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The Working of EU Conditionality in the Area of Migration Policy

The Case of Readmission of Irregular Migrants to Albania

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This article uses the analytical framework of “Europeanization” to assess whether and how EU conditionality has led to change in Albania’s migration policy. The analysis focuses on a specific but crucial aspect of migration policy: the readmission of irregular migrants. The examination of change in Albanian readmission policy demonstrates that the country has not only accepted the legal obligation to take back its citizens residing illegally in the EU and nationals of other countries who had reached the EU via Albania. It has also created the institutional and procedural conditions for implementation of those legal obligations, and statistical data demonstrate that Albania is accepting all the illegal immigrants returned by the EU member states. The article shows that this policy change took place after the EU made Albania’s progress towards accession conditional on compliance in this policy area. In addition to establishing the temporal covariation of EU pressure and domestic change, this work will explore the causal mechanism linking the two variables by examining the motivation of the actors involved in policy change. Thus, the analysis will identify the domestic factors that make possible the EU impact. This article demonstrates the crucial importance of gate-keeping in ensuring compliance. The control by the EU of access to each stage of the preaccession process is such a powerful motivating instrument that it can outweigh very high domestic costs and lead to developments in the aspirant country that are solely in the interest of the EU.

Keywords: *EU enlargement; Europeanization; migration policy; Albania; readmission*

The literature on European Union (EU) enlargement has identified a significant influence of the EU on the process of post-communist transformation in Central and Eastern Europe.¹ This article demonstrates that the EU influence on countries aspiring to membership can reach the extent of inducing a country of massive illegal emigration and whose economy relies heavily on migration to take back its citizens residing illegally in the EU. Indeed, Albania is a country from which a total of nearly six hundred thousand had moved abroad by 2001, representing nearly 20 percent of the Albanian population.² This migration is characterized by a high degree of

irregularity with clandestine departures and a large proportion of migrants classed as “illegal” and “undocumented” in host countries.³ Studies show that migrant remittances are vital to keep the country’s economy going, contributing about 14 percent of GDP.⁴ Under these circumstances, one would expect Albanian policy makers not to be interested in the readmission of irregular migrants as a tool for a strict control of migration from the country into the EU states. And yet the EU was able to compel Albania to sign in 2005 a Readmission Agreement whereby the country committed to take back its citizens residing illegally in the EU and to accept nationals of other countries who had passed through Albania prior to entering the EU. Readmission agreements (RAs) have emerged as one of the main instruments for achieving the EU objective to involve countries of origin and transit in the fight against illegal immigration. An RA is expected to reduce illegal migration from the concerned country, and as such it is an important element of the development of migration management in the country.⁵

This article asks what made possible such an impact of the EU on the development of Albanian migration policy. Given that this is a question related to the domestic impact of the EU, I use “Europeanization” as the analytical framework to address it. The concept of Europeanization has been used mainly to analyze the EU impact on its member states. According to this conceptual framework, the degree of impact of the EU rules and procedures depends on (1) the different degrees of adaptational pressure EU rules and procedures create and (2) the presence of facilitating domestic factors.⁶ Whereas in the literature on Europeanization of existing member states the different degrees of adaptational pressure depend on the goodness of fit between EU regulations and domestic regulations and procedures, studies of Europeanization in countries aspiring to EU membership point out that EU pressure does not emanate only from that misfit. The political relationship of the EU with these countries is based on conditionality. Therefore, studies of Europeanization in the accession countries typically analyze the effects of EU conditionality and point to its strength and effectiveness.⁷ Theoretically, the work on Europeanization in accession countries is rooted in institutionalist theory. The dominant theoretical debate of the 1990s between rationalist institutionalism and constructivist or sociological institutionalism provided the theoretical basis for the explanation of the EU influence on accession countries. Studies that analyze the effects of EU conditionality start from the rationalist assumption that cost-benefit calculations of the governments in accession countries determine the extent of compliance with EU conditionality: there will be good compliance outcome if the benefits of accepting EU demands outweigh the costs for the governments.⁸ Research on Europeanization in accession countries has identified the membership prospect as the most important benefit in the eyes of the decision makers in accession countries. Thus, with these countries the EU has at its disposal coercive mechanisms of influence, the most important of which is gate-keeping.⁹ The accession process is constituted by stages, such as the association agreement, the opening of negotiations, their conclusion, and the accession treaty, that constitute a sequence

of moving into an ever-closer relationship with the EU. The control by the EU of the access to each of these stages constitutes a powerful mechanism for the EU to secure compliance with its conditions by the aspirant country, as the EU can attach to particular stages in the accession process conditions whose fulfillment is particularly important for the Union.

