): 175-205.

The second article, by Albano and Volpicelli, (**Disregarding Aristotele’s motto “Ubi societas ibi ius” the biased genesis of Human trafficking protocol and the consequences on its enforcement**) analyses the problems in the fight against trafficking. Here, too, international treaties are examined in light of the influence exerted by the various actors that have determined the contents, examining the ‘Vienna process’ and the protocols deriving from it. It is pointed out that the very concept of trafficking has become debatable due to the various different views of the phenomenon and the problems of definition emerging from the Palermo Protocol. Thus action against trafficking as a crime appears problematic due to confusion in the definition of what exactly is meant by ‘consent’ to exploitation by persons alleging persecution. Again, trafficking prevention risks limiting the rights to international mobility of certain categories of migrants, particularly in the case of refugees. Here it is pointed out that control measures may prove counter-productive insofar as they drive migrants to resort to illegal channels even more, with the risk of greater economic and personal exploitation migrants in the various forms can take. Moreover, the States do not provide sufficient levels of protection to the victims of exploitation since the regulations do not prevent prosecution of them as perpetrators of offences which in reality result from the very condition of being exploited or migrants. Here, too, the interest of the States in security – which represents a widespread ‘sentiment’ among the voters – is seen to prevail, distorting the role played by the immigration authorities and the courts of criminal justice. Once again it is demonstrated that this possibility arises from the ambiguous definitions contained in the Protocols, which place a preconceived emphasis on the gender aspects regarding prostitution (an issue that public opinion is particularly sensitive to in certain countries), but to the detriment of the protection of other categories of persons exploited through trafficking, with a focus on human rights considered insufficient even by some of the very persons who drafted the Protocol. Essentially, the analysis demonstrates that the repressive element prevails in the Protocols and in practice, while assistance to and protection of the victims becomes secondary, to the detriment of the human rights of the migrants, both workers and refugees. Ultimately, although 95% of the countries have introduced legislative measures to fight trafficking, the concrete results are far from

satisfactory. A proliferation of regulations and practices tending to show inconsistencies leads inevitably to the conclusion that the Vienna process represents a wasted opportunity.

The last paper, by Rossi and Iafrate (**Il sistema di asilo europeo e i diritti umani dei rifugiati: verso una regressione?**) analyses the case of what has come to be known as Fortress Europe⁵, already summed up in some studies commissioned by the European Parliament⁶ in terms of a ‘fierce aversion’ to refugees. Reviewed here is the process of harmonisation of common European regulations on asylum, showing how the scant progress that has been made in the field of respective rights contained in the recast of the 2013 European directives (Peers 2013)⁷ has been completely reversed after the massive increase in inflows over the last few years. In particular, evidence is given of the expedients and stratagems to circumvent the regulations practised by the States with regard to the principle of *non-refoulement* set out in article 3 of the 1951 Geneva Convention and taken up in the European regulations and the national legislations. It is also shown how the Dublin Regulation⁸ still applied to the European asylum system entails more violations of rights than would be made in the absence of common European regulations. In fact, to elude the obligations of the Dublin Regulation, European states have implemented policies, procedures and practices to reject the asylum seekers, driving them to seek asylum in other European countries; often they are driven to place themselves in the hands of smuggling and trafficking organisations, in degrading conditions, subject to exploitation (this point is amply developed in the subsequent article by Albano and Volpicelli). Moreover, the transfers of asylum seekers from one European state to another as provided for by the Dublin Regulation are, despite the forms of protection established in the regulations, a cause of further distress, with

⁵ Lenart, J. (2012) ‘Fortress Europe’: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms’ *Merkourios*, Volume 28/Issue 75, Article, pp. 04-19.

⁶ Thielemann, E. R. Williams, R. and Boswell, C., (2010), ‘What System of Burden-Sharing between Member States for the Reception of Asylum Seekers?’. Report for the European Parliament

⁷ Peers, S. (2013) ‘The second phase of the Common European Asylum System: A brave new world – or lipstick on a pig?’ *Statewatch* <http://www.statewatch.org/analyses/no-220-ceas-second-phase.pdf>.

⁸ The Regulation establishes that the EU Member State of first entry is responsible for reception, and contains measures for identification and control of the refugees entailing that refugees intercepted in other European states be transferred back to that state.

degrading treatment in the course of the transferences, separation of families and inadequate treatment of minors.

Thus the overall picture is not only of a fortress which, in terms of numbers, drives back a large proportion of the refugees, but of a defensive system consisting of many national fortresses driving the refugees from one to another, generating peregrinations (asylum seekers ‘in orbit’, as they are called). This problem was raised from the very outset of the refugee flows into Europe but was not settled, and indeed aggravated by the Dublin Regulation.

The focus is also brought to bear on a recent development in the European asylum regulations entailing a further clampdown in the identification process, also with the use of ‘moderate coercion’, offering in exchange an ‘equitable’ burden sharing of refugees with improvement in the conditions. Despite these intentions, only the first part of the plan is being implemented in the actions of the States.

Finally, we come to the agreement with Turkey, which provides for a complex mechanism for relocation in Turkey of certain types of refugees and reception of another part of refugees in European States ‘on a voluntary basis’. Here, too, it will be seen that the agreement stretches the founding principles of the European Union and the common regulations on asylum, in practice taking the form of *refoulement* towards a country that does not guarantee respect of fundamental rights, and not only those of the refugees. What emerges is a Europe that does not want to be seen to be perpetrating violations of rights and delegates this work to a country that offers scant democratic guarantees. It is a procedure that had in the past been adopted, for example, by Italy in relation to Libya and Albania, and is still being implemented by Australia with Cambodia.

Taking a broader, overall view of the problems raised in these three articles and the indications that may be drawn from them, a common approach emerges. Globalisation has created new incentives for the international mobility of persons (Baumann 1998)⁹, provoking defensive reactions by the populations affected by immigration, with the sensation of being

⁹ Baumann Zigmunt (1998), “Globalization: The Human Consequences”, Cambridge, Polity Press; Oxford Blackwell.

invaded. This is possibly the main obstacle to international cooperation and national legislations granting due respect for the migrants' human rights. Reading between the lines, there emerges from all three articles the expediency of implementing medium- and long-term policies to educate the citizens of the countries of destination in a spirit of tolerance and sharing. If, for short-sighted electoral reasons, the States do not respond to these indications, the international community itself, and in particular construction of the European Union, risk falling apart.