European University Institute – Robert Schuman Centre for Advanced Studies

Workshop 1

The Implications of Readmission and Enforced Return on Euro-Mediterranean Relations and Beyond

directed by

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Workshop abstract

Making an inventory of all the bilateral readmission agreements concluded between the EU-27 member states and South Mediterranean countries (SMCs) would not suffice to grasp the various mechanisms and cooperative instruments that have emerged, over the last decade, to sustain the removal of illegally staying third-country nationals. By laying emphasis on the unstable balance of costs and benefits related to the bilateral cooperation on readmission, the purpose of this workshop lies in analysing, from an interdisciplinary perspective, the reasons for which some SMCs have engaged in the conclusion of readmission agreements with some EU member states, while others opted for alternative or less formal patterns of cooperation on readmission.

Scant attention has been paid to these alternative patterns. They do not constitute formal readmission agreements. However, they are no less agreements for that, having serious implications on state-to-state relations, policy-making and reforms, including the development of a genuine legal system aimed to the respect of the rights of migrants and the protection of asylum-seekers. The objectives of this workshop lie in analysing these manifold implications.

Workshop description

1. Background

The conclusion of agreements linked to readmission has gained momentum since the 1990s, particularly following the June 2002 Seville European Council which called for a reinforced cooperation on this field with third countries. This trend is reflective of the fact that the issue of readmission is gradually pervading various policy areas, including the migration and asylum policy of the EU and its Member States, their trade and development aid policy, and their international relations.

Readmission agreements are concluded to facilitate the removal or deportation of "persons who do not, or no longer fulfil the conditions of entry to, presence in or residence in the requesting state" (COM (2002) 504 final: 26). Many scholars, from various disciplines, have already stressed the fact that bilateral cooperation on readmission is not new in the history of international relations (Kruse, 2006: 120; Bouteillet-Paquet, 2003: 359) and that, since the early 1990s, the issue of readmission has become part and parcel of the immigration control systems developed at bilateral and multilateral levels (Lavenex 2002; Schieffer 2003). There is customary international law obliging countries of origin to facilitate the return of their nationals or of those persons identified as being nationals of these countries.

The vast majority of readmission agreements are concluded at a bilateral level. Such agreements set out administrative and operational procedures which are jointly defined by the contracting parties regarding the means of identification of the undocumented migrants and the ensuing delivery of travel documents (or laissez-passers). The national authorities in charge of cooperating on the removal of the foreigners are clearly stated in the agreement and the border control points which may be used for readmission purposes are listed.

1.1. Reciprocal obligations among "unequals"

Both contracting parties commit themselves to the respect of reciprocal obligations which are formally mentioned in the agreement. These obligations pertain to the fact that each contracting party agrees to readmit at the request of the other contracting party foreign nationals who do not or no longer fulfil the conditions of entry or residence on the territory of the State of the requesting party. Importantly, they also commit to carrying out removal procedures without unnecessary formalities and within reasonable time limits, with due respect of their duties under their national legislation and the international agreements on human rights and the protection of the status of refugees, in accordance with the 1951 Geneva Convention relating to the status of refugees and its 1967 protocol.

This reciprocity of obligations does not mean that the contracting parties benefit equally from the conclusion and the implementation of the readmission agreement. To use Robert Keohane's phrase, readmission agreements characterise "relations among unequals" (1986: 6), above all when these involve two signatory countries having a significant level of developmental asymmetry, which is more often than not the case. It could even be argued that the obligations contained in the readmission agreement are typically unequal, although they are framed in a reciprocal context.

Furthermore, the perceived costs and benefits attached to the conclusion *and* to the implementation of a readmission agreement differ substantially between both contracting parties. This assumption is far from being trite when it comes to accounting for the vested interests that each party has in engaging in this kind of bilateral agreement. Whilst the interest of a destination country sounds obvious ("unwanted migrants have to be effectively removed"), the interest of a country of origin may be less

evident, above all when considering that its economy remains dependent on the revenues of its (legal and illegal) expatriates living abroad, or when migration continues to be viewed as a safety valve to relieve pressure on domestic unemployment.

These considerations are important to show that the conclusion of a readmission agreement is motivated by expected benefits which are unequally perceived by the contracting parties, on the one hand, and that its implementation is based on a balance between the concrete benefits and costs attached to it, on the other. In other words, reciprocal obligations are not sufficient to account for the conclusion of readmission agreements, nor are they sufficient to secure their effectiveness in the long term.

Moreover, the balance of expected benefits and costs constitutes a useful analytical tool to explain factors that sustained the conclusion and implementation of a readmission agreement between two unequal contracting parties. The perceived value of the exchanged items shapes the intensity of the quid pro quo.

However, the balance between the costs and benefits might change over time, as a result of unfavourable or unexpected circumstances. In the long run, the concrete benefits may turn out to be too weak compared with the unintended costs of the bilateral cooperation on readmission. This change of value might negatively impact on the effective implementation of a readmission agreement leading gradually to new adaptive solutions, if not defection.

2. Preliminary observations and objectives of the workshop

Two countries may or may not accept to negotiate or conclude a readmission agreement depending on a series of factors, i.e., circumstances, their diplomatic relations, the size and nature of the migration flows affecting both countries, and (to a lesser extent) their geographical proximity.

The research activities carried out in the context of the MIREM project have demonstrated that making an inventory of all the bilateral readmission agreements concluded between the EU-27 member states and South Mediterranean countries would not suffice to grasp the various mechanisms and cooperative instruments that have emerged, over the last decade, to sustain the removal of illegally staying third-country nationals.

