

# Dubliners Project Report

**“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”**

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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.

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# 1. Introduction

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the Bonn Protocol, according to which the rules on the responsibility for asylum laid down in the Convention were no longer applicable with the entry into force of the Dublin Convention the 1st September 1997.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 (1<sup>st</sup> 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”<sup>1</sup>.

**In an area without internal borders and in which free movement of persons was supposed to be guaranteed, the Commission 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 and with the risk that none accepts responsibility.

During the years the “**Dublin System**” has been set up. It comprises the Dublin Regulation and the EURODAC Regulation (a tool for the comparison of fingerprints), as well as their implementing rules.

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 a matter of fact, some Member States have well established asylum traditions while others are countries of “new immigration” with different approaches regarding not only access to the asylum procedure both at the borders and inside the territory, but also as far as reception conditions of asylum-seekers are concerned.

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*

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1 Art. 63(1) of the Treaty establishing the European Community

*to have valid reasons for wishing to lodge their application in a specific Member State to take advantage of the most favourable national decision-making process”<sup>2</sup>.*

Trying to understand how the differences among Member States had impacted on the rights of asylum seekers was the very objective of the “Dubliners” project.

**The European “Dubliners” project is placed within the debate around the amendments to the Dublin II Regulation.** The deficiencies related both to the efficiency of the System and to the level of protection guaranteed to asylum seekers under a Dublin procedure have been stressed in the Evaluation Report of the “Dublin System” of the European Commission - issued on the 6<sup>th</sup> June 2007 - as well as by various stakeholders following the Green Paper consultation process.

On the 3<sup>rd</sup> December 2008, the European Commission made public its proposed Recast of the Dublin II Regulation<sup>3</sup>. 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. We hope that the evaluation of the “Dublin System” the “Dubliners” project has carried out will facilitate this process of reform.

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

<sup>3</sup> 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}, 3<sup>rd</sup> of December 2008.

## 2. Participating organisations:

### Lead Organisation

#### **CIR Onlus (Consiglio Italiano per i Rifugiati), Italy**

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[www.cir-onlus.org](http://www.cir-onlus.org)

The Italian Council for Refugees is an independent, humanitarian and non profit-making organisation, founded in 1990 under the patronage of the United Nations High Commissioner for Refugees (UNHCR). CIR works with the aim of empowering and co-ordinating actions in defence of refugees and asylum seekers' rights in Italy, in particular in favour of vulnerable groups of people such as women, victims of gender violence, unaccompanied minors and victims of torture.

Among its members CIR counts important humanitarian associations and organisations, the three main Italian trade unions and national and international research institutes. CIR is a member of the European Council on Refugees and Exiles (ECRE), as well as of the Euro-Mediterranean Human Rights Network (EMHRN). CIR has been carrying out extensive lobbying activity with Parliament and the Government to pass a national comprehensive law on asylum. CIR provides social protection and legal assistance to refugees and asylum seekers at its main office in Rome and through its offices all over Italy, particularly at nevralgic entrance borders.

### Partner Organisations

#### **Caritas, Sweden**

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[www.caritas.se](http://www.caritas.se)

Caritas Sweden is a member of the worldwide network of Caritas Internationalis, a confederation of 164 Catholic relief, development and social service organisations working to build a better world for the poor and oppressed in over 200 countries and territories. The main tasks of Caritas Sweden include development and relief work around the world and work with migration, integration, asylum and anti-trafficking issues in Sweden. Caritas Sweden provides legal and social counselling to refugees, asylum seekers and migrants and also provides practical help and support. Resettlement of refugees is one of the main areas of concern for Caritas, and Caritas promotes refugee resettlement through advocacy, policy analysis, networking and information exchange in Sweden and internationally. Caritas is a member of the Swedish resettlement network together with representatives from municipalities, the County Administrative Boards, the Swedish Migration Board and UNHCR where we try to raise awareness of resettlement needs and issues of integration.

#### **CEAR (Comisión Española de Ayuda al Refugiado), Spain**

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[www.cear.es](http://www.cear.es)

**The Spanish Commission for Refugees (CEAR)** is a Non-Governmental Organization of humanitarian action, independent and plural, founded in Spain in 1979. The main objectives of CEAR are that of defence and protection of the right to seek asylum and the rights of persons in need of international protection as well as vulnerable migrants and stateless persons.

### **The Greek Council for Refugees, Greece.**

**[www.gcr.gr](http://www.gcr.gr)**

The Greek Council for Refugees (GCR) is a Greek, Non Governmental Organization, founded in 1989 to support refugees and asylum seekers in Greece. Through various psycho-social and legal services, it helps them integrate harmoniously into Greece. It is registered in the records of the Ministry of Foreign Affairs as well as the Ministry of Health and Social Solidarity as a Charitable Organization. It is also one of the six Non Governmental Organizations protecting human rights in Greece that are members of the National Commission for Human Rights (NCHR) according to the law regarding the National Commission for Human Rights 2667/98. It is an implementing partner of the United Nations High Commissioner for Refugees (UNHCR), as well as a member of the European Council on Refugees and Exiles (ECRE). It has Special Advisory Status in the United Nations Economic and Social Council (ECOSOC).

