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"Why Do Some States Draw Upon Amnesties for Irregular Migrants while Others Do Not? A Comparison Between Spain and the United Kingdom"

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WHY DO SOME STATES DRAW UPON AMNESTIES FOR IRREGULAR MIGRANTS WHILE OTHERS DO NOT?

A COMPARISON BETWEEN SPAIN AND THE UNITED KINGDOM.

1. Introduction

During the last decades migration flows to Europe have visibly changed: In the afterwar period of reconstruction and of strong economic development citizens in the United Kingdom and Germany, for example, were used to guest workers from southern European states or Commonwealth citizens who were being actively recruited or legally endowed to reside in these countries. However, over the years this well-known 'face' of immigration has been increasingly complemented by irregular immigration (Engbersen, 2001: 222).

Particularly in European countries where immigration has not been identified as an element of national identity and self-understanding (as in the United States or Australia) (Geddes, 2002: 4), the increase in irregular immigration is followed with unease and serves as source of fervent public debates and constant media covering. Spectacular pictures of overcrowded boats trying to make their way to European shores – nowadays most often to the Canary Islands or the southern coasts of Italy – keep the issue in the public eye. Yet, in the case of Europe, this form of irregular migration is not the most common one; rather migrants usually enter legally and then become irregular by overstaying their visas or violating conditions specified by law (OECD, 2007: 47-48).

Either way, governments are compelled to address the challenges to their respective legal system and decide on how to deal with irregular aliens on their territory: Based on the consideration that the control over borders is an essential attribute of a nation state, the lack or loss of such power challenges the authority of the self-governed entity (Heathcoat-Amory, 2007: 6). From this perspective, irregular migration constitutes a critical threat to any state. Thus, if the irregular migrant does not voluntarily leave the country, the authorities have the options of ignoring or removing the irregular migrant or regularising his or her status (ippr, 2006: 16). While ignorance does not contribute to a solution in any way, expelling the migrant appears to be the most obvious mechanism of ending the unlawful presence of the

alien. The case of regularisations, however, is less clear: The irregular migrant is forgiven his or her offence against the immigration rules and is granted a legal immigration status. Indeed, legalising the status of the irregular migrant could be interpreted as the caving in of the country of destination. Consequently, regularisation programmes are hardly a country's first policy preference; rather they are run when other types of migration control have failed (Levinson, 2005: 5). However, as numerous analyses show (cf. among others Bruycker & Apap, 2000; Cornelius, Tsuda, Martin, & Hollifield, 2004; Geddes, 2002; Levinson, 2005), mass regularisations are no uncommon events.

In combination these factors inevitably raise a fundamental question: Why do some states draw upon amnesties while others do not?[2] As will be shown, studies on regularisation programme so far have remained mainly descriptive and have not included systematic comparisons of states in order to find an answer to this question. Therefore, with this paper I will try to fill this analytical gap and develop explanations about why states grant amnesties.

I will argue that in order to eventually reveal general patterns of regularisation policies, we need to draw a cross-country comparison between the contexts of these policies, i.e. the characteristics of the concerned migrants, the political and economic circumstances etc. My further analysis rests on a comparison of Spain and the UK, since a public debate of an amnesty took place in both countries almost at the same time but entailed very different results. Based on the findings of this comparison, no aspect appears to be the single cause for the implementation or non-implementation of a regularisation programme. However, the two cases reveal a strong link between the perception of a particular 'summoning effect' and the implementation of a regularisation programme. Hence, I will argue that a government will opt against an amnesty, if there is the conviction that such a policy increases irregular migration. However, if not the regularisation itself but another factor – such as the

[2] 'Amnesty', as explained in chapter 2.2, refers thereby to extraordinary large-scale, i.e. collective regularisations. Hence, this paper and particularly the case studies refer mainly to this type of regularisation.

underground economy – is considered as the stimulus for irregular migration, then an amnesty is implemented in order to break its reinforcing link with irregularity.

The paper is structured into four main sections: In the first part, I will define the concept of 'irregular migrant', elaborate on the different types of regularisations, and look into the results of previous analyses of regularisations. The second part consists of the methodology underlying my analysis and explains the choice of Spain and the UK as samples. Moreover, I will present and justify the selection of aspects for the comparison. These are the characteristics of the migration flow, the political circumstances, and the economy. In the third part, I will give an introduction to Spanish and British migration policies while the fourth part serves to illustrate and compare the two cases along the mentioned categories and to draw my explanations from this comparison. Finally, there will be a brief conclusion on my results and a discussion of the implications of these findings.

2. Concepts of irregular migration and regularisation policies

2.1 Irregular migration: Concept and terminology

When we speak of irregular immigration, it is important to bear in mind that the circumstances which lead to irregularity and the terminology used are manifold and complex. Adding to this confusion, even in studies with an exclusive focus on irregular migration (as for example in Bruycker & Apap, 2000), the concept of irregularity is not clarified and the terms 'irregular', 'illegal', etc. are used interchangeably. However, as the Institute for Public Policy Research (ippr) argues, this impreciseness confounds the different meanings and it is worth differentiating (ippr, 2006: 5):

'*Irregular* migration', used under a clear definition, captures the complexity of the matter but is rarely used in the public debate. The term '*illegal* migration', which is used most often in the UK and the European Union (EU), inevitably evokes links between criminality and migration. '*Undocumented* migration', frequently applied by non-governmental organisations (NGOs), is an ambiguous description since it may refer to migrants who have not been recorded and/ or who do not have identity documents. Fourth, '*unauthorised* migrant', used by the UK Home office, is for our purposes an inaccurate term as an unauthorised migrant is not necessarily liable to deportation and therefore may not be the one seeking regularisation. (ippr, 2006: 6). Additionally, the OECD (1999: 231) draws attention to a fifth term, '*clandestine* migration'. This term is also ambiguous since it may refer to clandestine entry, work, and/ or residence. Moreover, not all irregular migrants live clandestinely but are often known to the state as for example, the 'clandestins officiels' in France or 'tolerated migrants' in Germany (Bruycker, 2000: 6; Bruycker, Apap, Schmitter, Seze, & Ray, 2000: 24).