This article will show in its first section that gate-keeping was the crucial element of the EU strategy to induce Albania to comply with EU demands in the area of readmission policy. Readmission policy places the concept of Europeanization in a context different from the traditional adoption of EU rules by the countries aspiring to membership. EU demands in the area of readmission are simply the signature of a readmission agreement—whereby the country accepts the legal obligation to take into its territory its citizens residing illegally in the EU and the citizens of third countries who have entered the Union via that country—and the creation of the conditions for the implementation of the agreement. The EU pressure for adaptation does not stem from the formal process of adoption of EU rules and procedures as in the more traditional Europeanization studies. The pressure is of a more political and informal nature: the EU made progress in the negotiation and signature of the Stabilization and Association Agreement with Albania—an important stage in the process that leads to accession—conditional on the signature of the readmission agreement. This approach was an element of a development of the external dimension of EU migration policy that has led to an increasing salience of migration objectives in the relations of the Union with third countries. This development reached a critical juncture in the Seville European Council in 2002, where it was decided that inadequate cooperation by a third state in this policy area could hamper further development of the relations with the EU, following a systematic assessment of relations with that country. As a result, as of 2002, Albania's progress towards accession has been made to a very significant extent conditional on compliance with migration policy conditionality.

The article will then explore in its second section how Albanian policy on readmission developed after this critical juncture, in order to establish whether the EU strategy of making progress towards accession dependent on compliance with the EU migration-related demands has led to policy change in Albania. Thus, the second section will examine the obligations taken by Albania through the signature of the RA and the implementation of these commitments, that is, the establishment in Albania of mechanisms and procedures for readmission, as well as operational results as demonstrated by statistical data on readmission. This analysis will demonstrate very good results in Albania's compliance with the EU demands in the area of readmission after the EU made progress towards accession conditional on this compliance. An important challenge in this context is to establish the causal relationship, that is, whether the observed domestic developments have been caused by the EU pressure. This is a general methodological challenge of Europeanization research.¹⁰ My strategy for demonstrating the causal importance of the EU is to pay particular

attention to the temporal patterns by establishing a critical juncture in the development of the EU strategy and by examining whether there is domestic change in Albania after this critical juncture.

In addition to establishing the temporal covariation of EU pressure and domestic change, the last section of this work will explore the causal mechanism linking the two variables. The connection between EU pressure and domestic change will be rendered visible by examining the motivation of the actors involved in policy change in Albania. After having identified high social costs of compliance with EU demands in the area of readmission, I will explore why Albanian decision makers accepted EU conditions in this area despite these costs. This analysis will be based on interviews with negotiators of the RA and other officials involved in readmission, public declarations of representatives of the Albanian government and of political parties, as well as an analysis of press reports on the matter. This analysis will demonstrate that the domestic factors that made possible the effectiveness of EU conditionality are, first, a ruling elite willing to comply because of the importance it attaches to progress in the preaccession process and, second, a domestic structure where social forces have little influence on policy making and where policy change depends on the preferences of policy makers. The analysis of enlargement politics in the country, which determines why decision makers attach very high importance to progress towards accession, is beyond the scope of this article. So is the analysis of state-society relations in Albania. However, this article will determine that in relation to readmission policy, there was not any truly informed public debate on policy choices. Thus, the decision makers acted insulated from societal pressure and imposed their policy choices on a pliant population. In the terminology of Europeanization research, this type of state-society relation is a facilitating factor for compliance in that it leads to an absence of veto points in the domestic structure.¹¹

The EU Strategy to Obtain Compliance with Its Migration-Related Demands

The literature on the EU migration policy has identified an ever-increasing focus on the development of the external dimension of EU immigration policy, that is, a series of measures and instruments the Union has adopted to engage countries of origin and transit in the control of migration flows.¹² Indeed, the development of EU immigration policy has focused on aims—such as fighting illegal migration, securing expulsion and readmission of illegal immigrants by their countries of origin or transit—for which the cooperation of the countries of origin and transit is fundamental. What is the strategy of the Union to motivate these countries? A first attempt to define this strategy was made in 1999 at the Tampere European Council, which called for a “comprehensive approach” to migration policy. The Council established that “all competences and instruments at the disposal of the Union, and in particular, in external

relations must be used in an integrated way to build an area of freedom, security and justice.”¹³

What did this “comprehensive approach” mean in the efforts to implement it? In the Conclusions of the Seville European Council of June 2002, it was agreed that inadequate cooperation by a third state in the area of migration policy could hamper further development of relations with the EU, following a systematic assessment of relations with that country.¹⁴ It seems that the “comprehensive approach” would mean that the Union would make the development of its overall relations with countries of origin and transit of illegal migration dependent on their cooperation in this policy area. This strategy can be particularly effective with countries aspiring to accession: their relationship with the EU is based on conditionality. The Union sets conditions whose fulfillment makes possible the country’s progress towards accession. If the applicant country is one of origin or transit of illegal migration, then the application of the “Seville Strategy” would mean that the Union would accord overwhelming importance to migration policy conditionality, and the overall progress towards accession would become conditional on compliance with migration policy conditionality.

