



Fortress Europe :
**A study on the tightening of Schengen
visa policy, its consequences and its victims**

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A study on visa policy tightening

INTRODUCTION

«*The European Union's only boundary is democracy and human rights.*» This statement is an excerpt from the *Future of the European Union* declaration drafted at the Laeken European Summit held in 2001. Today, less than two decades later, these words sound like an insult because reality is so different. More than ever, borders are drawn up almost everywhere, especially between Europe and its southern neighborhood. The Mediterranean has become "*the largest cemetery in the world*", full of corpses of migrants who have tried to cross it without a visa.

The visa is, by definition, a barrier to the freedom of movement. It is an authorization issued to a foreigner by a host State to enter its territory. With the creation of the Schengen area within which the freedom of movement of persons is guaranteed and border controls are abolished, the European Member States have adopted a standardized "Schengen visa" in place of national visas. While the Schengen visa allows free movement within the area, obtaining it has become more difficult. The opening of internal borders has been combined with the tightening of tighter controls and the restriction of access to external borders.

The logic of "Fortress Europe" has been further strengthened in recent years, when the issue of migration became a major political issue in most European countries. It is most often a heated debate where the migration issue is tied to problems of

insecurity, but also with unemployment, social achievements of the welfare state, secularism and social cohesion; a debate in which identity considerations predominate and in which overpromising becomes a means of seducing voters. The last European elections proved this again. The title change of the migration commission to “European Way of Life” announced by the President-elect of the European Commission Ursula von der Leyen, proves that the anti-migrant discourse has now reached the highest level of power in Brussels¹.

Schengen visa policy is a central instrument in migration law. The visa is, first of all, a condition for entry into the Schengen area. Visa policy therefore influences the flow of entries depending on country of origin. With the adoption of a Regulation amending the Visa Code by the European Parliament, at the first reading, and then by the EU Council in 2019, visa policy has additionally become as a means of putting pressure on third countries that do not cooperate well enough on the issue of migrant readmission. Thus, the policy for issuing Schengen visas, including response times, duration of visas granted and even visa fees, is used to promote the repatriation policy of "migrants in an irregular situation" to their countries of origin or transit.

The same regulation also anticipates an increase of one third in the amount of visa fees which has now reached €80. This increase will also imply a rise in service fees, which are collected by private operators who manage the visa procedure for most consulates of the Schengen States. These private operators are

¹<https://www.la-croix.com/Monde/Europe/Quelle-mission-commissaire-europeen-protection-mode-vie-europeen-2019-09-12-1201047003>

driven by the logic of economic profit, and often exploit the distress of visa applicants to sell them additional optional services that are significantly overpriced. This profit logic can also be observed in governments themselves, since there is no evidence that the increase in fees is necessary to cover the cost of processing requests. On the applicant side however, the total cost of the visa, which is already too high for many vulnerable segments of the population, will be even higher. As such, the visa is inaccessible for these increasingly "undesirable" categories within the Union.

The visa issue is therefore dominated by migration issues. The list of countries whose nationals are subject to a visa requirement is established according to several criteria, first and foremost the "migration risk" as perceived by the Member States of the Schengen area. This "black list" therefore establishes from the outset a "presumption of undesirability"² for entire populations whose motive for mobility is potentially suspected³, which is all the more discriminatory as the "migration risk" is very often assessed in terms of poverty. It therefore constitutes discrimination between populations perceived as threatening and others who are not.

In addition, the entire visa procedure is governed by the concern to combat irregular immigration. The required supporting documents are intended to assess whether a visa applicant intends to return home when the visa expires. This assessment is based on

²Samir BEN HADID, *The status of foreigners in European Union law*, CPU, Tunis, 2016, p.104.

³ Andrew CROSBY and Andrea REA, "The Undesirable Factory", *Cultures & Conflicts*[Online], 103-104 | Autumn/Winter 2016, online December 20, 2016, visited October 09, 2018. URL: <http://conflicts.revues.org/19357>, p. 2.

criteria related to the socio-professional situation, or even the patrimonial situation, and therefore implicitly discriminates according to wealth. Unemployed and poor people thus have very low chances of being able to travel in the Schengen area, as they cannot present all the required supporting documents such as bank statements, proof of employment or social security. Finally, visa refusals are generally justified on vague grounds related to "migration risk".

While still based on grounds related to migration risk, for several months now, there has been an increasing recurrence of visa refusals now targeting all social categories, even people in unstable socio-economic situations. There have been enough indications and testimonies to believe that visa policy has been tightened, at least with regard to Tunisia. The situation has become serious enough to serve as an electoral debate topic for several presidential candidates.

While motivated by the general objective of "fighting irregular immigration", this "tightening" of visa policy on the contrary encourages another, much more dangerous form of irregular immigration, namely the crossing of the Mediterranean. If the idea of a link between irregular immigration and the tightening of visa policy divides researchers⁴, it is because this link, which seems to stem from logic and common sense, remains difficult to prove materially.

Thousands of Tunisians and nationals of other countries residing in Tunisia have paid the price for this "tightening" of visa

⁴ Mathias CZAÏKA & Mogens HOBOLTH, "Do restrictive asylum and visa policies increase irregular migration into Europe?", European Union politics, 1-21, 2016.

policy. This study aims to to give them a chance to voice their concerns and gather their testimonies in order to shed light on the individual sufferings they experienced in the visa application procedure, including the exploitation of their situation by the logic of economic profit, leading to refusals based on a simple suspicion, or rather, a presumption. Through the testimonies collected, we highlight the inequality suffered by populations of the South, and in particular those from where Europe sees an incoming flow of migration. In this study, we also attempt to demonstrate the link between tightening visa procedures and encouraging irregular immigration.