### **HHC (Hungarian Helsinki Committee), Hungary**

**[www.helsinki.hu](http://www.helsinki.hu)**

The Hungarian Helsinki Committee (HHC) is an association founded in 1989. It monitors the enforcement in Hungary of human rights enshrined in international human rights instruments, provides legal defence to victims of human rights abuses by state authorities and informs the public about rights violations. The HHC strives to ensure that domestic legislation guarantees the consistent implementation of human rights norms. The HHC promotes legal education and training in fields relevant to its activities, both in Hungary and abroad. The HHC's main areas of activities are centred on protecting the rights of asylum seekers and foreigners in need of international protection, as well as monitoring the human rights performance of law enforcement agencies and the judicial system. It particularly focuses on the conditions of detention and the effective enforcement of the right to defence and equality before the law.

### **PRO ASYL, Germany**

**[www.proasyl.de](http://www.proasyl.de)**

Every year hundreds of thousands become refugees due to war and persecution. Only a very small fraction of these refugees reach Germany. Instead of finding help, these people are often met with xenophobia and resentment in our society.

Refugees are entitled to have their human rights respected and to protection from persecution. But the protection of refugees is exposed to increasingly strong legal and official restrictions which often have unbearable consequences: reasons for escape are not accepted, families are separated, healthcare is denied, refugees are transported back to the country where they have been originally persecuted.

PRO ASYL has made it its aim to work against this. The organization helps refugees individually in situations in which they need support, for example, in cases concerning their asylum status in court. PRO ASYL also works on the political level. Through means of analysis, legal reports, surveys, lobbying and European networking the organization effectively takes part in public discussion. PRO ASYL intervenes also and supports refugees through their court cases. If necessary, the organization attends them all the way to the Constitutional Court as well as to the European Court of Human Rights.

Another way to help refugees with their cases is by psychological statements. The subject of these is, mostly, sustained repression like torture or rape, which is challenged by single case decision makers of the Federal Office or the Court.

Furthermore, PRO ASYL provides regular information for members and contributors through

means of press releases, press conferences, flyers and magazines, as well as on the website.

The project has been implemented with the participation of the following 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**
  
- **Department of International affairs – Office of Immigration and Nationality (OIN), Hungary**
  
- **Ministry of Interior – Aliens Division Asylum section – Greek Dublin Unit, Greece**

The German Dublin Unit has not participated to the implementation of the project, as a consequence we report the opinion and practices provided by Pro Asyl only.

Each Dublin Unit has filled in questionnaire I. As concerns the questionnaire II, all partners have contributed to provide the information required, apart from Greece, that has expressed some difficulties in filling in the questionnaire, due to the consistent workload.

As a result of the questionnaires, including questionnaire III (see *intra*), the non-governmental organisations involved in this project edit this report.

It is important to underline that the project is not designed to focus on the political question “to be in favour or to be against the “Dublin System” as a whole but rather to investigate its actual shortfalls and enhance transnational cooperation.

The report is the result of an investigation undertaken by NGOs in co-operation with the Dublin Units of the countries involved in the project. Nevertheless, the responsibility of the contents of the report falls under CIR.

## 3. Statistics

### DESCRIPTION

Statistics are fundamental to understand the “Dublin System”.

Data collection helps both in monitoring and controlling the situation and in analysing on a factual basis the cost and benefits of the “Dublin System”. Nevertheless, it is sometimes difficult to obtain detailed statistics, especially on vulnerable or other special groups. Often, no clear information is provided with regard to gender, age and application of the sovereignty or the humanitarian clause.

Probably this is due to the countries’ different traditions, to the different attention paid in keeping statistics, to the lack of attention given to the “Dublin System” (for example, Germany and Hungary keep very detailed and regular asylum statistics but not on Dublin cases), and to the lack of attention given to specific groups or issues (such as unaccompanied minors, sex/gender, the rate of successful transfers, sovereignty clause etc.).

The reason for these flaws could be the lack of human resources. The composition of the Dublin Units varies from country to country: in Spain the Unit is composed of 3 officials, in Greece of 7, in Italy of 17, in Sweden of 38 and in Hungary of 5. Another reason could be the lack of important information: for example, Dublin Units are not always in a position of identifying a vulnerable person.

In this report we were able to insert statistical data only for the year 2008, since not all of the Member States involved in the project have already completed statistics for 2009.

The following tables show that not all countries were able to provide us with all the information required.

