Passing the Buck: A Critical Analysis of the Readmission Policy Implemented by the European Union and Its Member States

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Despite recent political and media attention, readmission agreements are one of the oldest instruments used by Member States to control migratory flows. Indeed, Member States of the European Economic Community signed a first generation of readmission agreements in the 1960s in order to cope with irregular movements of persons amongst Member States. While this first generation of agreements has progressively ceased to be used with the completion of the internal market, Member States have felt the need to use readmission agreements as a tool to fight irregular immigration coming from third countries. After the fall of the Berlin wall and the opening of the borders in the East, Member States have thus concluded a second generation of bilateral readmission agreements with the Central and Eastern European countries (CEECs) in order to send back irregular migrants who have come from or passed through these countries. However, this bilateral policy did not have the expected effectiveness in terms of migration controls. Furthermore, it raises serious concerns regarding refugee protection, since the use of readmission agreements has been combined with the “safe third country” principle, alternatively referred to by European States as “first country of asylum” or “safe haven”. This concept is based on the assumption that persons who have left their country of origin because they feared persecution have an actual obligation to apply for asylum in the first safe country they have been able to reached.

While bilateral agreements are still applied, Member States have seized the opportunity of the broader debate on a Common European Asylum and Immigration Policy launched at the Inter-Governmental Conference in 1996 to improve the efficiency of their return policy, and to develop the harmonization process in the field of readmission agreements. While Article 63(3),

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paragraph (b) provides the legal basis for developing a third generation of readmission agreements, the conclusions of the Tampere Summit, held on 15–16 October 1999, underlined the need for a comprehensive approach to migration and asylum, addressing political, human rights and development issues in countries and regions of origin and transit. The conclusions of the Finnish Presidency also called for a greater coherence between the Union’s internal and external policies, and stressed the need for more efficient management of migration flows at all their stages, in which the partnership with countries of origin and transit would be a key element for the success of such a policy.

However, the so-called “integrated approach” to migration management has not been implemented so far and the overall implementation of the EU policy does not fundamentally depart from the one initially implemented by Member States. Partnership with countries of origin is an euphemism for a policy that has so far produced little more than extended the control driven policy, while very few progress has been made in the field of economic development and root causes prevention. This new generation of readmission agreements raises serious concerns owing to the humanitarian and political situation prevailing in the countries that are generating forced displacements.

The present article does not aim to carry out an exhaustive analysis of the existing readmission agreements. After defining the scope of the readmission agreements and the relevant principles of international law (I), we will give a broad outline of the second generation of agreements in order to put the EU policy into perspective and stress the dangers of readmission agreements for the asylum applicants who are generally entering illegally on the territory of the European Union (II). Finally, through a brief exposé of the third generation of readmission agreements, we will consider the impact of this policy on the countries generating immigrants’ flows insofar as the readmission policies are increasingly connected with the economic cooperation and CSFP instruments (III).

1. Overall Presentation

Under the terms of the readmission agreements, each contracting party has an obligation to re-admit persons who do not meet the conditions for entry or stay on the territory of the other contracting party, provided that the requesting State can validly prove or demonstrate, that the irregular migrant has the

1 Article 63(3)(b) TEC: “The Council, acting in accordance with the procedure referred to in Article 67, shall, within a period of five years after the entry into force of the Treaty of Amsterdam, adopt […] (3) measures on immigration policy within the following areas: […] (b) illegal immigration and illegal residence, including repatriation of illegal residents”.