METHODOLOGICAL NOTE

This study is based on a qualitative survey conducted between June and September 2019, in which we interviewed 31 rejected visa applicants, aged 19 to 44, and almost equally divided by gender: 15 women and 16 men.

- Nationalities: 24 Tunisian citizens and 7 foreign nationals residing in Tunisia from Libya, Gabon, Cameroon and Central African Republic.
- Socio-professional situation: half of those interviewed were students, in addition to employees in the private or non-profit sector, two entrepreneurs or self-employed, as well as a teacher and a housewife.
- Reasons for travel: Most of the interviewees submitted visa applications for tourism purposes, but other purposes also played a factor, such as study, internship, business and family visits.
- Visa application destination: most of the interviewees applied for visas for France or Germany, but some applied for visas for Belgium, Spain, Greece or Switzerland.

NB: *Different interviewees are called by automatically generated initials, which do not correspond to their real names.*

I. Visa applications: from a public service to a lucrative activity

In order to be able to apply for a visa, an applicant must first pay the visa fee, which will not be refunded in the event of refusal. This amount, already high (60€), has been increased by a third, without establishing that the cost of processing the files requires the increase. In addition, most European states have in recent years opted for the use private operators to manage the visa procedure. Thus, they are saving staff and costs, and are allowing these private operators to make their profits by systematically charging applicants service fees and additional fees.

Visa fees already high and soon to be increased

When asked about the current cost of the visa, all our interviewees considered it high, even "disproportionate" and "excessive", especially since it is not refunded in the event of refusal. This visa cost is composed of the €60 fixed by the Code (before its amendment), in addition to the service fee, which may not exceed 50% of the visa fee. This amount does not take into account local purchasing power, and fluctuates quite often with changes in exchange rates. Thus, most of our interviewees paid about 300 TD for their visa application, not to mention the fees for the optional services that many of them paid.

However, in the regulation amending the Visa Code, the amount of visa fees has been increased, "as processing costs have increased significantly in recent years", according to the European Commission. We did not find any studies to justify this increase. On the contrary, a report from the French Senate estimated the real cost of examining a visa application in 2014 to be at 38.75€⁵. The flat-rate amount fixed by the Code was therefore, even before its increase, more than 50% higher than the actual cost, thus generating a significant margin of profit for the French Government. The same report also describes the examination of visa applications as a "lucrative activity for the administration".

We have difficulty seeing how an increase by one third would be necessary, barely five years after the French Senate report, to cover the "increase in the costs of processing files". All indications point to the reality that the increase is intended to generate a profit margin for Member States, especially as demand for Schengen visas is not likely to dry up. Moreover, the new regulation provides for the possibility capping visa fees at €60 for citizens of States that are cooperative in readmission. This not only proves that the amount of €80 is not necessary to cover the processing costs, but also that the increase in visa fees will be used as a means of putting pressure on the States on the southern shore of the Mediterranean to comply with the European readmission policy.

Things do not stop there, since the same Regulation opens up the possibility for the Commission to amend the amount of visa

⁵ Éric DOLIGÉ and Richard YUNG, Information report on behalf of the French Senate Finance Committee on the provision of visas, 29 October 2015, p. 16

fees every 3 years without going through the legislative procedure involving the Parliament and the Council. In this way, further increases will be easy to implement, whether to make even more financial profit or to put more pressure on third countries. At the same time, any increase in visa fees leads to an increase in service fees, which are subject to the 50% limit of the visa fee.

The forced reliance on private operators

The externalization of the visa procedure appeared at the beginning of the 2000s in India with VFS Global, the world market leader⁶. In recent years, it has grown dramatically, and most Schengen States have made use of it. Presented as a solution to cope with the increasing number of visa applications, and thus, to better serve applicants, outsourcing delivers them to an "exploitation" of their desire - or need - to travel to serve the insatiable appetite of private operators.

In the initial logic of the Visa Code, the use of private operators is a simple option for applicants, the principle remaining the direct submission of applications to the consular services. However, practice shows that it is the opposite. Indeed, almost all of the interviewees were surveyed by private operators. Only one interviewee (Y.J), wishing to study in Germany, chose direct deposit, and another (A.B) submitted her file to the Greek Embassy, since Greece has not (yet) opted for the externalization

⁶ Federica INFANTINO, The marketing of the border, a state product. Private companies and implementation of Schengen visa policy, Government and public action 2017/4 (No. 4), p. 57

of the procedure. All the other interviewees went through the external operators, and for the most part, as they did not know that direct deposit was possible! This is the case of Y.J, who "thought that TLS had replaced the embassy in this role", and of M.E, a Central African student in Tunisia, who thought that "not being Tunisian, he was not allowed to deposit directly at the embassy". This shows the lack of information, particularly on the websites of consular authorities and private ⁷, as attested by R.F., who applied for a visa for Switzerland through the VFS Global agency.

Other interviewees were aware of the direct deposit option, but could not follow it, either because of "lack of time" or fear that the procedure would be "more complicated". Indeed, to have an appointment, you have to contact the embassy several months in advance, and often embassy employees encourage applicants to apply with these service operators. Everything is done to direct applicants to private operators.

Instead of reminding States of this largely neglected obligation of the Visa Code, the European institutions have simply chosen to remove the obligation. Thus, with the new Regulation amending the Visa Code, Member States will no longer be required to "maintain the possibility of direct access for the lodging of applications at the consulate in places where an external service provider has been mandated to collect applications on its behalf"⁸.