### RECOMMENDATIONS

With regard to this matter we think that the Commission’s proposal<sup>4</sup> introducing art. 42 of the Recast recommending that “*..Member States shall communicate to the Commission (Eurostat), statistics concerning the application of this Regulation and of Regulation (EC) 1560/2003*” should be welcomed.

We recommend that detailed statistics should be produced with a breakdown on:

- Age (including separate statistics on unaccompanied minors and elderly people)
- Sex
- Nationality
- Vulnerabilities (reference to the EU Reception Directive Art. 17)
- Successful transfers (with breakdown: country of origin AND receiving country)
- Basis for the Dublin transfer (EURODAC, family ties, etc.)
- Discretionary clauses (with breakdown: country of origin AND receiving country)

It is important to underline that the EU Commission is recommended to ensure that there is a common reporting format including all the above information and that Member States provide these information every 3 months.

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<sup>4</sup> 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.

Finally we think that these compiled statistics should be made public by the EU Commission.

**General information:**

1) N. of staff employed in your Dublin Unit (full time, part time)

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
3.124	7	5	17	3	38

2) Do you write reports on your activities?

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	Yes	No	Yes	Yes	Yes

**STATISTICAL DATA, YEAR 2008:  
IN-COMING REQUESTS**

**Total number of in-coming requests:**

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	2.921	945	5.710	596	1.767

Among which: positive responses by your Dublin Unit:

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	1.799	747	2.829	415	1.283

Among which: successful transfers to your country

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	507	322	1.098	166	n/a

“Success rate” (=successful transfers/total number of in-coming requests)

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	17,3%	34.07%	38.8%	27.8%	n/a

**Requesting country breakdown:**

**GREECE\***

<i>Country of nationality of the asylum-seeker*</i>	<i>Total number of in-coming requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Success transfers</i>	<i>% “Success rate”</i>
Afghanistan	1.900	1.194	305	16
Iraq	1.507	1.124	336	2
Somalia	528	320	32	6
Iran	364	243	88	24

\* Greece did not provide us with statistics on requesting countries, but we include data on the country of\* nationality of asylum-seekers.

**GERMANY**

<i>Requesting country</i>	<i>Total number of in-coming requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Successful transfers</i>	<i>“Success rate”</i>
France	666	-	-	-
Sweden	663	-	-	-
Belgium	304	-	-	-
The Netherlands	294	-	-	-

**HUNGARY**

<i>Requesting country</i>	<i>Total number of in-coming requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Successful transfers</i>	<i>% “Success rate”</i>
Germany	209	169	88	42,11
Italy	23	18	1	4,35
Spain	5	5	3	60
Sweden	80	70	18	22,5
Greece	0	-	-	-
Belgium	51	51	5	9,8
Czech Republic	8	7	21 (cases from '07)	N/A
Denmark	9	9	2	22,22
Ireland	2	2	0	0
France	122	103	24	19,67
Luxembourg	7	7	6	85,71
Netherlands	24	17	9	37,5
Austria	297	221	109	36,7
Romania	10	9	0	0
Slovenia	2	2	2	100
Slovakia	10	6	6	60
Finland	30	13	6	20
United Kingdom	23	16	9	39,13
Iceland	1	1	1	100
Norway	24	18	9	37,5
Switzerland	5	0	0	0

**ITALY**

<i>Requesting Country</i>	<i>Total number of in-coming Requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Successful transfers</i>	<i>% “Success rate”</i>
Norway	937	399	137	34,3
Sweden	873	358	94	26
France	763	365	84	23
Austria	740	245	110	44,8
United Kingdom	699	430	282	65
Germany	631	431	193	44,7
The Netherlands	431	249	87	35

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Finland	244	140	49	35
Belgium	124	72	13	18
Spain	76	64	1	1.5
Denmark	59	31	25	80
Ireland	52	13	8	61
Luxembourg	12	6	3	50
Iceland	10	4	4	100
Slovak Republic	10	0	0	-
Greece	8	3	2	66
Czech Republic	8	5	3	60
Slovenia	8	1	0	-
Hungary	8	6	0	-
Switzerland	7	3	0	-
Portugal	3	1	1	100
Romania	3	1	0	-
Bulgaria	1	1	1	100
Latvia	1	1	0	-
Cyprus	0	0	0	-
Estonia	0	0	0	-
Lithuania	0	0	0	-
Malta	0	0	0	-
Poland	0	0	0	-

### SPAIN

<i>Requesting country</i>	<i>Total number of in-coming requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Belgium	38	33	17	44
Bulgaria	1	0	0	0
Czech Republic	2	2	1	50
Denmark	9	9	3	33
Germany	157	80	41	26
Estonia	0	0	0	0
Ireland	6	5	4	66
Greece	0	0	0	0
Spain	0	0	0	0
France	126	92	22	17
Italy	38	25	3	7
Cyprus	1	1	1	100
Latvia	0	0	0	0
Lithuania	0	0	0	0
Luxembourg	0	0	0	0
Hungary	2	2	1	50
Malta	0	0	0	0
Netherlands	28	23	15	53
Austria	35	24	10	28
Poland	0	0	0	0
Portugal	10	8	5	50
Romania	0	0	0	0
Slovenia	1	0	0	0