This approach is embodied in the strategy of the Union to induce Albania to comply with the EU demands in the area of return and readmission of illegal immigrants. The strategy adopted by the Union in this particular case demonstrates clearly that the control by the EU of the access to each of the stages of the accession process can be used as a powerful mechanism for the EU to secure compliance with its conditions by the aspirant country.

The return of persons illegally residing in the EU figures prominently in the European Community migration policy since its establishment through the Amsterdam Treaty. The Treaty conferred to the Community the power to adopt measures in the area of “illegal immigration and illegal residence, including repatriation of illegal residents.”¹⁵ When establishing how to implement the new treaty provisions, the member states concluded that readmission agreements would constitute a valuable instrument of an active return policy.¹⁶ The Tampere European Council in October 1999 invited the Council to start concluding readmission agreements with relevant third countries.¹⁷ However, return measures by definition require the cooperation of another state, that is, the country of origin or transit. Therefore, when discussing the implementation of the “comprehensive approach” to migration policy, the Seville European Council of June 2002 asked for the development of an EU Return Action Program that would envisage the use of all appropriate instruments available in the context of the Union’s external relations to further negotiations of readmission agreements with third countries.¹⁸ The Seville European Council also established that each future EU association or cooperation agreement should include a clause on “joint management of migration flows and compulsory readmission in the event of illegal immigration.” In the same year (2002), the European Commission (EC) referred to a necessary “complementarity [of EU migration policy] with other Community policies in order to help achieving

the Community's objectives in the field of return and readmission." Return and readmission, the EC recognized, "are solely in the interest of the Community, their successful conclusion depends very much on the 'leverage' at the Commission's disposal."¹⁹

The Justice and Home Affairs Council in April 2002 established the criteria for selection of countries with which to conclude readmission agreements: the migration pressure exerted by the country, its geographical position in relation to the EU, and consideration of geographical balance and regional coherence.²⁰ Albania was one of the eleven countries that, on the basis of these criteria, were identified as the first group of countries with which the Union would negotiate RAs.²¹ Already in 1999 Albania had been identified by a report of the EU High Level Working Group on Asylum and Migration²² as a critical factor in the trajectory of irregular migration into the EU.²³ This report provides insights into the concerns of the EU about irregular migration from and through Albania. The report stresses the country's poverty with "young people out of work and constituting a large . . . migration potential." Albania is considered a country of origin and a country of transit for Kurds, Indians, Pakistanis, and Chinese who reach Italy through Albania.²⁵ As a result of this importance attributed by the EU to Albania as source and transit of irregular migration, Albania was, among those selected for the negotiation of a RA, the only country with a European accession prospect and, thus, the only one for which gate-keeping and conditionality was used to obtain cooperation in the readmission of irregular migrants.

The European accession prospect was offered explicitly to Albania at the Feira European Council in June 2000, which stated that all the countries of the Western Balkans are "potential candidates" for EU membership.²⁶ The preaccession process for this region was denominated by the EU as "Stabilization and Association Process" to emphasize the European perspective as the stabilizer of the region after the wars of the 1990s. The centerpiece of the Stabilization and Association Process, as defined in the Zagreb Summit in November 2000,²⁷ is the conclusion of a Stabilization and Association Agreement (SAA). The association established by the agreement is based on the gradual implementation of a free trade area and reforms designed to achieve the adoption of EU standards with the aim of taking the countries closer to EU accession. Thus, the SAA is the first important stage in the sequence of steps leading to accession. The formal conditions for the opening of SAA negotiations are related to the country's capacity to take on the obligations of an SAA. However, in the case of Albania, the EU tied the negotiation of the SAA to the negotiation of the RA. Negotiations for both agreements were opened in 2003. While the two agreements were being negotiated in parallel, in March 2003 the EC pointed out that "Albania should pay particular attention to the Justice and Home Affairs sector if it is to make meaningful progress in the Stabilization and Association process" and added that "the negotiation and conclusion of a readmission agreement at Community level is essential."²⁸