⁷ Mahdi Elleuch, A visa issuing practice that is not very concerned with applicants' rights, in Mohamed Limem (dir), Cahiers du FTDES N°1 (Migration).

⁸ Regulation (EU) 2019/1155 of the European Parliament and of the Council of 20 June 2019, cited above.

This systematization of applying with private operators deprives visa applicants of the opportunity to dialogue with consular officials, to explain their situations, to know if it is better to add new supporting documents. This is rarely the casewith agents of private companies, especially since they are only an intermediary between applicants and consular authorities. Z.G. compared the service she received from TLS Contact with her visa application submitted directly to the Austrian Embassy, which had "called her to complete the file". The lack of direct deposit opportunities in consulates leads a significant number of applicants to use optional services that allow them to do so, which are expensive. Moreover, the visa fees and service charges are mandatory.

The additional cost born by applicants

The externalization of the visa procedure has also resulted in an increase in application fees for applicants. Indeed, they are obliged to pay, in addition to the visa fees (the amount of which is fixed on a standard basis by the European institutions, and which therefore is transferred to the consular authorities) service fees which go to the private service providers.

The service fee is limited, by the Visa Code, to 50% of the amount of the visa fee, currently €30, and €40 when the visa fee increase takes effect. Of course, private operators do not hesitate to align themselves with this upper limit, driven as they are by market logic, and each being in a monopoly situation at least in the management of the visa procedure of a given country. The

applicants therefore have no choice. They can only apply. However, the amount of visa fees, increased by 50% for service fees, is high, even excessive and exorbitant, as most of the interviewees consider it. This is especially true for travelers who cannot afford it and who are already struggling to finance other expenses related to their travel. Indeed, this amount does not take into account the standard of living in the countries of the South and changes with the evolution of the exchange rate. In Tunisia, for example, it will be necessary to pay almost one month's minimum guaranteed wage (SMIG) to apply for a visa. As the CGT section of the French Ministry of Foreign Affairs has expressed, this is therefore "economic discrimination for the most disadvantaged families"»⁹. The trip to Europe thus becomes a kind of privilege for the wealthy.

The cost of the visa procedure is the most "excessive" and "unfair", according to most of the applicants interviewed, since it is not refunded in the event of refusal; A "scam", according to Z.G., a young Tunisian, or B.T, a Libyan judge. The same idea is expressed by W.H, who thinks that "they make money on our expense", and that they benefit from the fact that there is a "high demand and a limited offer" of visas. Other interviewees believe that this amount can only be acceptable if the visa is issued, and cite examples of countries that "only charge a visa fee if accepted", such as Russia or Egypt.

⁹ Explication du vote de la CGT lors de l'examen des avis formels, à la réunion du Comité technique ministériel du Ministère des affaires étrangères:<http://www.cgt-mae.org/7-et-8-novembre-reunion-du-Comite>

As a result, many of our interviewees felt robbed of their money. Especially since, for a large part of them, the cost was not limited to visa fees plus service fees. Indeed, the applicants are often, if not obliged, at least encouraged, to use other services, known as "optional" services, which are, of course, overcharged to increase the profit margins of these companies.

Optional services (not always optional), heavily overcharged

The profit margin of private operators is not limited to service charges. All of them offer optional services which are heavily overcharged, ranging from photocopying to premium services, including photography, travel insurance, text message notification, recovery of the passport while it is being processed, or its return by express courier¹⁰. Often, an applicant who fears that he or she may have to wait a long time for a second appointment uses services such as photocopying or taking pictures. Several applicants interviewed stated that they had been forced to purchase the photo service, as the photos in their files were deemed not to meet the required standards. Another practice noted at VFS Global is the default billing of an optional service such as SMS notification, as attested by N.Z, but also as the author of these lines has experienced it himself, despite his vain protests.

The most problematic optional service is so-called "premium" service. This improved service includes a comfortable

¹⁰ Gérard BEAUDU, Outsourcing in the field of Schengen visas, *Cultures & Conflicts*[Online], 68 | Winter 2007, online on 19 May 2008, visited 10 October 2018. URL: <http://conflicts.revues.org/5793>, p. 1

reception, an "especially available agent to handle the application" and assist the applicant. In fact, discrimination is faced with a public service on the basis of wealth; to the richest the warm welcome and assistance, and to the little people a "minimum service"¹¹. Several interviewees experienced this, some for the speed it offers, others, such as M.C, 40 years old and owner of a driving school, "to be informed if a document was missing". Thus, information that should normally be provided to all visa applicants becomes an "optional" service, expensively sold to individuals who are afraid of a refusal and seek to maximize their chances. Even more serious is the case of I.B, a teacher, who was unable to extract the receipt on the day of her appointment, "because of a problem of access to the site and her mailbox". She was then told that if she did not want to "lose her appointment and wait two months", she would have to pay for the premium service, which she did because, "fortunately", she had enough money on her. I.B. was "desperate", and "afraid" of missing her trip, a trip that, in the end, could not take place because her visa application was rejected.

This "premium service" is therefore not only a recognition of discrimination according to resources, but at the same time an exploitation of the distress situation in which visa applicants find themselves, having planned a trip and incurred expenses, and fearing its cancellation in the event of refusal.