Slovak Republic	0	0	0	0
Finland	7	7	0	0
Sweden	65	40	18	27
United Kingdom	11	8	6	54
Iceland	2	2	2	100
Norway	67	54		25

## SWEDEN

<i>Requesting country</i>	<i>Total number of in-coming requests</i>	<i>Positive responses by your Dublin Unit</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Germany	544	411	n/a	-
Norway	400	320	-	-
France	212	119	-	-
Finland	156	112	-	-

### Sex/age breakdown:

	<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
Men	-	3.274	N/A	4.904	N/A	1.340
Women	-	760	N/A	806	N/A	238
Children	-		N/A	N/A	N/A	172
Unaccompanied minor	-	682	N/A	267	N/A	17

## OUT-GOING REQUESTS

### Total number of out-going requests

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
6.363	48	221	1.562	209	3.959

### Among which: positive responses by your Dublin Unit:

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	14	138	1.018	172	3.249

### Among which: successful transfers to your country

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	9	60	125	25	2.009

### "Success rate" (=successful transfers/total number of out-going requests)

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	0,19%	27,15%	16%	11%	0,507%

**Requested country breakdown:****GREECE**

<i>Country of nationality of the asylum-seeker*</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Successfu rate"</i>
Iraq	26	7	5	19
Bangladesh	5	4	0	0
Georgia	4	2	1	25
Afghanistan	3	3	2	66

**GERMANY**

<i>Requested country</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Poland	806	-	-	-
Greece	800	-	-	-
France	781	-	-	-
Italy	769	-	-	-

**HUNGARY**

<i>Requested country</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Germany	23	7	3	13,04
Italy	6	6	2	33,33
Spain	1	1	0	0
Sweden	10	3	0	0
Greece	2	2	0	0
Belgium	3	1	0	0
Bulgaria	7	6	4	51,14
Ireland	1	1	0	0
France	11	8	5	45,45
Cyprus	27	23	8	29,63
Lithuania	1	1	0	0
Netherlands	4	1	0	0
Austria	45	17	10	22,22
Poland	2	1	0	0
Romania	61	52	27	44,26
Slovenia	5	1	0	0
Slovakia	7	4	1	14,29
Norway	5	3	0	0

\* Greece did not provide us with data on the Requested countries.

**ITALY**

<i>Requested country</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Greece	544	438	8	1.8
United Kingdom	258	162	61	37
Austria	155	60	4	6.6
Germany	117	64	7	10.9
Slovak Republic	85	26	1	3.8
France	81	60	6	10
Spain	52	32	2	6.2
Malta	37	30	2	6.6
Sweden	35	18	1	5.5
Slovenia	32	20	2	10
Hungary	28	22	2	9
Belgium	25	8	1	12
Czech Republic	25	23	0	0
Norway	24	22	7	31
The Netherlands	24	13	3	23
Ireland	11	9	6	66
Poland	7	3	1	33
Denmark	3	3	0	0
Bulgaria	2	2	1	50
Cyprus	2	2	0	-
Finland	2	1	0	-
Iceland	2	0	0	-
Lithuania	2	1	0	-
Luxembourg	2	0	0	-
Romania	2	2	0	-
Estonia	0	0	0	-
Latvia	0	0	0	-
Portugal	0	0	0	-
Switzerland	0	0	0	-

**SPAIN**

<i>Requested country</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Belgium	5	5	1	20
Bulgaria	2	2	0	0
Czech Republic	2	2	0	0
Denmark	2	1	0	0
Germany	19	16	2	10
Estonia	0	0	0	0
Ireland	1	1	0	0
Greece	28	25	2	7
Spain	0	0	0	0
France	23	22	6	17
Italy	75	62	5	26
Cyprus	1	1	0	0
Latvia	0	0	0	0

Lithuania	0	0	0	0
Luxembourg	2	1	0	0
Hungary	5	5	4	80
Malta	1	1	0	0
(The) Netherlands	6	6	0	0
Austria	10	7	0	0
Poland	5	5	3	60
Portugal	6	4	0	0
Romania	1	0	0	0
Slovenia	0	0	0	0
Slovak Republic	1	1	0	0
Finland	2	2	1	50
Sweden	4	0	0	0
United Kingdom	6	1	0	0
Iceland	0	0	0	0
Norway	2	2	1	50

**SWEDEN**

<i>Requested country</i>	<i>Total number of out-going requests</i>	<i>Positive responses by other member state</i>	<i>Successful transfers</i>	<i>% "Success rate"</i>
Greece	735	660	117	15,9
Germany	646	550	473	73,2
Italy	589	446	282	47,8
Norway	281	246	305	-