These mechanisms may be formalised, as this is often the case, through the conclusion of a standard readmission agreement because both parties view its formalisation as being valuable to each other's interests. Under some circumstances, however, both parties may agree to cooperate on readmission issues without necessarily formalising their cooperation on the basis of a readmission agreement. They may opt for alternative ways of dealing with the issue of readmission by placing it in a broader framework of cooperation including additional forms of mutual assistance (e.g., police cooperation agreement, arrangements) or by choosing to couch their cooperation in other types of deals, including exchanges of letters and memoranda of understanding (Cassarino, 2007).

Scant attention has been paid to these alternative patterns of cooperation on readmission. They do not constitute formal readmission agreements. However, they are no less agreements for that, having various implications on state-to-state relations and not only.

2.1. Objectives

The objectives of this workshop lie in filling in this gap. Speakers are particularly invited to address:

- The extent to which and the reasons for which (e.g., incentives, compensatory measures, enhanced international credibility) some South Mediterranean countries have been responsive to the need for reinforced cooperation on readmission;
- The reasons and factors that shaped the cooperative patterns on readmission between the EU member states and South Mediterranean countries. The point is to analyse why some South Mediterranean have engaged in formal readmission agreements, whereas others have opted for alternative patterns of cooperation on readmission;
- Whether the cooperation on readmission is having some repercussions on the relations of South Mediterranean countries with the European Union and its Member State;
- Whether the cooperative patterns on readmission, as they stand now, are conducive to institutional and legal reforms aimed at protecting the rights of the removed migrants as well as their reintegration;
- The extent to which the various cooperative patterns on readmission, undertaken at a bilateral level, might jeopardise or weaken the negotiating power of the EU in its attempt to conclude Community readmission agreements. This issue regards particularly the European Commission which has been mandated to negotiate readmission agreements with two third countries in the Mediterranean area, i.e., Morocco and Algeria, respectively in September 2000 and November 2002.

3. Abstract Submission

We welcome original contributions, from various disciplines, addressing the abovementioned objectives.

Selected references

Bouteillet-Paquet, Daphné (2003), “Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and Its Member States”. European Journal of Migration and Law 5: 359-377.

Cassarino, Jean-Pierre (2007), "Informalising Readmission Agreements in the EU Neighbourhood", The International Spectator (Routledge), 42 (2) p. 179-196.

Commission of the European Communities (2002), Communication from the Commission to the Council and the European Parliament on a Community Return Policy on Illegal Residents. COM (2002) 504 final. Brussels: European Commission.

Keohane, Robert O. (1986), “Reciprocity in International Relations”. International Organization 40 (1): 1-27.

Kruse, Imke (2006), “EU Readmission Policy and its Effects on Transit Countries – The Case of Albania”. European Journal of Migration and Law 8: 115-142.

Lavenex, Sandra (2002), "EU Trade Policy and Immigration Control". In Sandra Lavenex and Emek M. Uçarer (eds.), Migration and the Externalities of European Integration. Oxford: Lexington Books. p. 161-177.

Schieffer, Martin (2003), "Community Readmission Agreements with Third Countries – Objectives, Substance and Current State of Negotiations". European Journal of Migration and Law 5: 343-357.

Directors' individual paper abstracts

Managing Readmission in the Euro-Mediterranean Area: The emergence of new power relations

Jean-Pierre Cassarino

What happens when illegal emigrants and rejected asylum-seekers are forced to return? Under which conditions is their readmission organised? The "management" of this phenomenon is not new in the history of international relations. For many decades, destination and origin countries have concluded bilateral agreements aimed at facilitating the return of their nationals. Since the early 1990s, the issue of readmission has become part of the immigration control systems developed by the EU and its Member States.

Readmission agreements include reciprocal obligations as well as procedures pertaining to the identification process of undocumented migrants. The contracting states also commit to carrying out removal procedures without unnecessary formalities and within reasonable time limits, with due respect of their duties under their national legislation and the international agreements on human rights and the protection of the status of refugees, in accordance with the 1951 Geneva Convention relating to the status of refugees and its 1967 protocol.

Despite the letter of those agreements, various human rights organisations and associations in Europe and abroad have repeatedly denounced the lack of transparency that surrounds the implementation of readmission agreements and deportation operations. Such public denunciations have not only questioned the compliance with the obligations and principles contained in the bilateral readmission agreements. They also raised growing public concerns regarding the respect of the rights and safety of the removed persons.

Les multiples facettes de la migration de retour et de la réadmission : le cas de la Tunisie

Monia Ben Jemia

Seuls 3353 retours auraient été enregistrés entre 1999-2004 alors que la moyenne annuelle des départs se situerait autour de 28 000 personnes par an, soit un taux de 3,8 % en direction de la France, d'abord et de l'Italie ensuite. Et ce, malgré l'existence d'une législation qui se donne à voir comme particulièrement incitative au retour volontaire. Les retours enregistrés concernent, en effet, les retours volontaires à l'exclusion des retours forcés d'émigrés entrés ou séjournant de manière irrégulière dans les pays d'accueil. Si le nombre de ces retours reste inconnu, il est probable, vu

l'importance de l'émigration clandestine en Europe et les engagements pris par la Tunisie de réadmettre ses nationaux, que les retours forcés deviennent plus importants que les retours volontaires. Outre le paradoxe constitué par une nation qui retiendrait ses nationaux contre leur gré, le non retour volontaire peut contribuer à l'affaiblissement d'une économie qui souffrira de plus en plus du manque d'investissement des revenus de l'émigration et de l'exode de ses compétences.

La contribution propose d'étudier la politique législative tunisienne en matière de retour volontaire et forcé et de l'évaluer afin de donner des éléments de réponse permettant de réfléchir sur les meilleurs moyens d'inverser la tendance.