Thus, the externalization of the visa procedure exposes applicants to a commercial logic of profit which considers them as customers who are bound by a monopoly, and from which private

¹¹Rachel KNAEBEL, Visa privatization, Full right 2014/2 (No. 101), p. 8

operators should obtain the maximum gains, even if it means exploitation of their distress. The externalization is therefore, if not in principle, at least in practice, a complete break with the logic of public service. It allows governments of the Schengen States to save staff and management costs in their consular representations and makes applicants bear the costs. Thus, the consular services of Schengen States not only transfer visa applicants to these private operators with an insatiable appetite, but above all, do not exercise their right of control to limit abuses.

II. Unjustified and unfair refusals

The European Commission publishes statistics on the granting of Schengen visas every year. The 2018 figures show, for example, an overall refusal rate of 9.6%, but this varies greatly depending on the country where the visa application was made. Thus, and to retain only African countries, the refusal rate ranges from 1.8% for Namibia to 49.8% for Nigeria. For Tunisia, the statistics show a refusal rate of 18.2%, slightly higher than in 2017¹², but again varying according to the consulates. Thus, it ranges from 11.5 for the Portuguese consulate to 50.5% for the Dutch consulate¹³. It is likely that the 2019 figures show a higher refusal rate, as it seems that visa refusals have become more frequent.

¹² The refusal rate for Tunisia in 2017 was 16.5%.

¹³ All statistics are available on this link: https://ec.europa.eu/home-affairs/what-we-do/policies/borders-and-visas/visa-policy_en#stats

However, these figures are subject to a significant bias which is a dissuasive effect of supporting documents required in the visa application file, the high cost of visa, as well as the frequency of refusals. Often presented by the representations of Schengen countries as proof of their benevolence towards the population of the host country, these figures mainly hide harsh individual realities which can only be measured by the direct testimonies of the applicants. Visa refusals are usually based on very vague grounds, linked to the "migration risk", or, one could say, the presumption of migratory intent that seems to stick to visa applicants from Tunisia.

Very broad grounds for refusal

The frustration of rejected applicants is largely due to the incomprehension of the reasons presented in the refusal decision. Indeed, the reasons for refusal orders, which are a basic guarantee for applicants, are limited to predefined boxes that the consular authorities tick. The reasons for refusal are therefore better known by the numbers of the corresponding boxes. Three reasons are particularly well known, as by far the most frequent, namely reasons 3, 8 and especially 9. Thus, for all our interviewees, the refusal is based either on the fact that the « intention to leave the territory of the Member states before the expiry of the visa could not be ascertained »(reason n°9), that " information submitted regarding the justification for the purpose and conditions of the intended stay was not reliable" (reason n°8), or that the file lacks " proof of sufficient means of subsistence, for the duration of the intended stay" (reason n°3). Often, two or even three reasons are ticked.

The first problem with these reasons is their intelligibility. Indeed, many of our interviewees say that they had difficulty understanding these reasons. This is the case of H.S., a housewife, who searched in the Internet to understand, and W.H, a project manager in an NGO, who was refused a visa for Belgium and had to use an online translator. Worse still, for those who apply for Schengen visas to go to Germany, like O.B and I.L, the grounds for refusal are written in German. It is up to the rejected applicants to make sure they understand them. Even when they request a translation, the translation is refused "due to a shortage of staff who speak only German". Thus, it is as if visa applicants were supposed to be fluent in the language of the country they wanted to visit. Or, quite simply, no importance is given to whether the motives are intelligible or not.

Even when understood, the motivation for refusal decisions rarely succeeds in convincing rejected applicants. Among our interviewees, only three were convinced of the reasons for the refusal, as they had a lack or contradiction in the supporting documents they submitted. All others answered negatively to the question. Here too, reference is often made to supporting documents. Indeed, for visa applicants, if their file is complete, there is no reason why it should be refused. The supporting documents are thus perceived as conditions for access to the Schengen area which, once gathered, logically give the right to a visa. However, grounds 3 and 8, while linked to supporting documents, give the consular authorities a margin of appreciation. As for ground 9, the most commonly used to justify visa refusals; it is sufficiently vague to leave the consular authorities free to decide whether or not to grant the visa. As one interviewee noted,

there is a "feeling that it is their last resort when they cannot find other arguments" to refuse the visa.

The reasons 9, but also, to a lesser extent, the reasons 3 and 8, are related to "migration risk". They are therefore used to assess whether the person who wishes to travel in the Schengen area intends to leave it at the end of the period. However, neither the willingness to leave nor the intention to stay can be proven. Moreover, the grounds" of the decision do not even contain the elements of the file that would have led the consular authorities to tick this or that ground. Thus, a rejected applicant does not have the right to know exactly what was missing in his or her file, nor what he or she should avoid while submitting a new application. It is as if consular authorities have the right to refuse the case which they see as a potential irregular migrant, without being required to explain their decision, and without necessarily having solid reasons to suspect a "migration risk".

The logic of the Community Code on Visas is explained by reasons that can justify a refusal are limited, and that apart from these reasons, a visa application cannot be refused. This was confirmed by the European Court of Justice in a judgment of 19/12/2013¹⁴. Nevertheless, the same judgment specifies that the consular authorities have a "wide margin of appreciation" of the conditions for the application of these motives, and in particular those relating to the "risk of irregular immigration". This risk must be assessed by taking into account the applicant's personality, his

¹⁴ European Court of Justice, Judgment in Case C-84/12, Rahmanian Koushaki v Bundesrepublik Deutschland, 19/12/2013.

or her integration into the country, and even the political, social and economic situation in the country.