**Sex/age breakdown:**

	<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
Men		41	N/A	1.485	N/A	2518
Women		5	N/A	77	N/A	743
Children		N/A	N/A	N/A	N/A	610
unaccompanied minors		11	N/A	26	N/A	88

**In case of how many persons did your Dublin Unit apply the humanitarian clause?**

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	6	0	2	-	-

**In case of how many persons did your Dublin Unit apply the sovereignty clause?**

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	-	6	176	-	28

**How many persons whose transfer to another member state was ordered appealed this decision? (if such a possibility exists)**

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	-	8	56	N/A	-

**In case of how many persons a Dublin decision was later cancelled upon appeal or judicial review? (if relevant)**

<i>Germany</i>	<i>Greece</i>	<i>Hungary</i>	<i>Italy</i>	<i>Spain</i>	<i>Sweden</i>
	-	1	N/A	N/A	-

## 4. Description, aim, beneficiaries of the project

The Reports from the Commission to the European Parliament and to the Council on the evaluation of the “Dublin System” have pointed out relevant problems both on the practical application and on the effectiveness of the “Dublin System”.

The main concern regards the diverging interpretation of the countries involved in the application of some articles of the Regulation, such as the sovereignty and the humanitarian clauses. Similar concerns have also been raised by the United Nations High Commissioner for Refugees (UNHCR) and the European Council on Refugees and Exiles (ECRE), who emphasised that some States fail to respect the rights of transferred people to receive a proper examination of their asylum claims. This may result in exposing asylum seekers to the risk of being sent back to face persecution in the country of origin, thus violating the *non-refoulement* principle.

ECRE has also denounced the huge disparities found from one “Dublin State” to another in relation to accommodation, material benefits and access to health care, contrary to the European Union’s (EU) Reception Directive which states that all EU States have to provide similar standards of support to asylum-seekers.

Refugee assisting organisations in Italy and in partner countries have denounced the lack of uniformity in the application of the Dublin II Regulation and the flaws in its implementation. One of the most important findings of the research is that the deficiency or lack of information is the main problem suffered by asylum-seekers. Furthermore, asylum-seekers are not always in a position to provide important information on their personal situation, such as family links or special needs.

The project has contributed to a better understanding of the functioning of the “Dublin System” and, furthermore, it has evaluated the impact on asylum-seekers. **Best and worst practices** in the six partner countries have been identified and a learning process between all stakeholders involved has been promoted, on the basis of the experience so far and of the difficulties encountered.

We hope that the research and the sharing of information among the partner countries will lead to a better application of the Regulation with a consequent positive impact on the **beneficiaries (asylum-seekers)**, as well as on the **competent authorities**. This should also have a positive outcome in terms of decrease in costs, also with regard to social assistance.

Finally, the “Dubliners” project was aimed at identifying flaws in the “Dublin II System” which continue to emerge in practice and at documenting, through specific research, the consequences and the impact which implementation of the Dublin II Regulation has had on Member States.

The specific goals of the project were to collect empirical material primarily through interviews with asylum-seekers describing the subjective experiences during the Dublin procedure in the sending countries, their situation prior to departure, their fears and expectations after the transfer.

## 5. Comments on partnership, methodology, activities report and obstacles encountered

Activities have been programmed in a way that as much information as possible could be made available on the real functioning of the “Dublin System” in the different participant countries.

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.

### PARTNERSHIP

The identification of partners in the project was based on the distinct involvement, interest and experience of the six selected countries, as well as on the intention to bring governmental officials and NGOs together.

Among the six member States, some are mainly “sending countries” (Sweden and Germany), others are more “receiving countries” (Italy, Greece, Hungary and Spain). Some countries have a long tradition of asylum-seekers’ reception, others foresee detention during the asylum procedure. Finally, other differences – and similarities – have been discovered during implementation of the project.

The overall approach takes into account that all partner countries, with the exception of Hungary, had already experienced implementation of the Dublin Convention, as well as evaluation of the system carried out by different parties: the European Commission; the UNHCR; ECRE; Amnesty International and others.

A particularity of the project’s approach is that of taking into account the individual experiences of asylum-seekers as well as of the refugee assisting NGOs.

The partnership includes: in **Germany**, Pro Asyl. The German Federal Agency for Refugees Migration and Integration, who was very interested in the project at the beginning, has not formally joined in; in **Greece**, the Dublin Unit of the Greek Ministry of Interior and the Greek Council for Refugees; in **Hungary**, the Ministry of Justice and Law Enforcement and the Hungarian Helsinki Committee; in **Spain**, the Ministry of Interior and the Spanish Commission for the help of refugees (Comisión Española de Ayuda al Refugiado – CEAR); in **Sweden**, the Swedish Migration Board and Caritas Sweden. The NGO partners have identified one focal point each, responsible for the research carried out at the national level, including carrying out interviews with both Dublin Units and asylum-seekers. The partner NGOs have worked in close collaboration with the national Ministries and the Hungarian Helsinki Committee organised and hosted the first meeting with all of the partners in Budapest.