The minutes of the RA negotiations and personal communications with Albanian negotiators²⁹ reveal clearly that the desire to make progress in the negotiation of the SAA motivated the Albanian authorities to accept the conditions of the RA proposed by the EU. The main negotiating point raised by the Albanian negotiators was the request to tie the signature of the RA to the signature of the SAA. The Albanian negotiators asked for the inclusion in the RA's preamble of a statement that this agreement was concluded in accordance with Article 81 of the draft SAA³⁰ and was part of the negotiations for the conclusion of the SAA.³¹ The EU negotiators consented to this request.³² Albania also asked that "the RA enter into force simultaneously with the SAA, since it constitutes a direct obligation of the contents of article 81 of the draft SAA."³³ The EU representatives pointed out that the RA would be ratified by the European Parliament, whereas the SAA would have to be ratified by all the member states, which could take up to two years.³⁴ All the Albanian negotiators interviewed considered the conclusion of the RA inevitable as a precondition for the SAA and progress in getting closer to the EU. Questioned on whether Albania could have negotiated better conditions for the RA, the Albanian negotiators recognized the weakness of their position. The EU having put the conclusion of the agreement as a precondition for progress in the relations of the EU with the country, they felt they had to accept it.

The Development of Albania's Policy on Readmission

This section will explore how Albanian policy on readmission developed after the critical juncture constituted by the Seville European Council by examining the legal obligations taken by Albania through the RA and the implementation of these commitments, that is, the establishment in Albania of mechanisms and procedures for readmission, as well as operational results as demonstrated by statistical data on readmission.

The Legal Obligations of the RA

The RA was negotiated in three rounds in May, September, and November 2003. It was ratified by the European Parliament in early September 2005 and by the Albanian Parliament in January 2006 and entered into force on May 1, 2006. The negotiations were conducted on the basis of the standard draft-text of RA submitted to the Albanian authorities by the EC. As discussed in the previous section, the main negotiating point raised by the Albanian negotiators was the request to tie the signature of the RA to the signature of the SAA.

As regards the negotiation of the obligations to be taken by Albania through the RA, the Albanian negotiating team focused on timing and Albania's capacity to meet

obligations arising from the Third Country Nationals (TCN) clause that establishes Albania's obligation to readmit third country and stateless persons illegally present on the EU member states' territories having entered via Albania. The Albanian team claimed that the country did not have the capacity to implement the TCN clause due to

- total lack of reception capacities and of the administrative structures to deal with readmission of TCNs,
- very high costs related to reception of TCNs,
- expected difficulties in concluding readmission agreements with third countries of origin, and
- lack of a national legislative framework for readmission of TCNs.

On these grounds, Albania at first demanded a five-year derogation period for the entry into force of the TCN clause. The EC negotiators pointed out that it would take three years to sign and ratify the agreement, and with a two-year derogation period, Albania would have five years to build the capacities for the implementation of the TCN clause.³⁵ Albania accepted the two-year derogation period (Article [Art.] 22.3, RA).

Albania tried to negotiate the return procedures, but the EU position was that according to Art. 19 of the draft-text, these procedural technicalities would be established in bilateral implementation protocols that Albania would conclude with the member states and the EC-Albania RA would not include such technicalities. The Albanian team consented to defining return technicalities in implementation protocols while accepting all the procedural obligations of the RA.³⁶ Thus, Albania accepted that the Albanian nationality or transit through Albania be established on the basis of *prima facie* evidence furnished by the authorities of the member states (Art. 2.1 and 3.1). *Prima facie* evidence includes documents, certificates and bills of any kind, tickets, and statements by witnesses (Annexes 2 and 3, RA). Albania accepted to reply to readmission applications within a maximum of fourteen calendar days (as proposed by the EC, and not twenty-one days as initially requested by the Albanian side) and also accepted that if there was no reply within this time limit, the transfer be deemed to have been agreed to (Art. 10.2). Albania accepted to issue the person whose readmission has been accepted with the travel document required for his or her return within fourteen calendar days, or otherwise accept the use of the EU standard travel document for expulsion purposes (Art. 2.2 and 3.3).

The EC accepted the Albanian request to include an additional clause on readmission by error, according to which a member state shall take back any person readmitted by Albania, if it is established, within a period of three months after the transfer of the person concerned, that the requirements for establishing that the person is an Albanian national or transited through Albania were not met (Art. 12).

In conclusion, Albania accepted almost all the obligations of the draft-RA submitted by the EC. The only substantial changes requested by Albania and accepted by the EC were the two-year derogation from the TCN clause and the additional clause on readmission by error.

Implementation Results

To examine the implementation of the obligations taken by Albania through the RA, the following analysis will focus on the institutional and procedural change in the area of readmission, as well as the operational results as demonstrated by statistical data on readmission. This analysis is based on a review of the legislative measures in this area, on interviews with officials involved in the return of irregular migrants, and on reports of the EC and of the Albanian government.