In order to avoid any confusion, I will only use the rather neutral term 'irregular migrant' and thereby refer to those migrants who due to their offence against the immigration

rules are liable to deportation and therefore may find it necessary to seek regularisation. Beneath a varying terminology, we also find many different causes for irregularity. As such, this status may be the result of, for example,

- clandestine entry into the country in order to bypass immigration controls
- entry into the territory with false documentation
- overstaying the visa or violating other immigration conditions such as working without a work permit
- remaining after a failed asylum claim
- absence of the necessary documents of identification (ippr, 2006: 5).

Therefore, policies addressing irregular migration do not concern mainly and only those migrants who with their desperate attempts of clandestine entry become the subject of media reports, but a much wider range of cases.

2.2 Regularisations: Definition and existing explanations

By its very definition irregular migration constitutes in some form an offence against the immigration rules of the country of destination. In view of this misdemeanour, the affected state can proceed as in other situations of breach of law, i.e. the authorities can ignore the offence, penalise or forgive the offender. Translated into the field of migration, this could mean ignoring the irregularity of a migrant's presence, removing the offender or regularising the migrant's legal situation (ippr, 2006: 6).[3]

Turning a blind eye to the irregular migrant does not end the unlawful situation. A removal of the migrant, on the other hand, is the obvious way of restoring the legal order by getting rid

[3] Enforcing border controls and internal checks is a further conceivable policy option. However, since this is mainly a deterrence and detection measure, it does not say anything about how the state plans to deal with the migrant once his presence is known to the authorities.

of the offender. In comparison, a regularisation or an amnesty[4] appear to be the intermediate way by neither ignoring nor expelling the irregular migrant

In this context, a regularisation can be understood as an act which '[makes] legal the position of a third country national who either entered the national territory clandestinely or has become an illegal immigrant after having entered the country legally' (Bruycker & Apap, 2000: 89). In other words, in a regularisation process the irregular migrant is pardoned his or her violation of the immigration rules and is offered the opportunity to legalise his or her resident status. This can be on a permanent as well as on a temporary basis (Levinson, 2005: 4). Thus, the central element of a regularisation process is that the resident permit is granted to an alien who is already present on the concerned national territory but who actually does not have the right to be there (Bruycker et al., 2000: 24)

As Bruycker claims, regularisations are exceptional procedures in the management of migration flows (2000: 1). As such they serve to address the problem of irregular migration, and more specifically the discrepancies between official records and the actual number of of migrants present in the country (Clarke, 2000: 13). By opening records for a largely unknown share of the migrant population, legalisations allow the authorities to at least partially re-gain track of who is on the national territory. Indeed, it is argued that 'regularisation programmes are usually undertaken only when internal and external controls have failed' (Levinson, 2005: 5). Seen from this perspective regularisations are an admission of policy failure and loss of control (Bruycker, 2000: 9). Supporting this argument, the OECD summarises three reasons why states are generally reluctant to grant amnesties:

[4] The term 'regularisation' shall in this work be used interchangeably with 'amnesty', 'legalisation', and, in the Spanish case, 'normalisation' ('normalización'). The different description is often due to a particular perception of irregular migration itself, i.e. whether one considers irregular migration a criminal offence or rather situation that (merely) requires regularisation.

- There is the fear that a regularisation programme might attract even more irregular migrants since they stimulate the hope for further legalisation schemes. This also known as 'summoning effect'.
- Due to the particular requirement of a regularisation scheme, hardly all irregular migrants are eligible for regularisation; hence, it does not cover the entire irregular migrant population and therefore does not allow to start from zero (irregular migration) again.
- And finally, there is the reluctance to admit the inefficiency of the migration control system in the first place, as legalisations are an easy target for political opponents spurring fears of 'invasion' and dissatisfaction with incompetent authorities. (OECD Secretariat, 2000: 5)

Evidently, these arguments relate to spectacular events such as legalisations of irregular migrants at a large scale and during a relatively short period of time. As comprehensive analyses of regularisation programmes by Bruycker & Apap (2000) or Levinson (2005) however show, the reality of regularisations in Europe and across the globe is much more diverse.

Bruycker, Apap & Schmitter et al. (2000: 27-35) classify the different types of regularisations according to five particular features. As displayed in table 1, they make a distinction on the basis of the duration of the regularisation programme, the determination of the candidates for a regularisation, the motivations for the regularisation, the optionality of a regularisation, and finally, the organisational form of a regularisation. Any regularisation programme is usually a mixture of the different aspects, i.e. there are, for example, organised one-off programmes which regularise a determined collective or permanent regularisations based on individual merits, and so on. Indeed, this differentiation of regularisation programmes appears to be rather a matter of degree than of absolute category (Levinson, 2005: 3-4).

Table 1: Types of regularisation

Aspect	**Types of regularisation**	
Duration of the programme	Permanent There is no temporal limit to the regularisation process nor is the particular date of entry by the migrant taken into consideration. The number of regularised migrants is indefinite and the process is not part of an ad hoc policy.	One-off/ one-shot The conditions for a regularisation have to be fulfilled until a particular date. This refers both to the entry to the country and the application for a regularisation. Also, the number of candidates for regularisation is limited. In principal, a one-shot regularisation is supposed to be a single event without repetition in the future.
Candidate determination	Individual The emphasis is on the protection of the individual and leaves considerable discretion to the authority, particularly in informally organised regularisation programmes.	Collective The criteria are rather more objective and general such as the presence on the concerning territory since a certain date, the qualifications of the worker, the integration of the migrant in the host society.
Motivation	*Fait accompli* The authorities recognise the fact that the migrant is in the country since a specific date and grant him/her the right of residence. The condition for regularisation are usually geographic and economic criteria.	Protection The migrant is regularised in order to protect him/ her from risks or damages that might occur after an expulsion. The main criteria are humanitarian, medical or family reasons.
Optionality	Expedience The regularisation is due to the power and interests of the authorities and is rather a concession by the State.	Obligation Authorities may be obliged to carry out a regularisation in order to comply with a court decision or international conventions.
Organisational form	Organised A certain number of individual requests for regularisation usually lead to a more organised process in order to avoid arbitrariness and lawsuits by rejected petitioners.	Informal Despite the lack of clear criteria for regularisation, the individual petition of a migrant may be acceded. This process however does not include any guarantees regarding the migrant's appeal rights in case of rejection, for example.

