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REVIEW

of Nils Coleman, 'European Readmission Policy: Third Country Interests and Refugee Rights' (Martinus Nijhoff Publishers, Leiden 2009)

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Introduction

In this, the published version of his PhD thesis, Nils Coleman provides the first dedicated account and analysis of the EU's readmission policy and in particular assesses its compatibility with fundamental rights in the area of asylum law. In doing so he combines a legal analysis with a sophisticated presentation of the policy dynamics in this crucial and developing area of EU law and policy. It will, without a doubt, be a useful addition to the literature in the field and will be of interest to practitioners and academics working in the external relations of the EU, immigration and asylum law and policy, and questions of fundamental rights and the EU more broadly.

The book gives a general account of the readmission policy of the European Community (now Union) while also providing answers to two more specific research questions: a policy related question and a legal question. The policy question concerns the negotiation and implementation of these agreements and the motivation of third countries in entering into these agreements. The second, more legally focused question, focuses on the compatibility of such agreements with the fundamental rights obligations of the European Community and its Member states, particularly with regard to the situation of protection seekers and international refugee law.

The text is divided into three broad sections. Chapters 1 and 2 outline the historical and legal contexts of readmission agreements. Chapters 3 to 8 give a comprehensive account of the readmission policy of the European Community and also address the first research question. They deal with the legal basis of the readmission policy, its policy context, the content of such agreements and give an account of the negotiation of specific agreements. Chapter 9 deals with

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the second research question namely the compatibility of the EC readmission policy with international human rights obligations.

The history of readmission agreements and their international law context are contained in the first two chapters. Coleman traces the origins of readmission agreements to the early 19th century rather than the 1950s and 1960s, identifying a longer history than most commentators. Nonetheless he admits that such agreements became more widespread in the mid-20th century, particularly between European states. Another milestone in their history occurred in the early 1990s with the fall of the iron curtain and a rise of migration as an issue in the domestic politics of many European states. It is this point that marks the departure of a common European policy towards readmission, directed towards central and Eastern European states and some non-European states.

In the second chapter Coleman outlines the relationship between readmission agreements and international law more broadly. He implicitly seeks to identify to what extent readmission agreements represent added value compared to pre-existing international law obligations. He finds that in principle states have an obligation under customary international law to accept their own nationals. However, it is an obligation that can often be frustrated in practice; a corresponding obligation does not exist in relation to third country nationals. Readmission agreements therefore confirm obligations regarding a state's own nationals, providing important details for implementation whilst establishing a legal basis for a state's obligation to readmit connected third country nationals.

Chapters 3 to 8 provide a useful and comprehensive account of readmission policies in the context of the European Union and provide an answer to the first research question: how third countries are persuaded to enter into such agreements given that they do not, at first glance, provide significant advantages to such states.

Chapter 3 identifies the rationale for the creation of a common readmission policy at the Community level. Rather surprisingly, at least from a European lawyer's perspective, the existence of the internal market, the free movement of persons and the corresponding need for a common admission policy, did not figure amongst the reasons provided for the creation of a common readmission policy. Rather, its motivation was more prosaic and related to the desire of member states to employ the political and economic weight of the community in the hope of a speedier and more advantageous outcome for the negotiations that individual bilateral agreements could achieve. Interestingly Coleman points out that such agreements often provided a vehicle for the establishment

of wider cooperation with such states in migration and asylum matters, thereby contributing to the increasing externalisation of such matters.

Chapter 4 deals with the thorny question of the competence of the Community to conclude such agreements. The analysis, while mentioning the ill-fated Constitutional Treaty is based on the law as it existed following the Treaty of Amsterdam. Unfortunately, with the entry into force of the Treaty of Lisbon and in particular the new Article 79(3) TFEU, which created an explicit competence of the Union to conclude readmission agreements, some of the legal analysis of the chapter is now out of date. Nonetheless, much remains relevant and readers will still no doubt find useful his distillation of five rules regulating the division of competences between Member states and the Union when negotiating and concluding such agreements.

Chapter 5 gives an account of the content of these agreements and identifies the pragmatic and programmatic approach employed by the Commission, an approach of the European Parliament based more on fundamental rights concerns having been rejected. It is particularly useful in providing an insight into the internal dynamics of the Commission and in particular the interplay and contrasting goals of different sections of the Commission, namely the Directorate General on Justice and Home Affairs (DG JHA) and Directorate General on External Relations (DG RELEX), manifesting the interplay between internal and external policies within the Commission itself.

Chapter 6, integrating readmission policies into the broader external relations environment of the EU, has the dual function of locating readmission policies at the intersection between internal and external policies while at the same time providing some answers to the question of what motivates third countries to enter into such negotiations with the EU. While not including any formal reference to compensation, readmission agreements are linked to both positive and negative incentives for third countries – the proverbial carrots and sticks. Flanking measures of particular note are financial aid for capacity building in the areas of border control, immigration and asylum reception and processing. Some practical drawbacks exist and there is a lack of uptake of such schemes, nonetheless they provide some measure of incentives for third countries. These measures beginning as specific budget lines under JHA, have developed over time and now are found in the general EU external assistance program within the thematic program of migration. The EC has been less successful in formulating a policy for the application of negative, punitive flanking measures. Coleman notes that, beyond general political statements by the European Council and other bodies, it has failed to specify in detail possible negative consequences for uncooperative third countries.

Chapter 7 deals with the negotiation of such agreements and completes the assessment of the motivation of third countries in entering such agreements. The author provides an assessment of what the Community generally attempts to include in such agreements via an historical analysis of the policy since its inception at a Community level in the early 1990s. The second half of the chapter provides a detailed and invaluable country-by-country analysis. It identifies the issues that were common to the negotiations while providing an assessment of considerations particular to individual countries. Thus countries situations tend to vary depending on their different geographical position, their importance in general EU external policy, their status as origin and/or transit countries and their general geo-political situation. Coleman is particularly insightful in identifying the linkages that can exist between different sets of negotiations, particularly in a regional context.

