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Changes in Turkey's Illegal Migration Management: Why the EU Still Matters.

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Abstract

In view of the fading credibility of Turkey's EU membership bid, the impact of EU conditionality on policy change in Turkey seems to be weakening. However, this article argues that the transformative power of the EU should not be underestimated. Illustrated by three reforms in Turkey's illegal migration management, I argue that the EU continues to have an important influence on the policy processes in Turkey. There are three main reasons for this: First, officials dealing with the EU acquis generally remain optimistic about EU accession due to the normative entrapment of the EU; second, the European Union is able to set additional incentives, and finally, the impact of the instrument for pre-accession assistance (IPA) goes beyond that of a mere facilitator of domestically defined interests and goals.

Introduction

Recently Turkey has (at least partially) tackled three key demands of the EU related to the as yet unopened chapter 24 on Migration and Border Management: Ankara passed a law on foreigners and international protection in April 2013, signed a readmission agreement with the EU in December 2013 and drafted a law on border management in November 2010. Regarding the readmission agreement, Turkey is, after a transition period of three years,

obliged to take back illegal immigrants to the EU who have used Turkey as a transit country. For the EU, such an agreement is of utmost importance because Turkey has become the main transit route for illegal immigrants. Until recently, Turkey did not consider this demand as appropriate due to the expected high costs of hosting these immigrants, even if most of them only temporarily.

The second demand relates to border management. The Ministry of Interior drafted a Law on border management in November 2010, which is intended to introduce a new border guard under civilian oversight of the Ministry of Interior, thus reducing the autonomy of the Armed Land Forces at border surveillance. The EU has demanded such a restructuring for two reasons. First, the current fragmentation of competences and lack of coordination between the actors involved in border management is considered as being responsible for inefficient border management; second, civilian oversight is considered a democratic necessity (Commission 2011: 93).

Finally, Turkey adopted a law on foreigners and international protection on 11 April 2013. This law represents the first legislative framework in Turkey to protect the rights of immigrants and refugees by strengthening the institutional capacity in conformity with EU and international standards (Commission 2012: 75). Despite the fact this law fails to fulfil one key requirement in the accession process, the lifting of geographical limitation to the 1951 Geneva Convention Relating to the Status of Refugees, it is an important step as it represents the first legislative framework in Turkey to protect the rights of immigrants and refugees by strengthening the institutional capacity in conformity with EU and international standards (European Commission, 2013: 65). Furthermore, it provides for another key EU demand, the establishment of a new civilian body to oversee refugee applications, a process currently handled by the police. As Turkey has become a main transit country for irregular

immigrants on their way to the European Union, an improved asylum policy is of utmost interest for the EU.

The aim of this contribution is to analyse the influence of the European Union in bringing about these three policy changes. Based on four series of interviews that I have conducted with officials of EU member states, Turkey and the European Commission¹ I argue that the EU still has still an important transformative influence on domestic policy change in Turkey due to three factors: the ongoing EU support of the Turkish EU-experts in the respective ministries and the parliament, the policy entrepreneurship of the European Commission and the effects of the instrument for pre-accession assistance. The article is structured as follows: The first section refers to the Europeanization literature and the debate over the waning EU influence in Turkish politics. The second section deals with the normative entrapment of the EU. Section three describes how the European Commission has set the additional incentive of a visa liberalization process. The fourth section illustrates how the EU exercises influence in the implementation of projects financed by the instrument for pre-accession (IPA).

Explaining the compliance with EU demands

In the analysis of the compliance of candidate countries to EU demands, the Europeanization literature distinguishes between mechanisms driven by the EU, and those by domestic factors. In the first case the EU itself is the trigger for reform, without which reform would not occur. In the second case, domestic change is spearheaded by domestic actors whose reform projects fit with the EU demands, and which are thus an anchor for reform (Tocci 2005). Another distinction is made between two logics of actions: According to the logic of consequences, governments are open to policy changes if the perceived benefits are higher than

the costs. On the other hand, according to the logic of appropriateness, actors are motivated by internalized identities, values and norms (Schimmelfennig and Sedelmeier 2005: 9).

If these two distinctions are paired, three mechanisms of Europeanization can be identified (Schimmelfennig and Sedelmeier 2005: 8). The 'external incentives model' combines EU conditionality and a logic of consequences. Compliance with EU demands is expected if the government of the candidate country considers that the benefit of membership outweighs the adaptation costs.