Source: compiled from Bruycker, Apap, Schmitter, et al. (2000: 27-35)

In Bruycker & Apap's study (2000), this categorisation serves as starting point for an analyses of regularisation programmes in member states of the European Union. For the

European context, this is so far the most comprehensive study of legalisation schemes for irregular migrants as it gives detailed descriptions of regularisations in twelve different member states. It is thereby argued that in some form every state offers at least the minimal chance for migrants to be considered for regularisation (Bruycker et al., 2000: 34). Hence, it should be particularly interesting to see why some states grant large-scale one-off regularisations, or amnesties, as they are known in the UK (ibidem: 47) while others refrain from doing so.

Despite the aforementioned differentiation between the various types of of regularisations and a classification of the country cases, Bruycker & Apap's study remains largely descriptive: The summary of the findings is confined to the observation that there seem to be two groups of countries (ibidem: 55): One the one hand, the southern European countries, where regularisations are a relatively new phenomenon, tend to carry out one-off regularisations based on the *fait accompli* and with a clear focus on economic aspects. On the other hand, in the Northern European countries both *fait accompli* regularisations and amnesties in order to protect the individual take place; yet, the *fait accompli* regularisations tend to be of a more selective form than in southern Europe. This valuable insight, however, is not further elaborated into an explanation of the causes of extraordinary regularisations.

In a similar study, Levinson revisits the academic literature on regularisation and analyses also with the help of Bruycker et al.'s typology nine European countries and the United State (2005). Although Levinson comments common challenges or the political and economic impacts of regularisation programmes, she does not provide a truly comparative study in order to develop a broader explanatory pattern for regularisation programmes. In fact, she simply assumes four reasons for implementing regularisation programmes asserted by Mármora in his study of international migration policies (1999): According to Mármora regularisation are aimed at

- gaining control and awareness over irregular migration
- improving the social situation of migrants
- increasing labour market transparency
- and adapting the immigration policy to the foreign policy (1999: 208-209).

Yet, as Mármora rightly formulates, these factors are *goals* of regularisations and all appear to be of general desirability for any state. Therefore, once again, we cannot deduce any particular explanation why one state chooses to regularise whereas others do not. The same deficit is to be found in other analyses of policies towards irregular migrants (ippr, 2006; OECD, 2007), where the various national approaches are presented together but no explanatory links between the cases are established. These case studies address, for example, factors as the ethnic composition of the irregular migrant population, the acceptance of the underground economy, or the intervention of pro-/ anti- immigrant groups. Yet, they do not provide cross-country comparisons regarding the policy-making and the policy context. Hence, in this respect the academic literature remains largely descriptive and the question of what precisely makes countries opt for or against a regularisation programme remains unanswered.

In view of the analytical gap, this paper aims at finding explanations for the implementation (or rejection) of extraordinary large-scale regularisation programmes by comparing the context of the respective policy choices in two European countries, namely Spain and the United Kingdom.

3. Methodology

The choice of Spain and the United Kingdom as country samples for the comparison of regularisation policies is due to several reflections:

First, as mentioned, the possibility of being regularised – be it only in an informal and arbitrary process – exists in practically every country. Yet, within this basic commonality Spain and the UK still offer two very different regularisation policies: The United Kingdom, so far, has implemented only three small-scale extraordinary regularisation programmes apart from its permanent programme, whereas Spain has already executed six extraordinary mass legalisation schemes since 1985.

Second, the UK counts with an officially longer history of net immigration than Spain. Thus, if the particular experience of immigration should affect the regularisation policy of country, we should see this reflected in the two cases studies.

Third, Bruycker, Apap, Schmitter et al. (2000: 55) pointed to a difference in policies along the North- South axis. Since Spain and the UK reflect this axis, the direct comparison of these two sides allows us to review the relevance of the North- South factor. And should this discussion of regularisations, in fact, come to the conclusion that the policy choice is due to the belonging to a particular region, then Spain and the UK could serve as examples for the two sides and allow for hypotheses regarding other countries of the two sides.

And fourth, a public debate of regularisations emerged in Spain and the UK almost at the same time. In 2004, the Spanish Parliament decided on the implementation of yet another mass regularisation programme in 2005. Meanwhile in the UK, during summer 2006, the possibility of a regularisation was shortly discussed in public but no amnesty was implemented. Therefore it should be interesting to see why regularisations became an issue in both countries at almost the same time but led to two very different outcomes.

In order to answer what makes states draw upon regularisations or avoid them, I will compare the context of the regularisation debates in the UK and Spain. For this purpose, analyses of public policy-making by Considine (2005) and Anderson (1979) have served as guide in order to single out aspects, actors and steps of policy-making processes. Moreover, the academic literature on migration policies in these two countries provided useful information on the respective national peculiarities in this policy field. As a result, I will analyse a number of social, political and economic factors which appear to have been of importance for the decision for or against an amnesty in one or both countries. In greater detail I will therefore compare Spain and the UK in regard of

- characteristics of the irregular migration inflow (numbers, composition/ origin)
- political and systemic factors (the party in power, the distribution of competences, the role of courts, the membership in the EU and the Schengen Agreement, the public opinion, the mobilisation of interest groups)
- economic factors (the informal sector, migrants' employment prospects)

This selection should provide us with an ample picture of the circumstances of regularisation policies in both countries. Since in theory there is an indefinite number of variables intervening in the policy-making process, this study cannot claim completeness. Consequently, the discussion has to be understood as a mere selection of factors that appear to have been be of particular relevance for regularisation programmes.

The analysis of the different aspects for comparison is based on both quantitative and qualitative data available from official documents, academic literature as well as interviews with government officials where possible.

With regard to an overall conclusion and a generation of general hypotheses, we have to be aware that a possible selection bias may be included in both the selection of countries

and aspects of comparison. However, further research on regularisation policy-making and a testing of the results of this paper should clarify the validity of this comparison.

4. Immigration policies and the latest regularisation debates in Spain and the UK

Before comparing various aspects of the last regularisation debates in Spain and the UK, an overview over the evolution of the respective national immigration policies allows us to evaluate the recent events as elements of a broader immigration picture. Further details of the examined debates and their respective national context will be amplified within the comparison in the next chapter.