The third section of the book considers the compatibility of EC readmission agreements with international law in relation to refugees. Chapter 9 is a lengthy and detailed chapter providing a rich mixture of exposition and analysis and to a large extent can be read independently of the preceding eight chapters. It assesses the current European Union practice of readmission agreements in light of international obligations in refugee law. In doing so it provides a useful general account of the obligations of the European Union and its Member states in relation to refugees and asylum seekers, concentrating specifically on obligations stemming from the Geneva Convention and the European Convention on Human Rights. It highlights concerns that have been raised in relation to readmission agreements generally and specifically Community Readmission agreements and analysis these agreements in light of such concerns. It addresses considerations such as non-refoulement, procedural guarantees, the risk of chain expulsions, the extra-territorial nature of fundamental rights protections and obligations to determine the status of protection seekers. In the specific context of Community readmission agreement it looks at the 'safe third country' clauses included in the procedures directive and other possible obligations arising from international law. It amounts to a nuanced and careful consideration taking into account the interaction of readmission agreements and international legal obligations and the particularly discretionary and minimal nature of the EC directives in asylum matters which grant member states sufficient discretion to provide for a higher level of protection and thereby comply with fundamental rights standards. It comes to the conclusion that EC readmission agreements are in general compatible with fundamental rights obligations arising from the ECHR and the Geneva Convention albeit while interpreting such agreements rather narrowly. Furthermore there are no provisions in international refugee law making the

inclusion of clauses aimed at safeguarding the rights of protection seekers into readmission agreements obligatory.

The conclusion, while brief, brings together the various elements of the work. It answers the research questions as outlined at the beginning of the book but perhaps its principal value is addressing the question of whether readmission agreements do in fact provide the benefits normally associated with them. It looks at the rate of return, both formal and informal, to a third country following the conclusion of such an agreement and on the possible effects on the border control and general immigration policy of a state. It concludes that difficulties arise in establishing causation and that further quantitative and qualitative studies are required.

The study is sceptical when addressing the value of a common European policy of readmission agreements, as opposed to individual national policies. It points out the difficulties that have arisen in achieving the stated goal of a speedier and more advantageous result for the Member states. Three reasons are identified for the less than hoped for level of success; the insistence on the part of the Council on the inclusion of third country nationals in all readmission agreements, the forthright attitude of third parties in holding out for counter-demands to be met and finally the lack of negotiating leverage accorded the Commission by the Council. Coleman notes that the desire of the EU, responding to domestic political concerns, creates opportunities for third countries to extract concessions and benefits. Finally it notes that, contrary to much scholarly opinion, readmission agreements as concluded by the EU are indeed compatible with international human rights law.

Commentary

The book is the product of a PhD thesis and is a well accomplished piece of legal research. It is a comprehensive, detailed and clear account of this important and growing area of EU policy. It is nuanced and detailed in both its exposition and analysis yet requires no previous knowledge of the subject and should be of benefit to both academics and policy makers.

While its comprehensive nature is to be lauded the book can at times seem somewhat unbalanced. Beyond a detailed account of the readmission policy the book's detailed analysis concentrates exclusively on the question of its compatibility with international refugee law to the exclusion of other supplementary questions. Such issues are occasionally touched upon and would have benefited from further analysis. In particular the role of readmission policies in the general externalisation of EU immigration policy is

mentioned on a number of occasions but not elaborated upon. This is an important characteristic of the developing legal landscape and readmission policies are an important element in this development. The failure to develop this aspect of readmission policy and to relate it to other areas where immigration and asylum law is being externalised is therefore to be regretted. In a similar vein it would have been helpful if the text had elaborated on the claim that readmission policies can be considered a means of developing relations with third countries on migration and asylum matters broadly.

Nonetheless the work is a useful addition to the field and fills a gap in existing literature. In particular it provides the first dedicated analysis of such agreements and does so with success. While remaining a legal text it is adept at marrying the political, administrative and legal aspects of the European Readmission policy as befits its place in a series dedicated to Immigration and Asylum law and Policy in Europe. It describes in detail how varying political actors, be they Member states, the Council, the Commission or even different elements within the Commission, interact to formulate and implement policies. Not only does it accurately present the various characteristics of European readmission policy but also assess why the policy has developed in such a way. While not explicitly a work of policy analysis it shows a degree of sophistication in its combination of the tools of path dependency while taking into account the role of institutional concerns and individual actors.

Nuance and depth is added by relating readmission policy to other fields such as internal migration, constitutional and institutional questions of competence, human rights and external aid policies. In particular its clear empirical analysis of fundamental rights issues associated with such agreements will be a welcome addition to a body of literature that is often skewed heavily in the normative direction. Readmission policy is an area of law and policy that lies at the crossroads of internal and external policy, a fact that is not lost on the author. In fact internal and external policy considerations are integrated with ease and the author is quick to note where they complement each other and where they might find themselves in tension.

Overall this is a comprehensive and well-accomplished piece of research combining a thorough account of the readmission agreements while placing them in their legal, political and historical context. It highlights the interaction between internal and external policies that lie at the heart of readmission agreements and is particularly valuable in its clear assessment of their relationship to fundamental rights obligations. Yet perhaps its most valuable characteristic is the overtly empirical nature of the analysis, allowing for a clear, comprehensive and objective account of readmission agreements. In providing

such an account Nils Coleman has made a valuable addition to research in the field and his work will be of immense benefit to academics and practitioners.