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Dubliners Project

Summary of the final Report



Dublin Units

Italian Ministry of Interior – Dublin Unit, Department for the Civil Liberties and Immigration, Italy ■ Ministerio del Interior – Dublin Unit, Oficina de Asilo y Refugio (OAR), Spain ■ Swedish Migration Board, Dublin Unit, Sweden ■ Office of Immigration and Nationality (OIN), Hungary ■ Ministry of Interior – Aliens Division Asylum section, Greek Dublin Unit, Greece



PRO ASYL
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ΕΛΛΗΝΙΚΟ ΣΥΜΒΟΥΛΙΟ ΓΙΑ ΤΟΥΣ ΠΡΟΣΦΥΓΕΣ

S U M M A R Y

Context

The “*Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European communities*”, the so-called “*Dublin Convention*” was signed in June 1990 by the (then) 12 Member States of the European Community.

The Signatory States to the Convention implementing the *Schengen Agreement* then signed the Bonn Protocol, according to which the rules on the responsibility for asylum laid down in the Convention were no longer applicable with the entry into force of the Dublin Convention the 1st September 1997.

With the entry into force of the Amsterdam Treaty (1st May 1999), Member States agreed to adopt common instruments to guarantee, among others, “criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country in one of the Member States” (art. 63).

In an area without internal borders and in which free movement of persons was supposed to be guaranteed, the European Council adopted the Dublin II Regulation (Reg. 343/2003 on the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national of February 18th 2003), replacing the Dublin Convention.

The **objectives of the Regulation are**: to promptly determine the State responsible for the assessment of an asylum claim; to prevent multiple applications for asylum simultaneously or successively submitted by the same person in different Member States (the so-called “*asylum shopping*”) and to prevent the phenomenon of “*floating refugees*” or “*refugees in orbit*”, situations where refugees are transferred from one Member State to another with the risk that none accepts responsibility.

During the years the “**Dublin System**” has been set up. Notwithstanding the Dublin Regulation has been generally welcomed by Member States because of its aim to assure fair and prompt assessment of the applications, **the broad differences among the European Member States continue to generate some of the problems the Regulation tried to overcome.**

As the European Parliament revealed “*unless a satisfactory and consistent level of protection is achieved across the European Union, the “Dublin System” will always produce unsatisfactory results from both the technical and the human viewpoints, and asylum seekers will continue to have valid reasons for wishing to lodge their application in a specific Member State to take advantage of the most favorable national decision-making process*”¹.

¹ European Parliament, Resolution on the evaluation of the “Dublin System”, INI/2007/2262, 2nd September 2008

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On the 3rd December 2008, the European Commission made public its proposed Recast of the Dublin II Regulation². Notwithstanding the positive changes proposed by the European Commission in order to improve the efficiency of the Dublin System and to guarantee that the needs of applicants for international protection are duly addressed under the Dublin procedure, some problems remain. The evaluation of the “Dublin System” the “Dubliners” project has carried out aims at facilitating this process of reform.

The Project

Following the Reports of the EU Commission to the European Parliament and to the Council on the evaluation of the “Dublin System”, relevant problems have emerged both on the practical application of the Dublin II Regulation and on the effectiveness of the “Dublin System”.

The lack of uniformity in the application of the Regulation and the failure of States in respecting the rights of transferred people to receive a proper examination of their asylum claims, thus risking violating the *non-refoulement* principle, requested a better understanding of the “Dublin System” and of its mechanism.

The “Dubliners” project aimed at identifying flaws in the “Dublin II System” and at documenting, through specific research, the consequences and the impact which implementation of the Dublin II Regulation has had on asylum-seekers and on Member States. Implementing a partnership between six refugee assisting NGOs in six selected Member States and involving five Dublin Units as participants, the project has identified **best and worst practices** in the six partner countries and has promoted a learning process between all stakeholders involved, on the basis of the experience so far and of the difficulties encountered.

The specific goal of the project was to collect empirical material primarily through interviews with asylum-seekers describing their subjective experiences during the Dublin procedure and through data collection and interviews with public officials and relevant stakeholders.