4.1 Spain

The Spanish experience with migration is above all characterised by the rapid transformation from a labour-exporting into a labour-importing country during the 1980s (Cornelius, 2004: 387). With an increasing need of foreign labour and at the same time no correspondingly organised recruitment of foreign workers, the migration flow into Spain has been heavily irregular (ibidem: 388-390, 398). This development led to the first comprehensive law on immigration in 1985 (LO 7/1985), also known as the *Ley de Extranjería* ('Law on alienage'). It is argued that this law created basically three routes to obtain legal residence in Spain:

- The migrant can apply for a visa from abroad, if he/ she received a job offer from Spain.
- A quota system for new migrants was introduced.
- An extraordinary regularisation programme allowed irregular migrants to legalise their status. (Geddes, 2002: 163-164)

Since 1985, this last option has been offered six times. Spain carried out extraordinary legalisations in 1986, 1991, 1996, 2000, 2001 and 2005.The number of regularised migrants per programme has exponentially increased from approximately 38,000 accepted applications

in 1985 to more than 550,000 positively resolved cases in 2005 (Kostova Karaboytcheva, 2006: 11, 15; Ministerio de Trabajo y Asuntos Sociales, 2005a). These regularisation programmes were accompanied by revisions of the 1985 *Ley de Extanjería* in 2000 (LO 4/2000, ; LO 8/2000) and in 2003 (LO 14/2003) oscillating between at times more liberal and at times more restrictive approaches towards immigration (Cornelius, 2004: 406).

Despite these numerous efforts to control migration, Spain counts among the countries with the largest populations of irregular migrants in Europe (ibidem: 389).

The 'Proceso de normalización'

In 2004, the Spanish Government convened the trade unions, employers, NGOs, and the Autonomous Communities among others to a 'Social Dialogue' to consult and elaborate jointly the regimentation of a large-scale amnesty for irregular workers. By the end of the year, the Spanish Council of Ministers decided on the implementation of the so called 'proceso de normalización de trabajadores extranjeros' ('normalisation process of foreign workers'). Following this decision, from February 2005 to May 2005, irregular workers together with their employers could present their applications for a regularisation of their immigrant status. In order to qualify, the employer had to give proof of a valid labour agreement over a contracting period of at least six months. Moreover, the migrant had to be registered in his or her municipality before the 8 August 2004 and had to have no criminal record in Spain or other countries of residence in the previous five years. By the end of 2005, out of the 688,419 applicants 550,136 were regularised. (All informations, Ministerio de Trabajo y Asuntos Sociales, 2004, 2005a; Ministerio de Trabajo y Asuntos Sociales, 2005b)

4.2 The UK

Experiences with migration in the UK differ notably from the Spanish case. Although the UK became a net immigration country in 1980s (Layton-Henry, 2004: 318) just like Spain, remarkable policy responses towards immigration date back 20 years earlier. While until the beginning of the 1960s the immigration from the colonies and the Commonwealth was very much unrestricted, the implementation of the first Commonwealth Immigrants Act in 1962 set the stage for a tougher migration control regime. Since then, Britain has steadily introduced new legislation in order to restrict immigration; this includes among others a second Commonwealth Immigrants Act in 1968, the 1971 Immigration Act and the 1981 British Nationality Act. With the focus of immigration policy swinging to refugees in the early 1980s, the restrictive course was maintained with the 1987 Immigration (Carrier's Liability) Act.

To begin with, the legal routes into Britain consist therefore of

- a work permit system which under the condition of a job offer allows mainly skilled migrants to enter the country
- a highly skilled migrants programme, launched in 2002 and based on a points system, which grants the right of residence for one year
- a sector based scheme for low skilled workers which was introduced in 2003. (Levinson, 2005: 27)

The UK's experience with extraordinary regularisation programmes is rather limited. So far, two regularisation programmes between1974 and 1978 legalised 2,271 migrants, most of them Pakistani or Commonwealth citizens (Guild, 2000: 215-216). Moreover, another regularisation programme aimed at migrant domestic workers ran from 1998 until 1999 and legalised the status of less than 200 migrants (Levinson, 2005: 29-30). Apart from these extraordinary schemes, since 1977 the UK offers a permanent regularisation programme. In

order to qualify for legalisation, the migrant must have lived for at least 14 years continuously in the UK. Families with small children however may regularise their status after 7 years of continuous residence in the country. While in 1985 1,350 of such grants were made, this number rose to 5,900 in 1998 (Guild, 2000: 218) and reached approximately 4,000 in 2005 (Home Office, 2006: 72).

Notwithstanding these restrictive efforts, an increase in apprehensions of irregular migrants has been interpreted as a rise in irregular migration also in Britain recent years (Layton-Henry, 2004: 324).

The amnesty debate in 2006

After various scandals surrounding the British immigration system in the previous years, in 2005 the Home office presented the new five year strategy for asylum and immigration 'Controlling our borders: Making migration work for Britain' (Home Office, 2005a). Although this white paper laid the emphasis on the deportation of irregular migrants and did not include any amnesty plans, a year later the possibility of an amnesty was heatedly debated in the press when the Secretary of the Home Office and others indicated the necessity of a mass regularisation. This discussion was continued 2007, however, the focus of this analysis will be on 2006 where most of the debate took place.

5. The Spanish and British debate in comparison

In the following, a comparison between the recent amnesty debates in Spain and the UK along migrant-related, political and economic factors should shed light on the question why each country opted for one particular strategy. Eventually, this could allow us to generate hypotheses on regularisation policies irrespective of a particular country.

5.1 The characteristics of the irregular population

Comparing the cases of Spain and the UK in respect of the particular features of their migration inflows, both the estimated number of irregular migrants and the composition of this group in terms of origin, culture, ethnicity, etc. differ markedly between the two countries

5.1.1 The number of irregular migrants

Irregular migration, by its very definition, remains unquantified and often even unquantifiable: Therefore, as Clarke emphasises, 'any figure generated is at best an educated guess' (2000: 21). Due to different measurement methods as well as the exploitation and politicisation of the numbers, estimates reflect often a particular perception of reality rather than hard facts. In spite of this weakness, a comparison renders the necessity to rely on these perhaps biased estimates in the scholarly literature as well as in official government documents. Consequently, the following calculations cannot claim absolute correctness.

Preceding the 2005 regularisation, the Ministry of Labour and Social Affairs (Ministerio de Trabajo y Asuntos Sociales) stated in its 2004 statistical yearbook on immigration that by the end of 2004, 1,977,291 foreigners held a residence permit in Spain. In addition, the 2004 municipal census announced the presence of 3,730,610 registered foreigners (Ministerio del Interior, 2004). The difference between registered migrants and legally resident migrants

points to a number of at least 1.75 million irregular migrants in Spain. Calling to mind that these figures do not include irregular migrants who are not registered anywhere, we have to assume that the number of irregular migrants in Spain was much higher. Estimates on the number of undocumented migrants in Spain in 2003 count with about 400,000 (Díez Nicolás, 2005: 16). Therefore, by the time, the 2005 regularisation process was decided and executed the number of irregular migrants on the Spanish territory was probably already higher than the deduced 2.15 million (= 1.75 million irregular but registered migrants + approximately 400,000 unregistered migrants).