It is therefore perfectly "legal" that the situation in a given country can justify, or at least contribute to the increase in the number of visa applications refused, regardless of the very content of the files and the supporting documents submitted. In addition to the original discrimination between populations of the blacklist countries and those of the white list countries, a new discrimination is therefore faced which penalizes an entire population because of the difficult situation in their country. This is the case, for example, of the Libyan nationals interviewed who applied for their visas from Tunisia. One of them, a former judge who was refused a visa application in 2013, made an explicit link between the instability in Libya and the frequency of Schengen visa applications from Libyan nationals being refused.

Thus, the tightening of migration policy towards the populations of certain countries which is reflected, among other things, in the tightening of visa issuing policy, leads to an increase in the refusal rate and, in particular, to a more frequent use of the three above-mentioned grounds. The frequency of refusals on the basis of these vague grounds, even if the applicants' files contain all the required documents, proves that this is a well-considered and consistent policy towards nationals of countries such as Tunisia, rather than isolated decisions resulting from deficiencies in the applicants' files. Moreover, for consular authorities, a visa applicant is perceived as a potential irregular migrant, until proven otherwise, or as Z.G. explained it, "we are treated as if we were criminals until proven innocent".

The humiliation felt due to the rejection

It is difficult to understand the rage of a refused visa applicant when you have not experienced the situation. Through testimonies, the refusal is experienced as a humiliation, even an insult. Rejected applicants not only feel undesirable, but also treated as irregular migrants, even though they have no plans at all to do so, as their situation in Tunisia is stable. Thus, instead of helping to absorb the refusal, the motivation of the decision only reinforces this feeling of humiliation.

This is what emerges, for example, from the testimony of L.T, a 19-year-old student: "motive 9 is very hard! I am studying here; I have provided all the supporting documents, everything proves that my situation is very good here and that I will return. When I file a new application, I will be looked at with a skeptical eye. I spent 1000€ so that they finally accused me of wanting to immigrate irregularly when I was just going to attend a music concert and I had even bought the ticket! When they come to our country, we don't do that to them!"

The same indignation against the ground 9, perceived as an unjust and degrading accusation, is found in other testimonies. Some interviewees cite their previous travels as evidence of the absence of any illegal immigration intentions. W.H, for example, says that she had "already been to New York and back", before adding: "They humiliated me! ». M.E, a Central African student, also insists that he "still has a lot to do in Tunisia and that he has every reason to stay", as well as D.A., a Cameroonian student who still has his doctorate to finish in Tunisia. As for B.E, a 31-year-

old sales manager, he understands that the refusal of many applications is "given the number of people who want to leave the country", but adds: "not me, not for this reason. I work, my situation is stable in Tunisia, I don't have to run away from it. I have been working for 7 years and have social security, and then I am told that the information is not reliable. What are they still looking for after all these documents? They're mocking us. »

The same resentment is shared by I.B, a 43-year-old teacher: "I have a stable job here, I have my own house, I am divorced and I have custody of my children, I am not going to leave all this to look for any precarious work in Italy! ». The same interviewee said she believed that this was a "discriminatory refusal because of her quite large headscarf". Not convinced of the reasons checked in the refusal decision, several interviewees were looking for other reasons. Z.C. believes, for example, that she was the victim of a wave of visa refusals for France, due to the yellow jacket crisis.

Anger is even greater because the refusal is often unexpected. Indeed, many of our interviewees did not expect a refusal at all, as their files were complete. This is the case of M.C. who was all the more reassured because two of his friends, in the same professional situation as him, had received their visas. This is also the case of Z.C. who was "100% sure of getting the visa", and who "experienced the refusal so badly that she never wants to experience it again", and of W.H. who "was so ready to travel and had even packed her suitcase". "It was the biggest disappointment," she added.

On the other hand, some interviewees expected a refusal, or at least were not surprised by the refusal of their requests. This is the case of A.H. who "got used" to refusals even if the decision was unfair. He has been refused no less than twelve visas which "only reinforces his desire to leave". D.A, a Cameroonian student, was also not shocked by the refusal, since his "entourage warned him that the first requests were frequently refused".

However, in the majority of responses, there were disappointment, bitterness, and a sense of injustice. A resentment that grows with sacrifices often endured for a trip that ultimately will not take place. This is the case of O.B., a 24-year-old student, who "impatiently waited for the holidays and saved money to ensure a suitable budget for her trip". Or B.T, an activist of Libyan nationality, who "spent two months doing research work to participate in a Congress" to which he was invited, and which he finally failed to attend because of the visa refusal.

Often, decision to and reasons for this rejection are added to a feeling of humiliation already present during the visa procedure. This is what emerges, for example, from the testimony of W.H., who felt humiliated: "I spent the day in front of the embassy, there was a huge crowd, it was a hell of a day and I was in tears. This was the fatal blow." The financial sacrifice caused by visa fees further adds to the misfortune and disappointment of the rejected applicants. Thus, upon discovering that his visa had been refused, M.C "that his money had been stolen".

Indeed, from the beginning, the visa procedure with the required supporting documents, and by the end of the application, the reasons for the refusal are perceived by many applicants as

humiliation, manifestation of their "inferiority", comparatively to Europeans who can travel freely as one of the interviewees said, . Thus, nationals of countries of the South pay, with the material "tax" of visa fees and application fees, an "emotional tax"¹⁵, which reminds them of their "inferior condition", as well as the suspicions that stick to their skin because of their origin.