The methodology chosen, both theoretical and empirical, aimed at actively involve partner associations and institutions in order to carry out an exchange of information and to highlight the difficulties and flaws of the System. The comparative studies on the Dublin Regulation and other relevant Community legislation have been analysed with the same purposes.

The Final Report

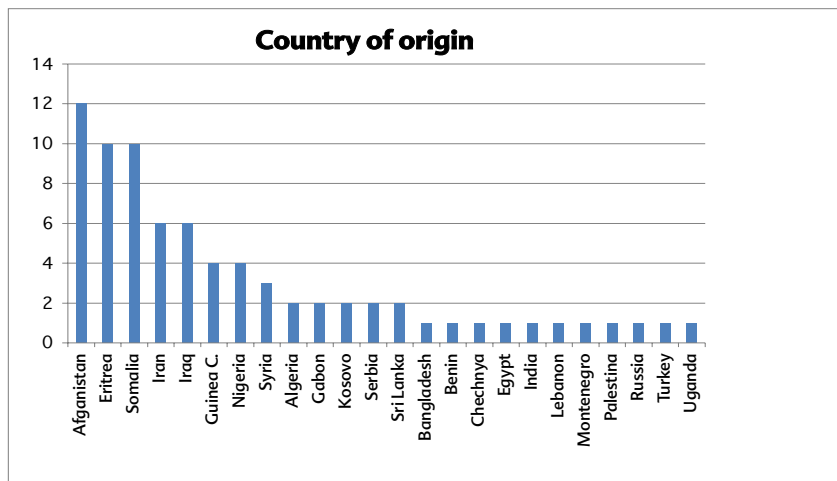
The final report is an analysis of the issues raised during the project. The chapters are based on the results of three questionnaires, which include practices revealed by NGOs and the official statements of the Dublin Units. To make the point of view of asylum-seekers stand out, opinions, feelings and life stories reported in questionnaire n. III were highlighted in boxes throughout all of the report. In each chapter **bad and good practices** were reported and

² European Commission, *Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person*, (Recast){SEC(2008) 2962}{SEC(2008) 2963}, 3rd of December 2008.

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recommendations were included with particular reference to the European Commission's Recast and the European Parliament's amendments to the Recast.

Statistics have also been included. Unfortunately, we were able to insert statistical data only for the year 2008, since not all of the Member States involved in the project had already completed statistics for 2009 and not all countries were able to provide us with all the information required.



Source: Results taken from questionnaire n. III, submitted to 75 asylum-seekers by the NGOs partners

The description, the aims and the beneficiaries of the project were described together with the methodology, the implemented activities and the obstacles encountered.

The issue discussed in the Report are the following:

- Provision of information to asylum-seekers on the “Dublin System”
- Collection and use of relevant information from asylum-seekers
- Detention and reception
- Family unit
- Discretionary clauses
- Vulnerable asylum seekers
- Transfers
- Access to asylum procedure subsequent to transfers
- Time limits
- Effective remedy

These issues were chosen because they represent the most significant elements asylum-seekers have to deal with during the Dublin procedure and the most relevant aspects of the Regulation's implementation.

The analysis was undertaken with a constant reference to the procedural aspects of the Dublin procedure and to the asylum-seekers needs.

Results of the Report and Conclusions

Analysis of the issues raised by our research shows that the Dublin II Regulation's **negative effects** lie mainly in the **differences encountered in the Member States' asylum systems** on one hand and in **important flaws in the Regulation** itself on the other, in spite of the original purpose and idea of the Regulation. The principles of *non-refoulement* and of family unity that inspired the Regulation are the basis of an effective asylum system founded on respect of the asylum-seekers' rights. The Dublin II Regulation was originally designed not only in order to fight the practice of "*asylum shopping*" but also to avoid the condition of the "*refugee in orbit*" by creating a mechanism which would quickly and effectively determine the State responsible for examination of an asylum application. It is for these reasons that, in theory, the Regulation could be a useful instrument not only for States but for asylum-seekers too.