The 'social learning model' combines EU conditionality and a logic of appropriateness, and is an alternative to rationalist explanations of conditionality. 'The EU's domestic impact results from a process of socialization in which domestic actors internalize EU norms that they regard as legitimate' (Sedelmeier 2011: 11). Thus, 'the participation in the institutional structures of EU may affect the interests and identities of the state agents' (Checkel 2005: 802). Persuasion-socialization dynamics can be facilitated by a number of scope conditions, such as domestic norm entrepreneurs, the resonance between EU rules and domestic rules, a relationship between the involved actors based on trust, and frequent meetings in a less politicized, more insulated environment (Checkel 2005: 813, Sedelmeier 2011: 13).

The 'lesson-drawing model' combines a focus on domestic factors, which relate to either a logic of consequences or a logic of appropriateness. In the first case, policy changes are the result of domestic needs. Dissatisfaction with the status quo in the country triggers domestic reforms, with the EU serving as role model. In the second case, policy changes are inspired either by changed policy paradigms or by changed identities. In either case, considerations about the incentives that the EU might offer for rule adoption play a subordinate role (Schimmelfennig and Sedelmeier 2005: 10). The EU incentive only plays a role in so far that it brings changes in the opportunity structure of domestic actors. Actors with prefer-

ences in line with the EU demands can use these demands as an additional justification for their position (Tocci 2005: 81).

According to Schimmelfennig and Sedelmeier, empirical research on rule transfer to Central and East European candidates suggests that the 'external incentive model' has the strongest explanatory power for understanding the compliance of EU candidates, whereby its effectiveness varies with the credibility of EU conditionality and domestic costs of rule adoption. Thus, where strongly nationalist and authoritarian governments were in power, the domestic political costs of complying with the EU's democratic conditionality proved prohibitively high. By contrast, in the context of *acquis* conditionality, when dealing with the harmonization requirements in the negotiation chapters, 'variation in the size of domestic adoption costs only accounted for the speed of rule transfer but did not matter systematically for its effectiveness' (Schimmelfennig and Sedelmeier 2004: 663).

The importance of a credible EU membership perspective for the harmonization with EU standards has also been shown in the Turkish case (e.g. Cengiz and Hoffmann 2013). However, the preconditions for the 'external incentive model' in Turkey have become less favourable in recent years. Whereas the granting of candidate status in Helsinki 1999 triggered substantial reforms aimed at compliance with the EU's political conditionality, the ongoing opposition to Turkey's EU accession has weakened the credibility of the EU accession perspective. Turkish public opinion is being increasingly shaped by the widespread perception of unfair treatment due to inconsistent application of membership conditionality, leading to a decline of EU support in recent years.

In addition, Turkey's new strategic option as an economically prospering rising regional power occasionally contributed to a more autonomous diplomacy and has weakened the priority of EU membership (Börzel and Soyaltin 2012: 11). Furthermore, the ongoing opposi-

tion against Turkey's EU membership also reduces the likelihood of persuasion and socialization processes (Börzel and Soyaltin 2012: 15).

Given this background, the partial continuation of alignment with EU standards is often attributed to domestic incentives and/or diffusion processes induced by external actors other than the EU. First, it is argued that the AKP government 'promoted EU accession in order to widen its support base towards the centre and to anchor its political reforms aimed at rolling back the influence of Kemalist forces and the military' (Börzel and Soyaltin 2012: 14). Second, reforms corresponding to EU standards are considered as being part of Turkey's more general modernization strategy which is independent of Turkey's EU membership prospects. In this respect, reforms can be read as Europeanization in a wider socio-political and normative context rather than 'EU-ization' as formal process of alignment with the EU *acquis* (Kaliber 2013: 58). Third, globalisation dynamics have increased communication and interconnectedness, so that policy makers have a greater tendency to refer to other political systems and international organisations for knowledge and ideas about institutions, programmes and policies (Dolowitz and Marsh 2000: 7), leading to policy transfer and diffusion of ideas.

Indeed, also legal reform projects regarding asylum and border management may be inspired by lesson-drawing, either as the result of socialization in global diffusion processes, or as a result of domestic policy dissatisfaction. For instance, Kirişçi argues that the longstanding relationship between the UNHCR and the Turkish government contributed to a socialization process in which Turkey moved towards an internalisation of norms and rules of an international refugee regime. Furthermore, the rulings of the ECtHR in particular in recent years have played a critical role in creating a sense of urgency in the reform of Turkey's asylum policy and practice (Kirişçi 2012: 64). In addition, policy dissatisfaction with the current

status quo also played a role. Turkey has developed from a country of transit migration to a target country of illegal migration, with a significant increase in the number of asylum seekers in recent years. Finally, reforms may also be facilitated by economic growth, which enabled Turkey to meet the high cost of reform (Kirişçi 2012: 79).