As regards institutional change, the Department for Border and Migration (DBM) was established in October 2004 in the Ministry of Interior (MoI). It is responsible for all matters related to border and migration, including readmission.³⁷ Prior to this date, competencies for these questions were divided between several entities within the ministry, and no one entity had overall responsibility for handling irregular migrants. In 2007 a Migration and Readmission Department was established within the DBM in the MoI. This department has a special unit dealing with readmission issues that is responsible for coordinating with foreign migration services and operative border police units for the readmission of Albanian and foreign citizens. Prior to this date, responsibility for return and readmission issues was allocated to a single specialist in the Unit for the Treatment of Foreigners and Migration.³⁸

The actual readmission of irregular migrants into Albanian territory is responsibility of the Border Police. The recent Law on State Police creates special sectors for migration and readmission issues in all eight regional departments of the border police. In the majority of border crossing points where the readmission procedures take place, specific admission facilities have been set up. The personnel have been trained for the reception, interviewing, and selection of the returned persons. As of 2009, a separate item of the budget of the Border and Migration Directorate will be allocated for the expenses of readmission.³⁹

As regards readmission procedures, before the entry into force of the RA with the EC, readmission of irregular migrants was taking place on the basis of bilateral readmission agreements. Each bilateral agreement was using different forms and contained different articles. Hence there existed a range of implementation procedures and responsible entities and a resulting lack of a clear readmission procedure and of clearly defined institutional structures and responsibilities. In practice, according to the Albanian border officials, Albanian citizens were returned to Albania by relevant authorities in EU member states without prior contact with Albanian authorities. This has occurred especially with Italy and Greece. Returns from these countries

were taking place at the border, and all procedures were carried out at the respective border points directly and without the involvement of the central structures. In most cases, Albanian authorities were only informed of the return once the individual had arrived on the territory of Albania and had been registered by the Border Police. There have been several reported cases where border authorities did not receive prior notification of the returnee's arrival.⁴⁰ Thus, official procedures of notification, as outlined in bilateral RAs, were not observed by the EU member states. A considerable number of Kosovars and Macedonians of Albanian ethnicity have been returned to Albania.⁴¹ Hence the request of the Albanian negotiating team for inclusion in the RA of the article on readmission in error.

The entry into force of the RA with the EC should have put an end to this procedural disorder. According to the RA, when an individual request for readmission has been submitted by the requesting authority to the responsible Albanian readmission entities, readmission can only take place after an official response has been made by the Albanian authorities (the fourteen-day rule). This procedure should increase the role of DBM and enable the collection and centralization of data, verification of requests, and authorization of readmission procedures. With procedures centralized by DBM, the verification of the identity of the person to be returned should be carried out by the DBM before the return takes place. The DBM notifies the border authorities on future returns. When the readmissions were taking place without prior notification, the Albanian returnees were kept at the border until their identity was verified and the police made sure they were not wanted for criminal acts. This process of verification used to last eight to ten hours, with the returnees being kept at the border crossing points. With the entry into force of the RA with the EC, the verification should be carried out by the DBM to avoid the problem of long verification periods. Thus, the observation of the agreement's readmission procedures could constitute a benefit for Albanian authorities.

However, data from the MoI⁴² demonstrate that to date, the entry into force of the RA has left the situation unchanged. Of the 66,009 returns in the course of 2008, only 654 were carried out after preliminary notification. The bulk of these returns were from Greece: 63,555 Albanian citizens were returned in 2008. For none of these was the procedure of prior notification observed. Ironically, Greece has demanded the observation of the RA procedures when asked to readmit 32 Afghan nationals that had entered Albania from Greece.⁴³ When the issue of violation of the return procedures was raised by Albania with the EC, the latter suggested that Albania should address the issue with the members states in the implementing protocols.⁴⁴

Even in these conditions of violation of return procedures by the EU member states, since the entry into force of the RA, the DBM at the MoI has processed all the requests for readmission of Albania citizens. In the course of 2008, 66,009 Albanian citizens residing illegally on EU territory were returned.⁴⁵ Six of these requests have

been refused until September 2008 due to insufficient information or because the person was not an Albanian citizen.⁴⁶

Measures to Implement the Obligation to Admit Third-Country Nationals

The implementation of the clause relating to TCNs constitutes a major challenge for the Albanian government. There is a risk that it could create a situation where TCNs are returned to Albania without being able, or willing, to return to their countries of origin, with an irregular situation in Albania and with little expectation of being able to reenter the EU. In other words, it could create what has been called a “readmission trap.”⁴⁷