Nevertheless, also according to the interviews undertaken the main gaps relate to:

- the treatment asylum-seekers receive
- the possibility of avoiding detention
- the reception conditions they find upon their transfer
- the possibility of having an effective access to the asylum procedure
- the possibility of receiving actual consideration of their vulnerability, of their family ties and of their interests
- lack of information

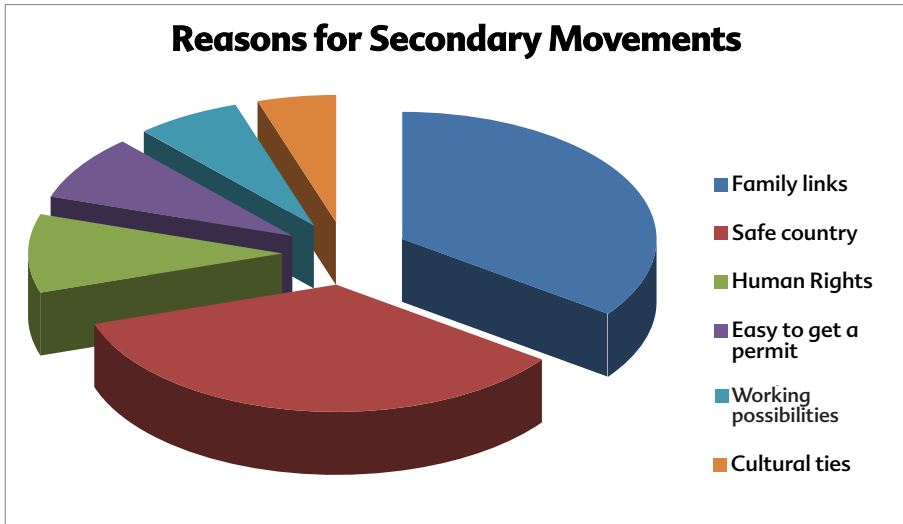
As a last resort the situation asylum-seekers face depends on the luck they have of passing through a country in which their rights are duly respected in the context of an effective and coherent asylum system.

It is probably for this reason that one of the most current remarks made about the Dublin II Regulation is that **until the European Union provides itself with a common European asylum system based on a single, coherent and uniform legal framework, this Regulation will always be ineffective**. The fact is that the Dublin II Regulation is in itself problematic as it often leaves the regulation of important issues to the different national legislations. With no clear definitions and legal safeguards (especially with regard to detention, treatment of vulnerable groups, access to procedure) the Regulation is often ambiguous and confused. Consequently, asylum-seekers falling under the Dublin procedure frequently find themselves deprived of their fundamental rights and sometimes even discriminated in relation to other asylum-seekers (especially as far as detention, reception and family situation are concerned).

The **dissimilarity in the treatment of *Dubliners*** is among the main reasons why asylum-seekers leave the country of first asylum, are reluctant to go back there, or even abscond. As shown in this report, *Dubliners* who have experienced inhuman treatment or a lack of accommodation in the first country complain about having to go back to a country that cannot receive them or where their fundamental rights will be breached. Similarly, knowing that in some countries they will be able to reunite with their beloved ones while they will not have this possibility in others, makes them decide to move. Thus the Regulation does not avoid the situation it was initially conceived

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to fight: the prolonged pending condition of asylum-seekers traveling from one country to another with insufficient knowledge about their situation. Asylum-seekers in general are not *asylum shoppers* but people who are prompted to move for family, medical and security reasons.



Source: Results taken from questionnaire n. III, submitted to 75 asylum-seekers by the NGOs partners

The **lack of information** provided to *Dubliners* is surely one of the most serious problems encountered during our research. Asylum-seekers have often proved to be unaware of what was happening to them, of their rights and of the procedure itself. The issue of information was also problematic regarding the use that States made of it: it appeared that authorities did not take into appropriate consideration the condition of vulnerability of asylum-seekers, their family situation and their personal story. This had negative consequences especially in relation to the application of the sovereignty and the humanitarian clauses. Finally, it appears that there is a great lack of exchange of information between States. In many cases the interest of asylum-seekers is completely ignored not because of the State's will but because important information is not provided or collected.

The fact is that the practice of determining the competent State for addressing an asylum application should not be seen as a competition between States. The implementation of the Dublin II Regulation by Member States as a mean to lighten the burden of reception is a deep distortion of the Regulation.