In the UK, despite the common claim that irregular immigration has increased (Layton-Henry, 2004: 324), few concrete numbers are to be found. In 2005, the UK Government published for the first time estimates on the number of irregular migrants in the UK (Home Office, 2005b). Accordingly, the Government estimates range between 310,000 and 570,000 irregular migrants with a median of 430,000 (Home Office, 2005b: 5). Yet, the data collection by the Home Office and the resulting estimations on the irregular population appear weak and outdated since the Government's report is based on a ten-yearly census which was last conducted in 2001 (ippr, 2006: 9). Therefore, Migration Watch UK, an immigrant-sceptic think thank, believes that the number of irregular migrants for 2005 oscillates between 515,000 and 870,000 with a central estimate of about 670,000 (2005). Hence, as in the Spanish case, the official statistics cover rather the lower end of estimations on the irregular population.

Nonetheless, when we compare the official and unofficial estimates of both countries, clearly Spain has to deal with a far higher number or irregular migrants than the UK.[5] Due to the difference in numbers and policy choices in the two countries, we might infer that there is

[5] The comparatively higher number of irregular migrants in Spain reflects the proximity of the Iberian Peninsula to the regions wherefrom migration pressures emanate (Geddes, 2002: 171).
This is confirmed by the constantly strong participation of Moroccans in the various regularisations schemes (Kostova Karaboytcheva, 2006: 6) and the almost daily arrival irregular sub-Saharan migrants on the Canary Islands.

a threshold in absolute or relative numbers for extraordinary regularisation programmes. A clear threshold, however, does not result when we add other countries to the comparison: Despite the lack of any serious estimations about the number of irregulars on Belgian ground, this country has executed one-off regularisation programmes (Bernard, 2000: 110) and legalised the status of alone 52,000 in 2000 (Kostova Karaboytcheva, 2006: 6). Likewise, Switzerland carried out a special regularisation programme in 2000 legalising about 13,000 aliens (OECD, 2001: 81), while the Swiss Federal Agency for Migration only vaguely estimated the number of irregular migrants in the country between 50,000 and 300,000 (Bundesamt für Migration, 2004: 10). Although there were no clear estimates about the absolute nor the relative number of irregular migrants in both countries and although even the higher estimates in Switzerland were well below the minimum estimates in the UK, both Belgium and Switzerland ran large-scale regularisation schemes

These examples show that concrete or particularly high estimates on the irregular population are no absolute condition for large scale regularisation programmes. This does no exclude that with a growing number of irregular migrants the pressure to carry out legalisation programmes increases, as might be the case in Spain. But the comparison shows that the estimated numbers themselves do not explain why the British government ruled out an extraordinary amnesty.

5.1.2 The origin of the irregular migrants

Regarding the outcomes of the regularisation debates in Britain and Spain, it is conceivable that the expected composition of the respective irregular populations was the cause for the different policy choice. This is based on the assumption that migrants who are perceived as culturally close may be more readily welcomed by the public and the policy-makers than migrants who are considered as very different from the receiving population.

Similar to the estimation of overall numbers, the origin of the irregular migrants is difficult to assess. Yet, in Spain since the regularisation programme took place, we have precise information about the applicants for legalisation: Of almost 700,000 applications about 18% were submitted by Latin Americans, alternatively of the 550,136 positively resolved cases 43% concerned Latin Americans; in number, Ecuadorians presented the strongest national group and were closely followed by Romanians (Kostova Karaboytcheva, 2006: 6; Ministerio de Trabajo y Asuntos Sociales, 2005a). Moroccans were the third strongest group but merely handed in half as many applications as Ecuadorians did (ibidem). Interestingly, Cornelius indicates that in terms of acceptance or preference regarding their integration, Spaniards prefer migrants of Latin American origin, followed by East Europeans, sub-Saharan Africans and North Africans (Cornelius, 2004: 420). Thus, regarding the nationalities of the migrants the 2005 regularisation programme in fact met the preferences and perhaps expectations by the public.

Nonetheless, this factor should not be overestimated since regularisation programmes often include nationality criteria and, indeed, did so in Spain in the past. Thus, if the nationality of the candidate for regularisation were of foremost importance and interest, the host country could simply include this requirement into the eligibility criteria.

With no extraordinary regularisation in the UK in 2005, the origin of Britain's irregular population remains largely unknown. However, ippr in its report on irregular migration uses as guidance data on migrants detained under the Immigration Act by December 2004: Out of these nearly 2,000 people, 39% were of African origin, 28% came from Asia, 15% were Europeans, 11% from the Americas and 7% were from the Middle East (ippr, 2006: 10). Since the accession of the new member states to the EU in 2004 and 2007, the percentage of European irregular migrants, however, is probably lower by now. Should the nationality of the candidates for regularisation be of importance, then we would have to

assume that irregular migrants from Africa and Asia are not very welcome in the UK. Yet, this is little convincing when we take into consideration that the origin of the irregular migrants was not part of the public debate in 2006. Moreover, a British Government official pointed out that in analogy to the points-based legal immigration scheme an extraordinary regularisation would be regardless of the origin of the migrant (Interview no. 1, 2007). Also, it was questioned whether the origin of a migrant would be a realistic indicator of his or her integration capacity (ibidem).

Since neither in Spain nor in the UK the origin of the irregular migrants have played a major role, considerations in this direction are evidently no prerequisite the decision for or against an amnesty.

5.2 Political and systemic factors

Beside the characteristics of the migration flow itself, the decision-making on amnesties is as any other policy field under the influence of political and systemic features of the destination country. Therefore, it should be interesting to examine the impact of the empowered institutions and political parties, the role of courts, and the influence of the EU and the adherence to the Schengen Agreement. Moreover, as important elements of the public policy-making process, we need to include the public opinion and interest group activities in the comparison.