The first challenge for Albania was to establish the legal framework to deal with irregular migrants in the country. Until 2006, there were no legal provisions on irregular migrants in Albania. Following the “prescreening procedure” introduced in 2001,⁴⁸ when irregular migrants were identified on Albanian territory or at the border, they were referred to an interagency roving team, made up of representatives from the UNHCR, the Organization for Security and Cooperation in Europe (OSCE), the International Organization for Migration (IOM), and MoI’s Directorate for Asylum and Refugees, which were expected to provide an early indication as to whether an individual apprehended by the authorities might be a refugee, economic migrant, or victim of trafficking. Once this prescreening had taken place, these returnees were referred to the relevant authority so that they could apply for asylum; be provided further assistance at the national center for Victims of Trafficking; or take advantage of an IOM program for voluntary return, if the individual wished to return voluntarily to his or her country of origin. Individuals who did not fall into one of the categories defined above, that is, individuals who were not asylum seekers, self-declared victims of trafficking, or individuals who wished to return voluntarily to their country of origin, fell out of this system and were not provided for within any specific regime.

This situation was overcome through an Instruction of Minister of Interior no. 1085, of June 12, 2008, “On the Procedure to Be Implemented by the State Police for Selection of Irregular Foreigners at the Border”; and the Law no. 9959 of July 17, 2008, “On Foreigners.”⁴⁹ In the event of illegal stay in the territory by a citizen of a foreign country an order of expulsion is issued, implying the irregular foreigner’s voluntary departure. In the event of failure to leave voluntarily within the time period determined in the expulsion order, an expulsion order through coercion shall be issued. The individual shall be detained in a closed center until the expulsion order is enforced; this period can last up to six months, and on justified grounds it can be extended for six more months.

The number of removals of irregular migrants from Albania to the countries of origin is clearly increasing, though still at a very low level in absolute figures: from

nine in 2006 to thirty-six in 2007.⁵⁰ In 2008, ninety-three irregular foreigners were removed from Albania.⁵¹ However, Albania faces serious obstacles in carrying out effective and sustainable removals to countries of origin. A major issue here is the conclusion of readmission agreements between Albania and the countries of origin. The only non-EU state with which Albania has managed to conclude a readmission agreement is Macedonia. Negotiations are under way with other countries of the region: Moldavia, Montenegro, Bosnia-Herzegovina, and Croatia.⁵² Of these countries, only Moldavia is considered by the Albanian officials to be an important country of origin of irregular immigrants in Albania.⁵³ No readmission agreement is being negotiated with any Asian country. This is hardly surprising given the difficulties of the EU itself to conclude readmission agreements with countries of origin of irregular immigrants.⁵⁴ There is hardly anything Albania can offer these countries in return for the signature of a readmission agreement.

This situation poses the problem of dealing with irregular migrants who cannot be immediately removed. While facilities exist for accepting victims of trafficking and asylum seekers, until recently there were no such facilities for irregular migrants. A Centre for Administrative Detention of Illegal Foreigners has been constructed with EC financial assistance. It will receive irregular foreigners in Albania, with a capacity of maximum two hundred persons (a capacity of up to one hundred persons and augmentation possibility of capacity for another one hundred). The construction was completed at the end of 2008, and the center become operational in the course of 2009.⁵⁵ The construction and operation of this detention facility constitutes a heavy burden on the small state budget of Albania. While funds have been allocated for the construction of the center, the Albanian state budget will have to allocate resources for running the center. The risk is that without adequate funding, the detention of irregular migrants would not respect the basic principles of humane treatment. In addition to the detention center, the selection of the foreigners at the border envisaged by the Instruction of the MoI requires transit reception centers at the border crossing points. By the end of 2008, these transit reception centers were established in ten border crossing points.⁵⁶

The costs of detention are only a first revelation of something larger or more complex. The process of returning TCNs will also be extremely complex and costly for Albania when it comes to the return of more important numbers of irregular migrants to their country of origin or transit. When asked about TCNs, officials spoke only of the construction of the detention center. They did not mention any other costs and measures to be taken, such as the return to the country of origin. In reality, the return of important numbers of TCNs should pose for Albania the same problems of irregular migrants as for the EU member states.

The evaluation of the difficulties in implementing Albania's obligation to readmit TCNs is related to the potential TCN caseload. The TCN clause of the RA entered into force in May 2008. From its entry into force until September 2008, sixteen foreign citizens of Nepalese, Indian, and Moldavian nationality have been admitted.⁵⁷

However, it is too early to draw any conclusions on the potential caseload. Representatives of EU member states have encouraged their Albanian counterparts by suggesting that they are more likely to return TCNs to their country of origin, rather than to Albania as a country of transit.⁵⁸ In fact, returning TCNs to Albania makes little sense, if they seek to return to the EU the next day. However, it has been acknowledged by EU experts that, where individuals cannot be returned to their country of origin, TCNs will be sent to Albania, if it can be proved that they have transited through Albania.⁵⁹ In addition, it may prove easier and more cost-effective to send irregular TCNs to Albania than to their country of origin, and nothing in the RA prevents EU member states from doing so. Moreover, returns are difficult to predict also because they depend on the capacity of the EU member states to capture and detain irregular immigrants and on the political decisions on returning them.

