

Fighting for the right to have rights

25 August 2015

The European Center for Constitutional and Human Rights, had guests this week from Morocco. The two human rights activists spoke about their work with refugees and migrants seeking to reach Europe via the Moroccan city of Nador. We've all heard or read about this before. But for me it's always more powerful when I hear these stories first hand and am directly confronted with the violence and injustice.

The shortest route from Nador to Europe involves climbing barbed wire fences to reach the Spanish enclave of Melilla in North Africa. The longer route gets migrants directly to the European continent but requires crossing the Mediterranean to reach Andalucía. It's generally only young men between around 15 and 21 who are fit enough to scale the three to six meter high fences and run the gauntlet between violent Moroccan and Spanish border guards. Attempts to climb over the fence often result in serious injury and even death. Taking the sea route – also fraught with danger – requires money that many do not have. In this way the EU's border regime enforces a Darwinian screening process.

The Moroccan state, for its part, stirs up racism against sub-Saharanans while the media spreads lies and perpetuates stereotypes. In Morocco there are very few people taking on the kind of work that our two guests are doing there, so we are glad to be able to work with them to help refugees and migrants get access to justice.

There is such a thing as a “right to have rights” as described by Hannah Arendt after World War II in her writing on the plight of the stateless and denaturalized. But even in this era of universal human rights, this right to have rights is far from guaranteed, including here in the EU. Refugees and migrants in Morocco have no effective access to justice and in Spain only a rare few are granted access to the asylum procedures they are entitled to.

Recently there was some cause for hope. The European Court of Human Rights in Strasbourg accepted a case we brought on behalf of two men from Mali and the Ivory Coast. We are challenging the Spanish police practice of summarily expelling refugees and migrants without giving them a chance to apply for asylum or legal assistance. It was the first time that Strasbourg addressed the conditions in Melilla and Spain's rigid border policies in general. When asked by the Court to provide further information, Spanish Interior Minister Jorge Fernández Díaz defended the expulsions, a mass-scale legal breach that has been part of official government policy since March.

We know, of course, that court decisions alone can't solve one of the biggest European problems of our time. A number of useful suggestions appeared in Heribert Prantl's recent polemic *Im Namen der Menschlichkeit*: help for transit countries like Lebanon and Jordan, halfway secure escape routes to Europe, reasonable social policies and the abolition of the Dublin system. One major step in the right direction would be to acknowledge that those who are fleeing are the subjects and bearers of human rights and to guarantee them these rights on European soil, a similar path to the one followed for years by the activists in Morocco.