5.2.1 The decision-makers

In regard of who has the power to grant an amnesty, there is in fact no big difference to between Spain and the UK: Regularisations follow in both countries decisions by the executive branch. In Spain, the 2005 regularisation was set in motion by a royal decree (RD

2393/2004), which is an executive law, and an executive order (Orden pre/140/2005). Although the royal decree needed to be based on the 2000 parliamentary law on alienage, the decision to issue this decree and thereby initiate the regularisation procedures was part of the executive's discretion.

Regularisation programmes in the UK come under the residual powers of the Secretary of State for the Home Department; this means, since they do not fall under the Immigration rules and the Immigration Act, regularisations are concessions made by the Minister (Guild, 2000: 214). Regarding the debate about an amnesty in 2006, the discussion was led by various Members of Parliament, representatives of the Transport and General Workers Union and the Immigration Advisory Service (Woodward, 2006), but mainly became a contentious issue when the Home Secretary, John Reid, and the Immigration Minister, Liam Byrne, endorsed or did not rule out the possibility of an amnesty (Travis, 2006; Woodward, 2006).

As both in Spain and the UK the executives decide on extraordinary regularisations and yet decided differently in 2005 and 2006, the choice for or against an amnesty is evidently not a question of parliamentary decision-making or executive decision-making. Therefore, it should be interesting to see whether it makes a difference which party is in power and enjoys the prerogative over regularisations.

5.2.2 The political parties in power

The 2005 regularisation programme was decided and implemented under the PSOE (Partido Socialista Obrero Español: Spanish Socialist Workers' Party) government of José Luis Rodríguez Zapatero. A year later, the amnesty debates in the UK took place under Labour rule, hence under a self-declared democratic socialist party (Labour Party, 2007). In other words, both the Spanish and the British debate occurred under rather left-leaning

governments and yet the outcomes were completely different. Therefore, we need to examine whether the decision for the regularisation was a particular Spanish socialist decision and whether the rejection of a regularisation in the UK characteristic for the Labour Party.

Taking into account all six extraordinary regularisations in Spain so far, we cannot confirm a decisional pattern based on a party ideology or standpoint: While in fact four regularisations (1986, 1991, 1996, and 2005) were decided under Socialist rule, the 2000 and 2001 regularisation programmes were implemented by a Conservative government.

In the UK, all three amnesties (1974, 1977, and 1998) were announced under the Labour Party in power. Consequently, the absence of regularisation in 2005 cannot be ascribed to the fact that a Labour government was in place at the time, since the party has proven willing to execute legalisations in the past. It is rather noteworthy that after the Immigration minister's considerations on an amnesty in 2006, other cabinet members as well as the Prime Minister of the Labour government immediately denied that there were such government plans (Morris, 2006).

Evidently, the respective party in government is no safe predictor for the implementation of a regularisation scheme.

5.2.3 The influence of courts

As recognised in the academic literature, courts can have a remarkable influence on migration policies (Joppke, 1997, 2001). In the case of regularisation programmes, courts have had an identifiable impact particularly in the UK. The amnesties in 1974 and 1977 were announced in order to "limit the adverse consequences of court decisions extending the concept of illegal entry in the UK" (Guild, 2000: 215). In other words, the amnesties were granted to prevent those migrants unaware of their irregular status from being removed. The 2006 debate, however, was not driven by any court decision or pending judgment. Rather, within the scope

of a reform programme tackling immigration control, the Home Secretary expressed that the introduction of ID cards for foreigners should be coupled with an amnesty for irregular migrants (Travis, 2006). Moreover, Statham and Geddes state that 'a British judiciary (…) is visible and expansionist within limits, but clearly not to an extent that could potentially curb the strongly prominent and restrictionist government' (Statham & Geddes, 2006: 255).

Just as Spanish regularisation programmes in the past have not related to any particular court decisions (Gortázar Rotaeche, 2000), the 2005 regularisation programme has not stood in context of a recent or pending judicial decision (Kostova Karaboytcheva, 2006: 13-18).

In short, the debates and outcomes in the two countries in 2005 and 2006 were apparently not conditioned by the respective national courts nor by international courts such as the European Court of Human Rights. The involvement of judges in national regularisation policies may therefore be considered an important but not necessary condition for the decision on an amnesty.

5.2.4 The EU and the Schengen Agreement

With the gradual communitarisation of migration policies initiated with the Treaty of Amsterdam in 1999 and also since the Schengen Agreement, the European Union and European co-operation beyond that have strongly shaped national migration policies. Indeed, since a common legal framework on regularisations does not yet exist, the European Commission deems it necessary to discuss joint legalisation approaches in the future (European Commission, 2007). Hence, there is no directly discernable legal effect of the European Union on the regularisation plans in both countries. Nonetheless, a wider European debate could have affected the decision to regularise irregular migrants or to back away from such plans. Regarding the 2005 normalisation programme in Spain, there has been such a debate – but primarily after the Spanish Government had announced the regularisation

(Bundesamt für Migration, 2005: 4). Other EU member states criticised Spain for not having consulted the other governments and for having acted arbitrarily (ibidem). As this debate took place after the decision for a regularisation in 2005, the course of the Spanish legalisation policy seems to have been pursued relatively independent from other European governments.

In the case of the UK, this independence is even more obvious: With the decision not to join the Schengen Agreement and to potentially opt-in rather than fully subscribe to the common immigration policy under the Treaty of Amsterdam (European Union, 1997), the UK has followed its own migration strategy. Moreover, in the recent debate in Britain, regularisation policies and immigration approaches by the EU or other European countries (particularly Spain) were mainly presented as cautionary tales of a negative policy development (Green, 2007; Heathcoat-Amory, 2007: 10, 14; Rachman, 2006).

Therefore, neither the EU and nor individual states determined the outcomes of the regularisation debates in Spain and the UK.In sum, none of the examined political factors can by itself convincingly explain the Spain opted for an extraordinary legalisation programme in 2005 whereas the British government has shied away from such a step so far.

5.2.5 Public opinion

With governments arguing that their immigration policies reflect the mass public opinion (and therefore increasingly immigrant-sceptic attitudes) (Cornelius & Tsuda, 2004: 19), the public view on regularisations in Spain and UK might indicate us why the respective governments opted for or rather against an amnesty.