Without denying the importance of these non-EU related factors, I argue in the following sections that the EU continues to play a major role in Turkey's recent policy changes in illegal migration management. There are mainly three mechanisms of EU impact: The influence of the EU's normative entrapment on the motivation of Turkish parliamentarians and government officials for further *acquis* harmonisation; the policy entrepreneurship of the Commission and the effects of the instrument for pre-accession assistance.

The normative entrapment of the European Union

Despite the ongoing opposition to Turkey's EU accession from some EU member states, a breakup of the accession talks cannot be considered a realistic scenario. The EU has to adhere to the rules of the game, which oblige the EU to evaluate Turkey's membership prospects on the basis of compliance with the Copenhagen Criteria. According to the negotiation framework, only a serious and persistent breach of the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law would allow the suspension of negotiations, which would require a consensus decision of the member states. Actors who oppose Turkey's membership for identity related reasons are thus normatively entrapped (Bürgin 2010, Schimmelfennig 2008). The more Turkey fulfils the political, economical and *acquis*-related criteria, the more difficult it will be to delay Turkey's accession.

The AKP government is sending ambivalent signals regarding its desire to join the EU. On the one hand, official documents, such as the National Programmes for the Adoption of

the *acquis*, describe EU membership as a priority, while on the other, the current drawbacks in Turkey's democratic consolidation process can be read as an indicator that the Prime Minister Erdoğan is losing interest in accession. However, the majority of the approximately 40 parliamentarians, government officials and party representatives I interviewed between 2010 and 2013 referred to the normative entrapment of the European Union, considering that progress in alignment with the EU is effective in increasing pressure on the reluctant member state governments (Bürgin 2010: 433) This alignment includes recent reforms in Turkey's illegal migration management (Bürgin 2012; for a similar finding regarding the motivations for the preparation of the new asylum law see Kirişçi 2012: 63).

The supranational entrepreneurship of the European Commission

The European Commission has pushed the enlargement process. Through its close monitoring in regular progress reports and its recommendation on how the EU should proceed in the accession talks, the Commission was influential in overcoming resistance against granting Turkey candidate status in Helsinki 1999 (Baun 2000) and in opening accession negotiations with Turkey in 2005 (Schimmelfennig 2008).

This supranational entrepreneurship of the European Commission is also crucial in understanding Turkey's change in attitude towards a readmission agreement. Whereas the member states offered the Western Balkan countries a visa liberalization process in return for a readmission agreement, they offered Turkey only visa facilitations in return for a readmission agreement. However, visa facilitations were not a strong enough incentive for the Turkish government. As a consequence, the Commission offered Turkey a visa dialogue with the clear goal of visa liberalisation after the signing of the readmission agreement, despite the opposition of some member states. With reference the credibility of the EU, the Com-

mission argued that Turkey should be offered the same procedure as the one applied in the Balkan precedent. This commitment cleared the way for negotiations on a readmission agreement text, which was finally accepted by Turkey on 27 January 2011. In line with the 'external incentive model', the prospect of a visa liberalization talk was a vote-winner for the AKP government that outweighs the costs of a readmission agreement.

In spite of such arguments, the goal of visa liberalization was rejected by some governments, such as Germany, France or Austria, who feared an influx of Turkish visitors settling permanently, ignoring the maximum stay of 90 days in any 180-day period, and due to the existing political objections to Turkey's EU membership. However, due to pressing problems of illegal migration via Turkey and the combined pressure of the Commission and the Danish Council Presidency, the Council eventually mandated the Commission to start a visa liberalization process with Turkey in June 2012 (Bürgin 2013).