In **Italy**, the Italian Council for Refugees (CIR) had a two-fold role. On one hand it carried out the activities at the national level in partnership with the Departement for Civil Liberties and Immigration of the Italian Ministry of Interior and, in particular, with the Dublin Unit within this Department. On the other hand, CIR has had overall responsibility for the research including the drafting of questionnaires, the collection of material from the partner countries, the drafting of the summaries and the final report.

### METHODOLOGY

The methodology consists of a two-fold research exercise: on one hand, through data collection and interviews with public officials and relevant stakeholders, the “objective” part of the implementation of the “Dublin System” and of the difficulties encountered has been

highlighted. The inclusion of Ministries of Interior and in particular of the Dublin Units is of the utmost importance in this regard. The questionnaires submitted to these stakeholders are semi-structured and have left space for individual comments and suggestions.

On the other hand, the “subjective” aspect on how the “Dublin System” and its concrete implementation in the various countries is perceived by asylum-seekers directly concerned has been investigated through **75** interviews with them, of which **25** were carried out in Italy, and **10** in each of the other partner countries.

The interviews were carried out mainly with asylum-seekers already transferred to the responsible Member State, but include a number of asylum-seekers with regard to whom a Dublin procedure was initiated prior to their transfer to the responsible State.

The methodology includes the collection of individual “**life stories**”, which have provided a number of important indications made by those directly affected, but not on a relevant statistical level.

The research has included a number of different situations with regard to nationality, gender, family circumstances, health situation, age, etc.

## 5.1 IMPLEMENTED ACTIVITIES

Data regarding the implementation of the “Dublin System” in the 6 involved countries has been collected, in order to compare different practices and its effects on asylum-seekers. The comparative studies on the Dublin Regulation and other relevant Community legislation have been analysed, to identify flaws and inefficiencies of the System.

Each organisation has liaised with the respective Dublin Unit on a regular basis. By means of **two semi-structured questionnaires**, public officials have been interviewed and their opinions assessed. Thanks to the questionnaires the functioning of Dublin Units emerged, both in terms of composition and working loads and **a better understanding between NGOs and respective Dublin Units arose**. These questionnaires focused on: statistical data; admission to asylum procedure; information provided to applicants; access to legal counselling; situation of unaccompanied minors and other vulnerable groups; provision of translation services; access to material reception after admission to the territory; use of the humanitarian clause and respect of the principle of *non refoulement*. **The two questionnaires** have been jointly filled in by Dublin authorities, border Police and partner NGOs whose personal point of views have been thoroughly assessed and have contributed to enhance mutual understanding and practical cooperation among NGOs and Dublin Units.

To outline the situation in a more comprehensive and realistic way, partner organisations have agreed to include in the questionnaire results their comments and the practical problems they experienced as Agencies providing assistance to asylum-seekers.

**Questionnaire II** has been drafted by all the Dublin Units, except for the Greek and the German one.

**Questionnaire III** has been submitted directly to asylum-seekers. The study regards 75 asylum-seekers, 25 in Italy, and 10 in each of the partner countries.

The nationality of the asylum-seekers to whom the third questionnaire was submitted was:

12 Afghanistan  
10 Eritrea  
10 Somalia  
6 Iran  
6 Iraq  
4 Guinea Conakry  
4 Nigeria  
3 Syria  
2 Algeria  
2 Gabon  
2 Kosovo  
2 Serbia  
2 Sri Lanka  
1 Bangladesh  
1 Benin  
1 Chechnya  
1 Egypt  
1 India  
1 Lebanon  
1 Montenegro  
1 Palestine  
1 Russia  
1 Turkey  
1 Uganda

58 asylum-seekers interviewed were men and 17 women.

Most of the interviewed asylum-seekers were between 26 and 39 years old (19 asylum-seekers), 17 between 18 and 25, 15 between 31 and 35, 12 between 36 and 40, 3 between 51 and 60, 2 were over 60. The minors interviewed were 4. 3 persons did not declare their age.

The reasons for **secondary movements** – from one EU Member State to another – of asylum-seekers are not always declared. In most cases asylum-seekers tried to reach the State where they had family links (21 interviewed asylum-seekers). Many persons also declared to have chosen a country because they perceived it as a *safe country*, where they can *live in peace* and there are *good living conditions* (21 asylum-seekers). Other asylum-seekers said they moved to a certain country because it respects human rights (6) and because they knew they could easily get a permit to stay there (5). Contrary to what is commonly perceived, few persons declared to have chosen a specific country for working reasons (4 interviewed asylum-seekers). The movements for cultural reasons are also residual (3).