For Spain, based on a large-scale longitudinal study, Díez Nicolás (2005) has found a relatively positive attitude towards legalisation programmes among the public: Although Spaniards are more aware now of the presence of immigrants and overestimate the number of migrants (Díez Nicolás, 2005: 159), more than 50% of the participants approved of

regularising those immigrants who are already in the country instead of expelling them immediately (ibidem: 199). Aapparently even those Spaniards who are in favour of limiting the entry of migrants support rather the legalisation of irregular migrants than their expulsion (ibidem: 200). Therefore, Díez Nicolás assumes that the public gives relatively little importance to the legal status of migrants (ibidem: 199).

This positive attitude in Spain is particularly noteworthy when we take into account that in the media increased immigration is often coupled with negative descriptions such as 'summoning effect', 'avalanches' and 'waves' (Cabezas de Alcalá & Velilla Giménez, 2005: 42; Gortázar Rotaeche, 2000: 295). Interestingly, the public opinion was not seriously influenced by this negative media image during the 2005 regularisation process: Although Spaniards were more worried about immigration (probably because of an increased awareness of migrants) at the time, issues such as racism, international terrorism or a 'value crisis' that might have indicated a general problem with immigration did not gain importance (Cabezas de Alcalá & Velilla Giménez, 2005: 105). In short, the Spanish government faced a relatively benevolent public in legalisation matters.

Public opinion polls in the UK reflect a more diverse picture. While a recent study claimed that two out of three British approve of granting residence rights and work permits to irregular migrants (ORB, 2007), a poll released at the height of the regularisation debate in 2006 suggested the opposite. According to YouGov, 77% of those polled were against an amnesty for irregular migrants; moreover (YouGov, 2006). It is therefore unclear whether, as Cornelius and Tsuda claim, 'in Britain, immigration policymakers seem trapped between their own liberal impulses and an illiberal public (2004: 19).

In sum, while it is widely argued that the Spanish government could count so far on the support of the public in its regularisation policies, the British government faces a less obvious public opinion. However, since the public opinion might itself be conditioned by

political propaganda, any conclusions on the impact of the public on the policy choice could be simply a self-fulfilling prophecy. Therefore, the public opinion does not offer an unambiguous explanation for the policy outcomes in Spain and the UK.

5.2.6 Interest groups

Special interest groups count as another domestic constraint in migration policy-making (Cornelius & Tsuda, 2004: 11). Therefore, we need to consider whether the governments in Britain and Spain are serving the interests of particular 'clients', i.e. NGOs and other interest groups.

In the past, various groups have defended migrants' rights and supported extraordinary regularisations in Spain. Rather than grass root movements, these groups have mainly been professional associations. As such the two major trade unions, the Comisiones Obreras (CC.OO., Labour Commissions) and the Unión General de Trabajadores (UGT, General Workers' Union), as well as the Jueces para la Democracia (Judges for the Democracy), and the Asociación Libre de Abogados (Free Associations of Lawyers) have stood out (Gortázar Rotaeche, 2000: 298). Also, the development of the 2005 regularisation programme was marked by a significant and deliberate inclusion of social forces: Again the major trade unions, professional associations and NGOs participated in the drafting of these immigration rules (Ministerio de Trabajo y Asuntos Sociales, 2004). Moreover, the CC.OO. and the UGT but also NGOs like SOS Racismo expressed their support of and campaigned for the regularisation programme (CC.OO. & UGT, 2005; SOS Racismo, 2004).

In the UK, non-governmental mobilisations regarding regularisations is more politicised and polarised both in the pro- and anti-direction. On the one hand, the pro-regularisation sector of society and the professional world campaigned intensively for the implementation of an extraordinary regularisation programme in Britain. The Immigration Advisory Service (IAS), a charity offering support and representation to migrants, argues in

favour of an amnesty and supports its claims with the pro-regularisation results of the mentioned 2007 poll (IAS, 2006, 2007). Moreover, a campaign exclusively dedicated to promote an amnesty was set up by the Citizen Organising Foundation (COF), an alliance of faith and community associations. The so called 'Strangers into citizens' (SiC) campaign (SiC, 2007) was particularly active and called for a massive rally in London in May 2007 in order to support their cause; they were joined by religious leaders and representatives of the Transport and General Workers' Union (Hickley, 2007). On the other hand, the opponents of a regularisation have not remained silent either. Migration Watch UK, an immigrant-sceptic think tank, and its chairman Andrew Green have continuously criticised the current amnesty plans since 'it would make a bad situation worse' (Green, 2007), attract even more irregular migrants and result in enormous net costs for the UK (Migration Watch UK, 2006). Therefore, they propose merely a 'departure amnesty' (Green, 2007) instead of an amnesty granting the right of residence.

In short, while in Spain a deliberate dialogue between the government and the social and economic forces did not leave much room for amnesty-sceptic voices, the picture in the UK is more varied. There both the supporters and opponents of the last amnesty project have campaigned actively for their cause. The question therefore is which influence these groups indeed have. In this respect, Statham and Geddes (2006) offer an interesting study: The authors test for the case of the UK Gary Freeman's 'client politics' model which foresees that the 'organised public' pressurises governments towards more liberal migration policies (Freeman, 2002). Based on an extensive network analysis, they find that first of all the government limits the margin of societal claims-making with a very restrictionist agenda (Statham & Geddes, 2006: 254). Therefore, Statham and Geddes detect the main cleavage in British migration policies between a restrictionist government and the pro-migrant NGO wing (ibidem: 257). Since however most of these migrant-friendly NGOs are state clients (i.e.

they are publicly funded) (ibidem), the authors consider them as relatively weak and not very influential (ibidem: 265-266). Hence, this study falsifies Freeman's idea of 'client politics' for the case of the UK.

For Spain, there is no similar quantitative and qualitative study measuring the impact of interest groups on migration policy-making available. It is therefore difficult to assess which influence the private sector had on the development of the 2005 regularisation programme. As Statham and Geddes emphasise, the influence of interest groups may vary with the political context. Thus, it is possible that in Spain claims by the 'organised public' facilitated the implementation of a legalisation programme. Nonetheless, the similarities in migration policy-making between the Spain and the UK, i.e. the dominance of the government and particular ministries, may lead us to the (preliminary) conclusion that also in Spain regularisation policies are determined 'top-down'. Likewise, the analogiese suggest that the intervention of organised interests in the regularisation debates is not the salient point for or against an amnesty. This assumption, however, should not be taken as a fact as long as there is no in-depth analysis of the intervention of interest groups in Spain.