In conclusion, the examination of the legal obligations taken by Albania through the RA and of the implementation of these commitments demonstrates that substantial policy change has taken place in a period that begins in 2003 to 2004. Albania has not only adopted the necessary legislation but has also established the institutional mechanisms and taken the operational measures to comply with the EU demands in the area of readmission policy. Albania readmits all the Albanian and third-country nationals returned by the EU member states even in the absence of observation of return procedures by the latter. Thus, the degree of compliance with EU demands is very high in the period that follows the EU decision to make progress towards accession conditional on compliance in the area of migration policy.

Why Comply?

The article having so far established the temporal covariation of EU pressure and domestic change, this section will explore the causal mechanism linking the two variables. The connection between EU pressure and domestic change will be rendered visible by examining the motivation of the actors involved in policy change in Albania. After having identified the domestic costs of compliance with EU demands in the area of readmission, I will explore why Albanian decision makers accepted EU conditions in this area despite those costs.

The previous section identified the financial costs of the readmission of TCNs and the risks of the “readmission trap.” With respect to Albanian nationals, one would expect domestic policy makers to consider emigration a means to ease political tensions created by high unemployment rates and even a source of income, through migrant remittances. While the possibility for legal migration is almost inexistent, the return of large numbers of Albanian irregular migrants could lead to a decrease of remittances and exacerbate problems of poverty. Studies show that remittances are still vital to keep the economy going, contributing about 14 percent of GDP. The amount of remittances to Albania is three times as high as foreign net direct investment

and nearly twice as much as the official development aid received by Albania.⁶⁰ It is generally agreed that remittances have been an important mechanism for alleviating poverty in Albania and for increasing family income above extreme low levels. According to the results of the Albanian Living Standard Measuring Survey in 2002, remittances from emigrants represented 13 percent of the average household income, while for recipient households they represented 47 percent of the household income.⁶¹ Access to emigration is seen by many in the country as the only viable way out of poverty.⁶² A study by IOM in 2002 on the voluntary return of rejected asylum applicants and irregular migrants who participated in the IOM voluntary return programs showed that the majority of the assisted returnees in the study was either being unemployed or facing difficulties in finding a suitable job.⁶³ Thus, the government incurs not only financial but also social costs as a result of compliance. Therefore, the domestic equilibrium would induce Albanian policy makers not to be interested in the readmission of irregular migrants as a tool for a strict control of migration from the country into the EU states. But how did the Albanian policy makers and the public opinion perceive the costs of the readmission policy analyzed above? Why did Albania accept the readmission obligations? The following analysis will seek to answer these questions on the basis of interviews with negotiators of the RA and other officials involved in readmission, public declarations of representatives of the Albanian government and of political parties, as well as an analysis of press reports on the matter.

All the officials interviewed considered the conclusion of the RA inevitable as a precondition for the SAA and progress towards EU accession. Some officials mentioned the responsibility of a state to counter irregular emigration, but always in relation to the need to act as a partner with the EU. As a high official in MoI put it, "We have created many problems with our illegal migration to the EU countries. As Albanians, we should take our responsibilities and give guarantees."⁶⁴ When asked whether Albania could have negotiated better conditions for the RA, the Albanian negotiators recognize the weakness of their position. The EU having put the conclusion of the agreement as a precondition for progress in the relations of the EU with the country, they felt they had to accept it. One of the principal negotiators argued that "more than negotiation, my experience, at least, shows it was an exam. We negotiated on the deadlines and derogation periods, not substance."⁶⁵ The Albanian negotiators did not have a clear picture of the implementation difficulties and the costs the country would have to incur. They point out that they had very little time to prepare and very limited expertise on readmission issues: "We analyzed the bilateral agreements, but we cannot say there was sufficient expertise. The Ministry of Public Order did not have special structures on readmission."⁶⁶ The experts of the Ministry of Public Order recognize their insufficient expertise pointing out that there was not any feasibility study on which to base the assessment of implementation difficulties.⁶⁷ Asked about the benefits of the RA for the Albanian side, the negotiators considered the agreement as a fulfillment of a precondition for further progress in the relations with the EU.

They also mentioned the financial assistance of the EU, but none was able to quantify it.