As concerns the other activities, the 11<sup>th</sup> and 12<sup>th</sup> June 2009 the **first Transnational Meeting** took place in Budapest. Updates on the implementation of the Dublin Regulation in Member States were discussed and management of “Dublin cases” explained.

The first meeting underlined the shortcomings of the Dublin II Regulation from the NGO’s perspective. The results of questionnaire I were shared among Partners and this allowed a

full understanding of the implementation of the Dublin Regulation at the national level from the institutional point of view. Similarities and differences in the collected questionnaires were discussed.

Partners also agreed on future “**research methodology**” to be used for the collection of “**life stories**” of asylum-seekers. They underlined the “subjective” aspect of the “Dublin System” and how its implementation is perceived by asylum-seekers directly involved.

Thanks to the project, cooperation among Partners in the daily management of “Dublin cases” improved.

The **team research meeting** among partners was held in Rome on December 2009 with the aim of collecting the results of the questionnaires and planning the contents of the final report.

### **Encountered difficulties**

It was sometimes difficult to contact for interviews asylum-seekers affected by the Dublin procedure during their stay in the “sending country”. It happened that some of them did not trust the aim of the interview or the reason why the interviews were proposed.

At the beginning of the project some problems arose because the former Swedish partner SWERA officially left the Project on January 2009, after it ceased its activities following severe negative financial results in 2008. CIR promptly looked for another partner and Caritas Sweden joined the Project. The new partner made great efforts to reach the level of partners involved in the Project from the beginning and it completely fulfilled its tasks.

Since the 1<sup>st</sup> of April 2008, CIR is no longer in charge of the Border Services at Fiumicino Airport and Bari Seaport. This has prevented CIR from assisting many *Dubliners* in transit from/to Italy and from better assessing the reception conditions at national level. However, CIR has other offices at crucial entrance borders as the airport of Milan (Malpensa)<sup>5</sup> and the seaports of Venice, Ancona (from November 2008) and Brindisi. One of the main problems in the development of the Project was the refusal of the German Dublin Unit to cooperate with the German partner Pro Asyl.

This Unit did not formally participate in the Project and failed to comply with the commitment to give the German partner its contribution to the implementation of the project activities. Pro-Asyl could not totally fill in the first and the second questionnaire without the Dublin Unit involvement and it has only provided data and information at its disposal.

In the first part of the Project the effort was to create a mutual knowledge among Partners and respective Dublin Units.

During the implementation of the Project, the officials responsible for the Dublin Units in Italy, Greece and Hungary changed. This entailed a small delay in the filling in of the questionnaires.

Due to overwork and shortage of staff, some Dublin Units completed the questionnaire without respecting the deadline.

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<sup>5</sup> Since the 1<sup>st</sup> of January 2010, CIR is no longer in charge of the Border Service at Malpensa Airport. From the 1<sup>st</sup> of March 2010, CIR is present again at Bari sea port.

## 6. Results of the project: main issues raised

The report is the result of the analysis of the issues raised during the project. The following chapters are based on the results of the three questionnaires, which include practices revealed by NGOs and the official answers given by the Dublin Units. To highlight the point of view of asylum-seekers, we considered that the best way was to put in a box opinion and feelings reported in questionnaire n. III as well as “life stories” of asylum-seekers.

In each chapter **bad and good practices** are reported, **and recommendations** are included with reference to the European Commission’s Recast and to the European Parliament’s amendments.

### 6.1. PROVISION OF INFORMATION TO ASYLUM-SEEKERS ON THE “DUBLIN SYSTEM

#### 6.1.1 Description of the problem

**Authority => Dubliner**  
Dubliner => Authority

Within the Dublin II Regulation one of the most relevant problems is the lack of a common strategy to inform and explain the “Dublin System” to *Dubliners*. As a matter of fact, the Dublin II Regulation does not foresee adequate standards for information provision.

According to article 3 par. 4 of the Dublin II Regulation, the asylum-seeker should be informed in a language which he/she “reasonably” understands, but in practice this rule is not always respected. This issue is essential as receiving information in an understandable language is the only way for the asylum-seeker to know exactly how the “Dublin System” works.

Furthermore, another aspect which should be clarified in the Dublin II Regulation is the moment when the information has to be given to the asylum-seeker. Very often it is too late when the *Dubliner* understands what is happening, sometimes only during his/her transfer.

In practice, it is often difficult to verify if the information has effectively been given to the asylum-seeker by the authorities.