5.3 Economic factors: The informal sector and migrants' employment prospects

Finally, also economic considerations may lead a state to resort to granting amnesties. At this, employment prospects for migrants on the one side and the informal sector on the other side stand out in the two examined cases.

For southern European countries, Russell King argues that informal economic activities and irregular migration are characteristic (King, 2000). According to King's migration model, the rapid economic development of southern European countries has caused shortages in the labour force while at the same time a large informal sector has offered employment opportunities for irregular migrants. In combination, informality and irregular

migration offer advantages for both the employers who avoid taxes and for the irregular migrant who obtains employment (Geddes, 2002: 152). This trade-off between employers and migrants, however, includes also disadvantages: First, the state does not receive taxes for these irregular workers while they still may benefit from welfare services; second, informality puts the state's regulatory capacity into disrepute; third, irregular migrants are more vulnerable to abuse by traffickers or at their workplace; and fourth, the success of irregular migration ridicules the lengthy procedures of legal immigration (ibidem: 154). Therefore, regularisations offer the opportunity to address irregular migration and thereby a core element of economic informality.

These considerations appear to have underpinned the decision to carry out a regularisation in Spain in 2005: Explaining the principal elements of this amnesty, the Spanish government emphasised in particular that

> 'The underground economy is the true summoning effect for irregular immigration which is why in addition to the necessary instruments for the border control, returns, devolutions and expulsions, it is intended to impact on the arrangements of the labour market and avoid the perpetuation of irregular labour relations'. (Ministerio de Trabajo y Asuntos Sociales, 2004: 5; translation by the author).

Moreover, in agreement with the social forces and employers, mechanisms of workplace inspections and proof of legal employment have been developed in order manage the transition from irregular to legal employment (ibidem: 5-6, 9). These official statements indicate that the 2005 regularisation process is to a high degree based on economic motivations and more specifically on breaking the link between informal activities and irregular migration.

In Britain, fighting irregular employment of migrants is also a major aspect of the five year strategy for asylum and migration 'Controlling our borders: Making migration work for Britain' presented in 2005 by the Home Office (Home Office, 2005a). Moreover, at the beginning of the 2006 debate ippr presented calculations according to which a regularisation could result in an additional tax contribution of over £1 billion per year (ippr, 2006: 12). However, despite the agreement on cracking down on illegal work in the strategy paper as much as in the 2006 public debate, and despite promising new tax incomes, an amnesty has not emerged as a solution accepted on all sides. A migration expert of the British government explained this outcome by arguing that from the British perspective an amnesty is similar to a summons for other migrants to come or stay illegally in Britain and simply wait for another regularisation (Interview no. 2, 2007).

In, short, a cross-country comparison of the two debates reveals an interesting difference: While the Spanish government explicitly considers the employment opportunities in the informal sector as the principal incentive for irregular migration, the British government attributes this 'summoning effect' to the regularisation itself. In the first case, this leads to the conclusion that a regularisation is a powerful means to gain control over the underground economy by withdrawing a large share of its usual workforce. In the latter case, however, a regularisation is considered to have the opposite effect by stimulating the hope for further amnesties and by simply resulting in the replacement of the legalised with new irregulars (Green, 2007).

5.4 Summary

Regarding the results of this comparison, this discussion suggests that the decision-maker's perception of the stimulus for further irregular migration is the factor that turns the balance for or against an amnesty. While the discussed political factors appeared to be relatively

insignificant for the policy outcome, the number of irregular migrants is closely related to the issue of informal employment: For governments arguing with the summoning effect of the underground economy, a growing number of irregular migrants increases the need to officially break the link between irregular migration and informal employment in order not to attract more irregulars. Hence, they grant amnesties. If, however, there is the conviction that a regularisation attracts more migrants, a growing number of irregular migrants should not raise the attractiveness of such a legalisation process.

6. Conclusion

So far scholarship on regularisation policies has not come up with coherent explanations on why states grant amnesties in a particular situation. With a cross-country comparison along political and economic factors as well as aspects related to the migration flow itself, this paper has aimed at filling the explanatory gap. Thereby, first, the choice of Spain and the UK as case studies has allowed us to examine two almost parallel regularisation debates with different outcomes. And second, the analysis of a wide array of factors intervening in the policy-making process in both countries has provided us with an ample picture of the respective policy debates.

In the course of this comparison, I have developed the argument that the particular perception of a 'summoning effect' is crucial for the regularisation policy of a country. While the Spanish authorities blamed the underground economy for the high incidence of irregularity among migrants, the British authorities considered a regularisation itself as a stimulus for irregular migration. Hence, the opposite evaluation of the advantages and disadvantages of an amnesty.

While the existing literature has already pointed to states' interest in both increasing the labour market transparency and avoiding a 'summoning effect', this study generated an explanatory link between both sides: If a government considers the employment opportunities in the informal sector as stimulus for irregular migration, an amnesty in combination with enforced employer controls offers the chance to reduce the stock of irregular migrants. In contrast, if the regularisation itself is regarded as attracting new migrants, a government should want to refrain from granting an amnesty.

Moreover, the discussion has shown that factors such as the estimated number of migrants or public opinion do not by themselves explain the decision for or against an amnesty. However, in relation to the perception of a particular 'summoning effect' these

aspects may reinforce the policy tendency in either direction. As such, high estimates on the size of the irregular population may be interpreted as sign for a strong informal sector and increase the pressure to disconnect the sector from its usual workforce. Also, a public benevolent towards irregular migrants to regularisations could be facilitating the decision in favour of an amnesty. Consequently, amnesties have to be understood as multi-causal phenomena.

With regard to past regularisation studies and future research, the hypotheses deducted from the comparison between Spain and the UK constitute an important point of reference: While previous analyses have emphasised a North-South axis in Europe separating those countries unwilling to grant amnesties from those willing to implement regularisations, this paper indicates that the high coincidence of mass regularisations in southern Europe may be rather a coincidence than a truly regional phenomenon. This is supported by the fact that countries like Switzerland, Belgium and the Netherlands have also conducted massive legalisation schemes. The commonality of a relatively large informal sector and a comparatively high number of irregular aliens in southern Europe may therefore back up the decision for an amnesty, but both aspects are no necessary conditions for such a policy. Indeed, according to the here developed hypotheses all those countries should have in common that they do not perceive amnesties as the principal motor for irregular migration. In order to test the validity of my explanations and to shed light on amnesty policies, further research on views on the summoning effect both in northern and southern European countries needs to be done.

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