

<p style="text-align: center;">European Commission evaluation of EU readmission agreements. Some comments and questions.</p>

Following the request made by the Council at the time of the adoption of the Stockholm Programme, on 23 February 2011 the European released its first evaluation of the EU readmission agreements that have been reached by the European Union or whose negotiation is underway. It must be noted that the associations that are members of the Migreurop network, which has over 50 partner associations from different European and third countries, has already asked the Commission to carry out such an evaluation through an open letter dated 20 January 2009¹, because it is a very sensitive issue that closely affects people's fundamental rights.

On that occasion, we had asked to know the number and nationalities of the third country nationals who had been the object of an actual readmission, the number of readmission requests made by a Member State that had not been accepted by the requested country and also the number and nationality of people who had been the object of a readmission within the framework of the «accelerated» procedure. On these points, the evaluation presented by the Commission still falls way short of our expectations. In its communication of February 2011, the Commission mentions several attached working documents in which data on the implementation of the agreements is found. However, these documents have not been made public.

The Commission enacted a «limited» evaluation of the application of the agreements and formulated some proposals to improve their negotiation and implementation. The Migreurop and Trans Europe Experts (TEE) networks share some of these observations and suggestions (I). They nonetheless remain concerned about the submission of other proposals that have already been criticised by civil society through associative networks (II).

In general terms, they do not understand how the Commission can be pushing to speed up the conclusion of such agreements at the same time as it recognises that it does not have reliable evaluation data available to it concerning those that have already been reached and while it questions their effectiveness, and about which it admits, instead, that they induce violations of fundamental rights.

I. Shared observations

a) on the application of readmission agreements

On this matter, the Commission highlights the reluctance by certain Member States to enact EU agreements, as European countries often implement their bilateral agreements. As a result of this, a number of problems arise: on the one hand, this does not allow a uniform application of the EU agreements (as the Commission notes) and on the other hand, a form of democratic oversight (by national parliaments and civil societies) that would enable the creation of satisfactory practices does not always exist in all the European countries.

In fact, even if this may seem slightly surprising as regards the democratic societies of the States in the European Union (EU), it is sometimes very difficult, or even impossible, to obtain the text of

¹ See: <http://www.migreurop.org/article1350.html>

a bilateral readmission agreement signed between a Member State and a third country. For example, this is true for Italy and its «famous» agreement with Libya². Looking for information is even more difficult when dealing with political, commercial, economic or immigration pacts (hence, that is, those whose scope are wide-ranging matters) that include readmission clauses. This is why, in a recent study for the European Parliament³ (EP), it was recommended that it «*request the Commission to carry out a thorough and regularly updated inventory of all the bilateral agreements linked to readmission (whether standard or not) concluded by each EU Member State, at global level*».

b) on the implementation of readmission agreements, including the improvement of fundamental rights

According to the Commission, «*given the growing role of the EU readmission agreements in the return process and their possible interaction in practice with human rights and international protection standards, the possibility of inviting relevant NGOs and international organisations to Joint Readmission Committee meetings should be considered*». We can only rejoice about this proposal. Still, it is necessary for it to be an independent NGO that is recognised for its work in the field of the defence of the fundamental rights of migrants and asylum seekers. Furthermore, we reiterate our request to fully associate the European Parliament to the Joint Committee that is responsible for monitoring the agreements' implementation⁴. This would make the execution of these understandings rather more transparent and the presence of the EP could be a real bulwark in relation to the problems that this kind of agreement poses in the field of human rights.

c) Provision of suspension clauses in every readmission agreement

In its recommendation no. 12, the Commission suggests: «*Member States must always respect fundamental rights when they are implementing EU readmission agreements and must therefore suspend their application when it would lead to a violation of fundamental rights*». Hence, the Commission envisages the inclusion of a clause for the temporary suspension of an agreement «*in the event of persistent and serious risk of violation of human rights of readmitted persons. The EU could in this case unilaterally stop the application of the agreement by notification to the other contracting Party (if necessary after consulting the Joint Readmission Committee)*».

We agree entirely with this proposal. It should have (and must) be envisaged for all readmission agreements, including those that have already come into force. For example, the situation of migrants and asylum seekers in Ukraine remains alarming; for a very long time, several NGOs have reported the degrading living conditions to which migrants are subjected. However, respect for fundamental rights has not carried great weight in the mandate entrusted to the Commission to negotiate this kind of agreement with that country. One may guess that this is also the case with regards to the agreement with Pakistan that has recently come into force and to which we have drawn the attention of MEPs, or also to the latest agreement that has been concluded with Georgia.