In addition to the humiliation of the moment, visa denial often has far more serious and lasting consequences than the cancellation of a trip. This is the case for O.O., 27 years old, who "runs a company and wanted to participate in a major seminar that could have been a plus in her professional life". Mad with rage at this "injustice", she "even risked her life when she cried while driving crazily on the Tunis/Sfax highway". As for Z.C., she just wanted to "attend her favorite music group". She had bought her ticket before she got the visa, and had to resell it after the first refusal. She bought a new ticket for a second concert, but her visa application was again refused. She felt "helpless" in the face of this unjustified double refusal of the visa, which was supposed to "allow her to see something that, she would not have the opportunity to see in her country". Z.G, for her part, was invited to a festival as an artist, and despite all the supporting documents, her visa application was refused. "We are artists, we can only have a positive contribution," said Z.G. "And yet I felt that we were 7th degree citizens."

¹⁵ Bathsheba Okwenje, Visa applications: emotional tax and privileged passports, <https://blogs.lse.ac.uk/africaatlse/2019/07/10/visa-applications-emotional-tax-privileged-passports/?fbclid=IwAR1BP76sF5-cWCpoXh3X4SNRXdaj703SqrZuCdmbWXYR82jKCOVM8UV2NI>

But the most dramatic case remains that of W.H, 29 years old, who testifies as follows: "I was going to meet my lover, we were in a long-distance relationship and we were having trouble with that. We wanted to spend time together, but we couldn't do it because of the visa denial. I had already spent too much money on airfare and visas to be able to change destinations after the refusal. After that episode, the relationship deteriorated further." Behind the visa application files and their cold supporting documents, there are personal experiences and needs that consular authorities do not take into consideration, and that are paying the price of a tighter migration policy against an entire population.

The right of appeal a theoretical guarantee

Faced with the refusal of his visa application, the only guarantee for a rejected applicant is the right of appeal this right is enshrined in the Community Code on Visas, but organized by national legislation and exercised before national authorities. This margin left to the Member States of the Schengen area implies that the right of judicial review is not always accessible. Indeed, some legislations provide for an administrative commission, others for very short deadlines or high costs¹⁶. Above all, information on the right of appeal is very incomplete.¹⁷

¹⁶ Mahdi Elleuch, above-mentioned.

¹⁷ Recognizing these shortcomings, which make the right of recourse ineffective, the European institutions have adopted, in the new above-mentioned Regulation, a new standard form for the notification of refusal, providing details on the right of recourse (applicable rules, competent authorities, time limit, etc.).

Several interviewees stated that they had thought about challenging the decision of refusal, and some of them even made it. However, everyone has chosen its path, in the absence of clear information on the procedure to be followed. For example, W.H. sent an email to the embassy challenging the decision and requesting reimbursement of expenses; a negative response was given. Similarly, Y.J. chose to send an e-mail to the embassy "to explain his situation". M.C. sent a "complaint to in France", but the return he received was an "automatic reply". As for B.T., a Libyan national who was invited with a group of activists to participate in an international congress and even in a "hearing in the European Parliament", he and his colleagues chose to protest outside the headquarters of the European Union delegation in Tunisia.

This diversity of appeal resolution methods followed by interviewees is primarily due to a lack of information. As a consequence of the externalization of the visa procedure, the lack of direct contact between an applicant and consular services is an important factor. Refused applicants receive their passports in envelopes, and there is no one to explain to them the reasons for the refusal or to enlighten them on the procedure to follow and the chances of a successful appeal. However, H.S., a housewife, tried to ask a question to "one of the TLS contact agents", who replied that "it is useless and that she will not even be answered". D.A., a Cameroonian student in Tunis, also considered filing an appeal but "did not know from where to start".

According to many of the interviewees, this is a "waste of time". Some have even asked about this to relatives or on social

networks to conclude that, "from experience", there is nothing to hope for by filing a complaint, because "it has not worked with anyone". Others could not even wait for the time it takes to complete the procedure, since the reason for the trip would soon expire. This is the case of Z.G. who wanted to travel to attend a festival, and O.O., a doctor of pharmacy, who wanted to attend a Congress.

Some prefer to reapply, but fear that the appeal against a first refusal decision will further reduce their chances of obtaining a visa. This is the case of G.D., a student, who was at her first refused request and "was afraid of being blacklisted". W.H, for her part, was "traumatized" and "did not want to be mistreated again", after a visa refusal and a negative response to the email she sent to the embassy. For many interviewees, the visa procedure, with its negative outcome, is experienced as a nightmare that must no longer continue. Others do not surrender and file new applications, most often facing new refusals.

Once rejected, always rejected?

Faced with the lack of information and the perception of ineffectiveness regarding the right of appeal against the refusal decision, the outcome for a number of rejected applicants is to submit a new application for a Schengen visa, either directly or after a certain time. Others claim to have lost the desire to travel in the Schengen area and are heading for other destinations.

Some prefer to turn to another country in the Schengen area, thinking that the first refusal reflects a national policy. This is the case of M.C., who stated that next time he will apply for a visa to Italy, but also of Z.C. who will prefer to send his application to Spain or Germany, but never again to France. This same perception is also adopted by G.D., who, if she "knew that France was pursuing such a harsh policy, would have tried to apply for a visa to another country". It is remarkable that the interviewees, who were turned away by other consulates, do not have such a perception.

Others, on the other hand, insist on having the visa from the same country that refused them, again France. This is the case of B.N., a 22-year-old Tunisian student, because she has relatives living there. As for I.B., a 43-year-old teacher, she says she plans to apply for a new visa for France, because "it has become a matter of self-esteem". "It's either I win or they win," I.B. added. This is the humiliation felt because of the visa denial, especially when it is based on a suspicion of migratory intent.

However, it is likely that a first refusal of a Schengen visa will lead to others, or at least reduce the chances of a positive response¹⁸. Yet the article 21 of the Visa Code states the opposite principle. But as long as the refusal of an application is recorded in the "Visa Information System" (VIS), which is an essential reference in the examination of new applications, it becomes difficult to believe that it has no effect on new applications.