The transformative effects of the Instrument for pre-accession assistance

The EU has effectuated the Instrument for Pre-Accession Assistance (IPA) for the 2007-2013 period in order to prepare candidate countries for membership. In this time period Turkey received a funding of 4.87 billion Euros. Twinning projects are one type of projects financed by the IPA-funds. In the period 2002-2007 alone, 25 out of a total of 77 twinning projects were related to the Justice and Home Affairs Sector (Republic of Turkey EU Ministry 2008), many of these projects cover border management and asylum issues. The course of actions is as follows: Once the beneficiary country has prepared a twinning fiche, member states are invited to submit twinning proposals outlining the required public sector expertise. Proposals are then sent to the beneficiary country, which, after specific selection procedures, has the right to choose the proposal which best corresponds to its needs. Each twinning project

has at least one Resident Twinning Adviser (RTA) and a Project Leader from a member state administration or from another approved body in a member state. These officials work full time for a minimum of 12 months in the corresponding ministry in the partner country during the implementation of the project.

The aim of twinning projects corresponds to the 'social learning model'. Based on the principle of partnership, these projects aim to foster learning processes, which not only help beneficiary countries to develop modern and efficient administrations, able to implement the EU *acquis*, but also to contribute to the formation and strengthening of a European identity among the involved actors. However, the few existing studies on twinning projects in central and eastern European countries (CEEC) show mixed results regarding the success rate and the socialization effects in particular (Bailey and De Propris 2004, Papadimitriou and Phinnemore 2003).

There seem to be a number of reasons for this lack of overall success. First, beneficiary countries are aware that twinning represents an opportunity to learn from existing models, new techniques, and advice; however they reserve the right to choose whether or not to follow this advice. Second, officials in the candidate countries sometimes regard their counterparts with suspicion, implying the absence of an open-minded discursive setting, which is a precondition for social learning. Finally, the representatives of the beneficiary country tend to limit the role of the representatives of the member states to service providers, minimizing interaction and exchange (Tulmets 2005: 670-671). As a consequence, the socialization effects of twinning projects remain unclear (Papadimitriou and Phinnemore 2003: 19).

The impact of twinning projects in Turkey has so far received scant scientific interests. Drawing on experience in central and eastern European countries, however, it is plausible that IPA funded projects can partially be considered as instrumental tools to achieve

goals which are independent of the EU accession incentive. For instance, an IPA financed project may be used as a tool for promoting the above-mentioned modernization strategy. According to this perspective, the EU is seen solely as a role model and facilitator of reforms, offering knowhow and funding, rather than being an end in itself. In addition, IPA project may also serve as an opportunity structure for personal career advancement motives and departmental and organizational interests. However, the interviews I have conducted with officials of the Ministry of EU Affairs (MEU) and the EU Delegation in Ankara in May and June 2013 suggest that the implementation of IPA funds has effects which go beyond those of facilitating reforms driven by domestic motivations. This can be accounted for by the following aspects: 1) the discretion of the European Commission in the project selection process, 2) the role of the Ministry for EU Affairs (MEU) as the National IPA coordinator and 3) IPA induced social learning.

Discretion of the European Commission

The interviews point out to the significant (coercive) influence of the European Commission on the entire programme cycle of IPA projects. This is due to three main reasons. First, after consultations with the MEU the European Commission has the final approval on setting criteria for the distribution of funds. This is important, because, according to a European Commission official, while the Turkish side tends to prioritize infrastructure projects, the European Commission prefers projects focusing on the fulfilment of the political criteria. Another source of influence is the Commission's power over acceptance of proposals. Once the money for each component and sector is fixed, ministries and agencies are requested to submit project proposals. The selection process is jointly coordinated together by the MEU

and the European Commission, but again the latter makes the final decision. Thus, the European Commission has significant discretion in changing the accepted list of projects, blocking certain projects and prioritizing others. It can exploit the competition for projects among departments in the line ministries to ensure the inclusion of certain aspects in the programming phase, regardless of whether these are a priority for the applicant. For instance, the European Commission promotes stakeholder participation. Thus, the consultation of civil society actors in the policy formulation phase is a precondition for a successful application, and resulted in institutionalized NGO involvement. According to several interviewed Commission officials, this represents a significant change in comparison to the past, even though the extent of the change in attitude varies across the ministries. A final source of influence, reported by interviewees from the MEU was the tendency of potential beneficiaries in the line ministries to modify their project proposals after direct contacts with the EUD, in order to increase their chances of success. For instance, projects originally designed as requests for technical assistance are modified into twinning projects, which are preferred by the Commission.

Role of the Ministry for EU Affairs

The Ministry for EU Affairs itself is also an important change agent. As national IPA coordinator, the Ministry of EU Affairs has an important mediation function between the European Commission and the beneficiaries in the ministries. Intensive training measures on IPA principles regarding programming, implementation, monitoring and evaluation have increased its institutional capacity, contributing to a more effective implementation of projects in all IPA components (Commission 2012). Most officials from the MEU I interviewed in May and June 2013 agreed that the promotion from the Secretariat General for EU Affairs to the

status of MEU in 2011, and the subsequent increase in staff was also beneficial for the MEU's tasks as IPA coordinator.