² Moreover, there is no official website that details the list of the readmission agreements which have been reached with third countries.

³ «Readmission Policy in the European Union», Jean-Pierre Cassarino, September 2010, PE 425.632.

⁴ «Readmission agreement EU-Pakistan. The European Parliament has to deny its approval», Trans Europe Experts and Migreurop, 4 May 2010.

II. Some reasons to continue being concerned

In spite of some positive developments, there are still many reasons that lead Migreurop and TEE to be concerned about the guidelines of the European Union's readmission policy.

a) The readmission of citizens who are not nationals of the parties of such an agreement

According to the Commission, this clause has not been used very much, particularly when the requested State does not share a border with the EU. Thus, it suggests that *«the concrete need for third country national clauses should be thoroughly evaluated for each country with which the EU enters into readmission negotiations»*. Furthermore, this clause imposes «incentives» which are more important than those «offered» to third countries for the readmission of their own nationals.

Hence, the readmission of third country nationals other than those whose nationality is that of the contracting State, as well as of stateless people, raises some serious legal questions. As TEE and Migreurop had already noted, the measures governed by this «readmission» clause concern acts and operations that the parties are not empowered to undertake in accordance with international law. The two contracting parties do not have the power to dispose of the rights and situation of these people. According to international law, apart from exceptions that are not relevant in this case, a State only has competence over a person's situation if the person is attached to it due to their nationality (in which case the State exercises its «personal» competence over them) or due to their position in its territory (in which case it exercises its «territorial» competence). In this sort of readmission clauses for third country nationals and stateless people, neither of these two prerogatives exist.

b) Incentives

In pursuit of a policy that may be summarised as «cooperating to return better»⁵, the European Commission proposes that *«readmission negotiating directives should include the incentives that the EU will offer, in particular in case the negotiating directives include a third country nationals clause, and at the same time indicate possible retaliation measures by the EU in cases of persistent and unjustified denial of cooperation by the partner country»*. At the same time, the Commission deems that *«non respect of the readmission obligation should lead to adopting sanctions for partner countries which show insufficient cooperation when tackling irregular migration, without prejudice to legal obligations contained in framework agreements between the EU and third countries»*. These provisions are reminiscent of the conclusions of the European Council in Seville in June 2002. At the time, the EU claimed that it wished for any association or equivalent agreement concluded between the EU and a third country to *«include a clause on joint management of migration flows and on compulsory readmission in the event of illegal immigration»*. It was clearly a matter of imposing conditions on economic, commercial and development aid by the EU upon third countries who would, in any circumstances, have to accept the policy for managing migration flows according to the precepts dictated by the EU and its interests.

Overall, the dominant idea is that it is necessary to grant more financial means to third States in order for them to manage the foreigners who we do not want more effectively; and, beyond this, the

⁵ «Politique européenne de réadmission: coopérer pour mieux renvoyer», Atlas des migrants en Europe. Géographie des politiques migratoires, Migreurop. Editions Armand Colin, September 2009.

Commission is also naïve enough to believe that the European Union is in a position to «punish» third States that refuse to comply. However, relations between the EU and Libya have revealed that pushing too eagerly to subcontract the management of migration flows outside of the borders of the European Union, it exposes itself, in turn, to blackmailing operations by unscrupulous authorities at the head of these States.

c) Use of the «accelerated procedure»

According to the Commission's evaluation, this accelerated procedure has been used only in relation to countries that share a common border with the EU, such as Ukraine, Montenegro and Serbia. This procedure raises a number of questions: the speed of the mechanisms does not allow concerned people to gainfully assert their rights, all the more so as decisions that are adopted have no provisions for jurisdictional appeals. What guarantees are provided for in Member States and third countries bound by an EU agreement in order for the people concerned not to be exposed to risks for their life or their dignity in the countries that they are returned to and in order for especially vulnerable people like refugees to be able to raise their personal situation? The Commission does not mention these possible situations, nor any sort of evaluation other than counting people that may be undertaken in the application of this procedure.

In relation to all these matters, we call upon the European Parliament to exercise, more than ever, its control powers over the European readmission policy, in order for it to be fully associated to the choice of third contracting parties, and also to the negotiation and implementation of EU agreements. These indispensable changes would make it possible to strengthen respect for the human rights of all migrants and asylum seekers, in complete compliance with the norms to which the European Union is subjected.

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