¹⁸ Mahdi Elleuch,

Several of the interviewees were thus refused more than once. The most notable example is that of A.H., a 32-year-old businessman, who was refused a Schengen visa 12 times. Another example is that of N.Z., an engineering student, who was refused five times for study and tourist visas between July 2018 and May 2019. As for M.C., an owner of a driving school, he was refused despite all the financial proof he presented, perhaps because of the first refusal he had received when he was unemployed. Thus, a visa rejection probably has consequences for subsequent applications, especially if the reason is related to migration risk. In the absence of concrete evidence, this is the general perception, confirmed by many examples. B.E., a sales manager, tells us that he heard that "if the 8th or 9th reason is ticked, we must forget the visa forever".

The opposite, however, is not verified. Having already a Schengen visa is not a guarantee of obtaining of a new visa. This is illustrated by the case of Z.C., a 29-year-old Tunisian woman working in an NGO, who had already obtained 6 Schengen visas before being refused twice in June and December 2018. There is also the case of D.L., 42 years old, a Libyan national working as an employee in a hotel, who had already had a Schengen visa for France twice before, but whose visa application for the same country was refused in 2019. G.D. had already had a three-month Schengen visa, but her file was refused for the first time in June 2019, and again a few weeks later. She says she "did the impossible" the second time to get the visa, for example, by buying the return ticket as further proof of her willingness to return to Tunisia. This was clearly not enough to convince the French consular authorities.

III. The tightening of visa policy, is that an encouragement to irregular immigration?

The belief that there is a link between the tightening of regular migration channels - and travel in general - and the reliance on irregular immigration is not a new idea. This logical link is difficult to prove. Some studies have tried to prove this quantitatively¹⁹. But such research faces many practical obstacles, particularly in terms of quantitative assessment of visa policy tightening²⁰.

We asked our interviewees whether they had ever thought about irregular immigration. The majority of the responses were, as expected, negative. It must be said that the majority of visa applicants we interviewed were in a socio-professional, stable situation. This is not surprising since the supporting documents requested, as well as the cost of the application and travel in general, constitute a kind of implicit discrimination «based on the bank account»²¹. In general, people in a precarious situation do not even apply for a visa, as they are so sure they will not get one.

It is interesting to note that the only people who admitted to have this temptation were unemployed. This is the case of A.B.,

¹⁹ Mathias CZAİKA & Mogens HOBOLTH, article mentioned above.

²⁰ Mathias CZAİKA & Hein de HAAS, «The effect of visas on migration processes », *International migration review*, 2016, DOI: 10.1111/immre.12261, p. 1.

²¹ Alexis SPIRE, «Making foreigners pay, the future of an old idea », Full right 2005/4 (n°67), p. 5

currently an artistic director in a company, suffered from unemployment before, claimed to have "thought about irregular immigration in times of disappointment", but that he had "restrained himself". A.B. said that he had difficulties accepting "the idea that you need to have certain requirements to be able to spend a few days somewhere". Similarly, G.O., 32 years old, who worked as a handyman and was unemployed at the time of the interview, did not hesitate to say that, he was thinking about irregular immigration. He explained that "in his city, most young people have tried the "Harqa", because of marginalization and inability to aspire to a better future".

While some interviewees stated that irregular immigration is an "independent phenomenon" (R.F.), that "nothing justifies" (I.L.) and that there is "no alternative to regular travel" (B.E.), the majority believe, with more or less insistence, and sometimes even before the question is asked, that the tightening of visa policy "encourages" non-regulatory immigration, as J. C. and Y. N. M.C. says that, it is even a "major factor", and S.I. believes that, "when you are given such grounds for refusal while you are a student and have the right to leave after one year of study, you have rage, and you want to leave at all costs. »

Two of our interviewees even mentioned cases among their acquaintances that prove the link between stricter visa requirements and illegal immigration. N.Z. cites the example of her friend "who has been refused a tourist visa twice", and who is thinking of immigrating by sea, taking the example of a friend of his who has managed to do so: "I tried to follow the rules and get there, they did not accept," he told her. Similarly, B.N., a 22-year-

old student, says that three of her friends, who have been refused a Schengen visa, plan to "immigrate irregularly" and "burn" their papers once arrived.

Without necessarily having a temptation to immigrate without a visa, many of the interviewees say that they understand that the frustration of refusal may encourage some to take the plunge. W.H. considers, for his part, that "when you are deprived of your freedom of movement, that is what happens". "Let immigrants invade them!", she added. Z.G. believes that Europe "considers us criminals or beggars" and that, when we are treated in this way, "we often end up becoming criminals".

This testimony supports the hypothesis that restrictive visa policies create their "logic of circumvention". Indeed, a desire for migration does not weaken with visa denials. It often gets stronger. This applies both to individuals who have submitted one or more unsuccessful applications, and to those who, seeing the supporting documents requested for the visa and the feedback from the first ones, immediately understand that their chances of obtaining a visa are, if not non-existent, very limited²². A desire to immigrate often searches alternatives channels while facing difficulties in front of regular channels, as it is shown in many studies²³. This is indeed one of the "substitution effects",

²²Abdessatar Sahbani, « Youth and irregular migration: Field survey of social representations, practices and expectations », FTDES publication (in arabic).

²³ Mathias CZAÏKA & Mogens HOBOLTH, « Do restrictive asylum and visa policies increase irregular migration into Europe? », European Union politics, 1-21, 2016.

identified by De Haas²⁴, which explain the ineffectiveness of restrictive migration policies.