One crucial task of the MEU is to filter the project proposals of the different beneficiary ministries and assess their compatibility with the EU accession process. In order to improve the quality of the project proposals, the MEU organizes meetings for all stakeholders in a certain policy area. According to the interviewees, the MEU is sometimes asked by these stakeholders to act as arbiter between their conflicting interests, thus resolving conflicts of interests in and between different ministries. Regarding the reform of illegal migration management, MEU can be characterized in many respects as being a strong advocate for the EU reform agenda. According to interviews with MEU officials, the MEU has promoted the need for a modernized border management and illegal migration management in various institutions, such as the task force border management at expert level, or the Reform Monitoring group at undersecretary level, which, beside the MEU, includes the Ministry of Interior, the Ministry of Justice and the Foreign Ministry, the IBM Coordination Board. There was a consensus among the MEU officials that the IPA process was crucial for the establishment of these institutions, and that these institutions contributed to social learning processes, leading to an increased willingness to cooperate and engage in an exchange of views.

As an example of this the MEU officials referred to the struggle over the new border agency. In line with EU demands, the Turkish government intends to transfer border responsibilities from the military and the gendarmerie to the police. Therefore, both, military and the gendarmerie were initially obstructing the governments' plans for reform (Today's Zaman 2011, 2010). However, according to the MEU officials, the newly established coordination institutions contributed to a rapprochement of positions.

Social learning effects of IPA financed projects

Even if considerations not directly related to Turkey's EU accession prevail in the application for and implementation of IPA-financed projects, the long-term effect may reach beyond the instrumental use of funds. First, follow-up projects may create a lasting network among the involved actors, and thus lead to a more personal type of relationships, which is more conducive for social learning. A second consideration is that, in order to manage the EU accession process and in particular the IPA process, the Turkish ministries established EU departments consisting of a growing body of staff with IPA-financed training. As a consequence, according to a MEU official, a community of EU experts has emerged, facilitating intra and inter-ministerial exchange in EU-related matters. As recommendations of colleagues are often more acceptable than those of the EU Delegation, these experts are important agents of change, stated the same MEU official.

This is also reflected in the process leading to the new asylum law and the draft law on border management. An important step towards legislative reform was the adoption a National Action Plan on Asylum and Migration in 2005 and a National Action Plan on Integrated Border Management in 2006. Both plans were prepared during twinning projects with EU member states, and each envisaged the establishment of a specialized institution for migration management and for border management respectively. The first step towards the creation of such specialized institutions was the creation of two Bureaus under the under-secretariat of the Ministry of Interior on 15 October 2008, the Integrated Border Management Bureau, and the Asylum and Migration Bureau. Both bureaus received the mandate to prepare the draft laws in the relevant policy areas. Clearly, the Ministry has an organisational self-interest, as the laws will increase its competences. However, according to a European

Commission official, the way the laws are prepared illustrates a Europeanized style, including active civil society involvement and intensive communication with other ministries, parliamentarians, which can be attributed to the groundwork of the previous IPA financed projects.

Conclusion

With reference to recent reforms in Turkey's illegal migration management, this contribution has shown that the European Union continues to play an important role in Turkey's domestic politics. There are three major mechanisms through which the EU exerts influence. First, as interviews with bureaucrats and parliamentarians indicate, the membership incentive is still considered as an important motivation for reform. Second, the European Commission was able to incorporate the visa liberalization process as an additional incentive. Finally, in the rather technical process of implementing IPA-funds, the EU exerts a high degree of influence via conditional acceptance of certain projects and socialization processes, which has contributed inter alia to the establishment of an Europeanized expert community in the respective ministries and Europeanized institutions such as the Integrated Border Management Bureau and the Asylum and Migration Bureau, a greater civil society involvement in the policy making process, and more effective intra- and inter-ministerial coordination.

However, the influence of the EU has two important limitations. First, costly changes such as the lifting of the geographical limitation are used by Turkey as a bargaining tool, and such changes will probably not be realized without a more secure membership perspective. Second, while the abovementioned IPA projects clearly influence middle and highly ranked bureaucrats, they have a much weaker influence on the top executive.

Notes

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