Given this situation, we truly welcome the European Union Commission's Recast and the Parliament's amendments to the Recast that have the merit of addressing the principal flaws in the Regulation. The Commission's Recast is wider and more comprehensive than the Regulation and the amendments usually specify the broad definitions and generic time limits of the Regulation. For these reasons we warmly recommend the rapid adoption of the Commission's Recast as amended by the Parliament.

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In the meantime, as far as the practice of Member States is concerned, we specifically **recommend** the following:

- Always provide complete and coherent information in a language that asylum-seekers are sure to understand.
- Always collect and consider all relevant information regarding the asylum-seeker's situation, especially with regard to his/her family ties and his/her eventual condition of vulnerability.
- Assure an effective, efficient and rapid exchange of all relevant information between Member States.
- Apply non-custodial measures to an individual before that person can be detained and encourage voluntary methods of transfer. If detention is applied, it has to be for the shortest time possible (the time reasonably necessary to fulfill the required administrative procedures for carrying out a transfer) and only if other non-custodial measures have failed. In any case, an asylum-seeker shall never be detained for the entire length of the Dublin procedure and the Dublin Regulation shall not be used as a reason to apply detention after transfer.
- Assure adequate reception conditions for *Dublin returnees* and specific reception measures for vulnerable groups.
- The emotional and material dependency should be the primary consideration when evaluating family unity.
- We suggest the elaboration and use, in parallel with the discretionary clauses, of alternative and more effective mechanisms (such as temporary suspension of transfers as proposed by the Commission) to solve the problem of non-compliance with EU asylum law and international human rights obligations by a Member State.
- Transfers to Greece shall always be suspended until its asylum system is strengthened and until Greece ensures respect of asylum-seekers' fundamental rights, in line with international standards and Greece's obligations.
- Guarantee a real identification of vulnerable and traumatised people which is common to all Member States. If transfer has to be carried out adequate measures shall be taken in both concerned Member States so that the vulnerability and related special needs are duly addressed during and after transfer.
- Member States should improve their information strategies related to transfers both to the receiving State and the asylum-seeker concerned. Transfers should be carried out promptly and in full respect of the asylum-seeker's dignity. We further recommend States to provide adequate assistance at the borders to *Dublin returnees* upon transfer.
- Member States shall ensure that a full asylum procedure – including the possibility of seeking legal remedy against a negative decision – is ensured to all asylum-seekers in at least one Member State and that this principle is not jeopardised by a Dublin transfer.
- Conflicts between Dublin Regulation and national law time limits should be resolved in a favourable manner for the applicant.
- Ensure an “automatic” suspensive effect of the appeal against transfer.

The Dublin II Regulation could in principle be an important step towards a common European asylum system. For this reason it is of the utmost importance to improve it and to apply it in full respect of the rights and dignity of asylum-seekers.

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*Mr. R is an Afghan asylum-seeker escaping to Europe to find protection: because of his work as an interpreter for the British army, he and his family were threatened by the Taliban. He travelled through Iran, Turkey and Greece while his family stayed in Afghanistan. In **Greece** he was detained for 16 days and, when released, he escaped to Austria, where he applied for asylum for the first time. In Austria, he was told **after 40 days** that he had to **wait 6 months** in order to see if he would be transferred to Greece. He therefore escaped to Hungary because he did not want to wait so long: “I need to get protection soon, so that I can help my family who is in danger” he said during the interview, when explaining the reasons for his displacements. In **Hungary** he was detained in the centre of Békéscsaba and was waiting for a decision at the time of the interview, **one and a half months after** his arrival in the camp. In the camp he has nothing to do, he cannot move freely and medical care is inadequate. He does not want to go back to Greece because he needs to help his family and he is afraid of not receiving shelter and not being able to proceed to family reunification if returned to Greece. When asked about the Dublin procedure, Mr. R declared: “**We are not a football to be played with**. All I want is protection so I can save my family as well. **Dublin is a big problem for everyone**”.*



Dubliners Project

DUBLINERS - Research and exchange of experience and practice on the implementation of the Council Regulation Dublin II establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national

The project has been implemented under the ERF Community Actions 2007

The views expressed are purely those of the authors and may not in any circumstances be regarded as stating an official position of the European Commission or of the Italian Ministry of the Interior or of the Dublin Units involved in the project.

The contents of this summary are updated at 09/04/2010