The Europeanisation of Migration Policy – The Normative Issues

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Introduction

‘Europe’ is a miraculous entity. In public debate ‘Europe’ is presented as the solution to many problems, but at the same time we hear it is the cause thereof or, at least, that it blocks the solving of these issues. ‘Europe’ already exists – and has been there since times immemorial – and its now time to construct ‘Europe’. ‘Europe’ is something with a particular shape and clear distinguishing marks, and at the same time it is a project with a universal quality.

The debate on ‘Europe’ since WWII concentrates on the continuing co-operation of countries that in Geography commonly are reckoned to the same part of the world. In the beginning this ‘Europe’ was a matter of economic co-operation on a single terrain (coal and steel), then it was the development of a common market for all kinds of commodities and services, and later still the formation of a monetary union was the major issue. Nowadays, migration and security issues seems to be what ‘Europe’ is all about.

That ‘Europe’ in recent years has become involved in the development and implementation of regulations and policy in the field of migration and exclusion, nobody will deny. The establishment of a European Union-citizenship in the Treaty of Maastricht (effective as of 1993) and the introduction of a chapter on asylum and migration in the Community Treaty (Amsterdam 1999) are clear markers of this process. It even seems to be in the natural course of events that ‘Europe’ has a gate-keepers role. After a shift in migration control in the 19th and 20th century from the local to the national level (Leenders 1993), the transfer towards an even more encompassing level seems to be a logical one.

The logic of this development is object of intensive research within Political Science and Public Administration. Studies in these field address questions like: to what degree may we actually speak of any Europeanisation of migration policy, what does it mean for states and other actors involved, how do states try to influence this process, are goals aimed at in fact realised, how can the Europeanisation in this field be explained, and what consequences do these developments have for other fields of (European) policy making? (Geddes 2003; Guiraudon 2001; Guiraudon 2003; Joppke 1999; Sassen 1999; Soysal 1993). Researchers of Jurisprudence already took an interest in the development of migration law in Europe in earlier years. But recently the attention for European migration law increased enormously. The central questions in legal research concern the competence of and the relations

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between the actors involved and the extent to which European law guarantees rights of migrants (Guild 2001; Noll 2000; Skran 2003; Spijkerboer 1993; Vermeulen 2002).

Remarkably, within normative disciplines – political theory, philosophy of law, ethics – there has been far less attention for the Europeanisation of migration policy. The development of European institutions and the legitimacy of European governance are broadly discussed. National migration policy, furthermore, also has found a place on the research agenda of these disciplines. The ‘border era’ between these two fields of research, however, is relatively unexplored. One wonders: are the developments then not that fundamental, is there no need for further reflection? Does the Europeanisation of migration policy not entail new questions, given the nature of the newly involved community, the changing positions of national states, and the new opportunities of steering and control in the European setting? The aim of this article is to explore the normative questions that the Europeanisation of migration-policy entails.

This exploration will start by sketching the Europeanisation of migration policy. By using studies from Political Science and Jurisprudence, in section II some basic trends will be pointed out. Section III will focus on the questions that are prominent in existing state-oriented normative studies on migration policy. In section IV we combine these two surveys in order to trace new issues. In the final section we will bring these issues together in an agenda for further research.

Before starting this exploration however, we have to make a few remarks on our central concepts: ‘Europe’ and ‘migration policy’. Above, we already emphasised the multitude of meanings of ‘Europe’ by putting it between quotation marks. Conceptually the unity (or identity, for that matter) of Europe might take many forms. But also institutionally Europe has many guises. ‘Europe’ is used to refer to the EU (with roots in the ECSC, the EEC, the EC and a growing number of Member States; 25 as of May 2004). ‘Europe’, however, can also be the Council of Europe (40 Member States), or the OSCE, the Benelux, the EFTA or, for instance, the Schengen group. In this article we take ‘Europe’ to be the continent that in Geography commonly is given that name. We will concentrate on the forms of co-operation of states in that region concerning migration policy. The diversity in institutional configurations and the changes therein are part of the issue we want to address in this article.

The concept of ‘migration’ also is a fuzzy one. Migration policy often is distinguished from integration or immigration policy. The latter is used for activities aiming at furthering the participation (of migrants) in political, social and economic spheres. The former involves admission to a territory. This way of putting things, however, proofs to be too simple. Measures aimed at integration often have effects on migration and admission. (The condition, for instance, that one can only join one’s spouse if one is able to speak the country’s language.) And migration policy often is not an issue of granting residence rights, but of granting rights of a specific kind, with specific possibilities of participating in societal spheres. Migration policies, moreover, not only aim at selecting among those that request entrance at the states’ borders. Instruments having the effect to hinder people or to discourage them to travel to this region or country also seem to be part of it. The different ways in which migration policy is understood, and the changes therein, are relevant for this study.