In addition, the issue of cost probably plays a role in this substitution. Sure, both regular and irregular migration has a cost. The cost of regular travel continues to rise, including the cost of visas, but also passports, air tickets, etc... As D.A. noted, the amount he spent on a trip that did not take place because of the lack of a visa is the equivalent of what "could have made him pass" through unconventional channels. However, expenses incurred for regular travel also carry the risk of visa denial: a risk that cannot be compared at all with the risk of death posed by irregular immigration through the sea. But it is legitimate to believe that the high financial cost of regular travel, combined with the low chances of success, can encourage the resort to irregular immigration. It may seem exaggerated to say, as D.A. did, that "many people die because of visa denial". However, the tightening of visa policy is probably contributing to the increase in irregular immigration by sea which costs thousands of migrants their lives every year²⁵.

²⁴ Hein DE HAAS, The determinants of international migration: Conceptualising policy, origin and destination effects, DEMIG Working paper no°32, april 2011.

²⁵https://www.lemonde.fr/international/article/2019/01/03/plus-de-2-260-migrants-morts-en-mediterranee-en-2018_5404889_3210.html

IV ● Our governments are also to blame

The anger often experienced by visa applicants is directed first at the Schengen States, particularly at the one concerned by their visa application. In many cases however, while to a lesser degree, the anger is aimed at the State of which they are nationals. Thus, without being prompted by the question, several interviewees criticized the passivity of Tunisian authorities. "The State must assume its responsibility because they exploit Tunisian citizens! ", said L.T. Similarly, S.I.'s reaction to the visa refusal did not spare the Tunisian State: "You even have rage against your State, the situation, everything. Tunisia also bears its share of responsibility in this situation. For A.H., the Tunisian State is "complicit", since it does not "protect the rights of its citizens who are victims of injustice in the visa procedure."

Indeed, visa applicants feel left to their own fate, as they each pay the price of a fundamental discrimination against the entire population. It is because they are Tunisian (or Libyan or bearers of other African nationalities) that they are required to have a visa to access the Schengen area and that their country is on the "black list". It is likely also on this basis and due to a general tightening of visa policy that their visa applications are refused, regardless of the content of their file. Libyan nationals also pay the price of the instability their country is experiencing,

which could result in a minimization of their chances of obtaining a visa without it constituting a violation of European law²⁶.

The outrage is further fueled by the fact that Europeans do not need a visa to enter Tunisia, as several interviewees pointed out. Nonetheless, the interviewees insist that they "believe in free borders". It is therefore not necessarily a question of demanding that Tunisia treat European nationals reciprocally. However, this inequality between populations is so glaring that it cannot be ignored. As Z.G. expressed it, "it doesn't make sense that you can enter my country without money or visas and that I have to pay a lot of money without being sure that I would be allowed to". "It is one of the forms of colonization," A.H. emphasized.

Several interviewees expressed their rejection of borders, and of the various obstacles restricting their freedom of movement, even on the Tunisian side. Z.G. thus denounced the "parental authorization" often required by the Tunisian authorities for young people, sometimes even adults, to travel; a requirement that has no legal basis, except for one of the so-called ghost circulars that governs Tunisians, in great disregard of constitutional guarantees²⁷. As one of the interviewees put it so well, "borders suffocate us," and this applies, while certainly at very different degrees, to both sides of the border.

²⁶ See above.

²⁷RabebMokrani, « Ghost decrees and the right to leave Tunisian territory», in Wahid Ferchichi (dir.), *Liberticidal circulars. An underground right in a State governed by the rule of law*, ADLI publication, Tunis, 2018.

CONCLUSION

Travel should be a simple exercise of the freedom to move in and out of state boundaries. It has become, at least with regards to the Schengen area, a privilege. First and foremost, it is a privilege for populations exempted from the visa requirements, as they do not present a migration or security risk to Europe. Secondly, it is a privilege for those in countries of the South whose financial and socio-professional situation is sufficiently stable, and finally, a privilege for those whose files survive the filter of visibly arbitrary refusals.

The visa procedure is experienced by many applicants as a humiliation and scam suffered as soon as the application is submitted to private agencies, with whom it is difficult to have a dialogue, and to whom service charges are paid in addition to the already high visa fees. Visa applicants pay the price of savings made by European governments from the outsourcing of operations – one which is used to feed the private operators' appetite for profit: a price too high, which is not even refunded in case of refusal.

Cases of refusal have become too frequent, without them being justified by a deficiency in the application file. The reasons checked do not offer any explanation, except that there is a suspicion of migratory intent. The feeling of humiliation is all the more legitimate because the refusal is unfair. The institutions of the European Union recognized this failure to state reasons and promised in the new Regulation that the notification of refusal will contain more detailed information on the grounds for refusal

and the recourse procedures. However, the same margin of appreciation is left to the consular authorities assessing migrants' "willingness to return", which continues to maintain an element of arbitrariness in the process.

The testimonies collected show that the tightening of Schengen visa policy, at least with regard to Tunisia, is a reality. This tightening is justified by the omnipresent concern to combat irregular immigration, and risks being used as a means of pressure, if not blackmail, on the States of the southern shore of the Mediterranean in order to bring them into line with European requirements for the readmission of migrants. Nonetheless, the tightening of visa policy may also be counterproductive, and may help to encourage young (and not so young) people desperate to gain legal access to the Schengen area to attempt to cross the Mediterranean, and therefore risk their lives when faced with the disgraceful indifference of Europe to human rights.

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