As for the public positions on the RA, the government supported strongly the agreement as part of the EU conditions for negotiating the SAA. The correlation was also made clear in declarations made to the press by the then-minister for European Integration, Sokol Nako,⁶⁸ and his successor, Ermelinda Meksi.⁶⁹ Both ministers explicitly stated that the RA was part of the process of establishing border management and security standards and of creating the institutions required for implementing the SAA. The same position was expressed in the press by one of the negotiators.⁷⁰ Only one politician of a junior opposition party stated that Albania should not passively accept all the EU conditions and should serve its national interests more.⁷¹ However, there is no evidence of any involvement of the parliament and of the political parties in the negotiating process. It was treated as an exclusively governmental issue. In July 2005, general elections in Albania brought to power the former opposition, which inherited thus the RA signed by the former government. Although members of the opposition had not been involved directly in the negotiations, the new government declared its commitment to signing the SAA as soon as possible. Therefore, it did not oppose ratification of the RA in parliament.⁷²

The analysis of media reporting on the RA shows that the way the Albanian press dealt with the issue hardly amounts to a truly informed public debate. A review of articles on the RA published in the main daily newspapers⁷³ reveals very limited media coverage and a lack of clear analysis and debate on the costs and benefits of the RA for Albanian society. Very few articles on the RA were published during the negotiation process. At the time of the first and second rounds of negotiations, the Albanian press published alarming reports that the EU and Albania might accept a British proposal to build a refugee camp in Albania. The promise of financial support for asylum centers and centers for other categories of irregular migrants was frequently mentioned as a benefit of the RA.⁷⁴

Later on, the press echoed the government's position that the RA was a success for the country in that it constituted the fulfillment of a precondition for progress in the path towards EU accession. Thus, the conclusion of the third round of negotiations was regarded by the media as a success for the Albanian government.⁷⁵

After a period of silence, the signature of the RA in 2005 reawakened the interest of the press. The signature coincided with the campaign for national elections. In the period leading up to the elections, almost all the reviewed newspapers took a very critical view of the government's actions generally. As a result, the coverage of the RA became very negative and assumed sometimes alarming notes. However, this criticism was instrumental to the election campaign and not based on a clear evaluation of the costs and benefits of policy choices. The press articles of this period criticized the Albanian government for having accepted an agreement that would lead to the return of large numbers of Albanian emigrants.⁷⁶ The press raised the fear of EU-wide operations for the identification of illegal immigrants.⁷⁷ The article "Brussels,

the Return of Albanian Illegal Emigrants Is Signed”⁷⁸ expressed the concern that the implementation procedures were not clear. In this context, the RA is considered by the Albanian press as a “gift” of the government to the EU.⁷⁹ However, the instrumental use of this issue to attack the government during the election campaign is demonstrated by the fact that, when the new parliament ratified the RA in January 2006, there was not any mentioning in the media of the fears raised during the election campaign.

The conclusion that can be drawn from the analysis of the media coverage is that the readmission policy was not object of an informed public debate that takes into account costs and benefits of policy choices. This lack of an informed public debate meant that the decision makers were acting free from societal pressure. This policy change depended on the preferences of policy makers alone. As for the perspective of decision makers, the interviews reveal that they accepted all the readmission obligations because they saw it as a precondition for progress towards EU membership. The importance the elite attached to progress towards membership and the domestic structure characterized by the lack of veto points are the domestic factors that led to compliance.

Conclusion

The analysis of change in Albania’s readmission policy demonstrates that although the domestic costs of compliance are very significant, very high pressure from the EU has led to very good compliance results. The country has not only accepted the legal obligation to take back its citizens residing illegally in the EU and nationals of other countries who had reached the EU via Albania. It has also created the institutional and procedural conditions for implementation of those legal obligations and statistical data demonstrate that Albania is accepting all the illegal immigrants returned by the EU member states.

These developments have taken place despite their high domestic social costs, because the pressure exerted by the EU for compliance with its demands in this policy area was very high. The involvement of the countries of origin and transit in the fight against illegal migration is very high on the EU agenda. As a result, the Union tied compliance in this area to the progress towards accession. The signature of the SAA constitutes a step in the preaccession process and was therefore highly valued by the Albanian public officials and the public opinion at large. Thus, the critical facilitating domestic factor is the importance the ruling elite attaches to progress towards EU membership. An additional domestic factor that made possible compliance with the EU demands is the nature of the domestic structure in Albania where social forces have little influence on policy making and where policy change depends on the preferences of policy makers.

This article demonstrates the crucial importance of gate-keeping in ensuring compliance. The control by the EU of access to the stages of the preaccession process is such a powerful motivating instrument that it can outweigh very high domestic costs and even lead to developments in the aspirant country that are solely in the interest of the EU.

Notes

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