In questionnaire n. II, all the Dublin Units involved in the project stated that asylum-seekers are informed on the content of the Regulation: **Sweden** affirms that the different types of information are communicated orally through an interpreter and the same information is also supplied in a written document in the asylum-seeker’s native language. **Hungary** affirms that asylum-seekers are provided with a leaflet in 10 languages. **Italy** reports the same procedure as in Hungary. **Spain** also provides a leaflet in 11 languages, including oral information on the asylum application form and on time limits<sup>6</sup>. **Greece** affirms that all relevant information is provided, even if it is not clear how it is given. There are still no interpretation facilities at the airport, nor is an information leaflet being distributed.

As concerns **Germany**, since the Dublin Unit is not involved in this project, we cannot report on this issue. On the basis of the experience of *Pro Asyl*, asylum-seekers are informed about the general contents of the Regulation, but this is not enough to understand the whole procedure.

<sup>6</sup> The leaflet did not include information on the Dublin procedure. Nevertheless, the law has just changed and a new leaflet including this information is expected.

Indeed, in most countries *Dubliners* were asked the reason why they made a request for international protection. They more or less understand the Dublin procedure but often it is not well explained and communication is sometimes difficult because of the absence of an interpreter.

Many asylum-seekers have stated that they suffer from lack of information and even if –according to Dublin Unit declarations – the information system seems to work, there is a wide gap between theory and practice. In the majority of cases, it is only with the help of NGOs, providing *Dubliners* with adequate information, that asylum-seekers are able to go through the entire procedure.

### 6.1.2 National practices and findings

#### ⊖ **Bad practices:**

Despite the authorities claim that information is usually well disseminated<sup>7</sup>, it seems that in some cases *Dubliners* are only provided with partial information, sometimes none at all, and often in unsuitable conditions.

**Case reported from Hungary (QIII):** A Roma family left Kosovo because they had problems with Serbs. They asked for asylum in Hungary but received a negative decision. They then went to Germany, where they were living in very good conditions: the parents had work and the children could go to school.

One night, at 4.00 a.m., the Police knocked at the door and told them they had to go with them to the airport. Only at the airport, where the woman started crying, did the Police tell them that **“they were wanted by Hungary”** and that they had to go back there. In Hungary they received another negative decision and are now waiting to go back to Kosovo.

**Case reported from Germany (QIII):** A Russian woman, who had left her country in order to reach her son living in France, was caught by the Police in Poland; she then crossed the German border and was caught again. In Germany the authorities did not grant her an interview, she did not get any information about the Dublin II Regulation and therefore she was not able to understand what was going on.

**Case reported from Greece (QIII):** An Iraqi asylum-seeker reported not having received any information about the Dublin procedure. He was not interviewed at all but he declares that he knows the Dublin II Regulation because he has studied the text “by himself”. This Dublin case was interviewed only by a Greek NGO (Greek Council for Refugees) but not by the Greek authorities.

**Case reported from Germany (QIII):** An Afghan man was in a detention centre in Germany and at 4.00 a.m., without notice, four policemen asked him to pack his things because he had to go back to Greece. In theory, the authorities should inform the asylum-seekers not only about the Dublin Unit’s decision but also about the transfer procedure. In practice, the German authorities do not automatically inform the asylum-seekers and sometimes not even when deportation to the responsible Member State has already started.

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<sup>7</sup> Source: Questionnaire n. II.

### Information provided with the support of an interpreter

In communicating the Dublin procedure to asylum-seekers, the interview is sometimes made in a language that they do not fully understand.

**Case reported from Hungary (QIII).** A man coming from Sri Lanka was interviewed in English but he did not really understand it: even so, a Tamil interpreter was not called to help him. As a consequence, this *Dubliner* was unable to defend himself and was transferred without understanding what was happening. To this day he is not able to explain what the Dublin procedure is.

**Case reported from Greece (QIII).** A man from Somalia transferred from the Netherlands was interviewed in English although he did not understand the language well. A Somali interpreter was not called, therefore he was not able to understand clearly what the authorities said and what they were asking him. Until July 2009 no *Dublin returnee arriving* at the airport in Greece was submitted to a verbal interview due to lack of interpreters, but all were asked to write down in a paragraph the reason for having fled their countries.

### Quality of information

Another problem is that, even if in some partner countries *Dubliners* receive an explanation, this is not adequate to their **educational level**. Very often, asylum-seekers do not understand the explanation given by the authorities. It is true that a **written document** helps but it is not always understandable because of the language, because of the legal terms and because it can happen that some asylum-seekers are illiterate. We have verified that in most of the countries the majority of the interviewees did not understand what the Dublin procedure and the decision taken by the Dublin Unit are. Furthermore, they do not know about their rights and consequently they cannot **lodge an appeal**.

It is common that without the help of a lawyer or of an NGO, asylum-seekers cannot understand nor go through the whole procedure of the appeal.

In all countries, the asylum-seekers reported that when the officers communicate the possibility of making an appeal, they often advise them not to do so. Sometimes, the Police tell asylum-seekers about the possibility of making an appeal, but discourage them to do so saying that, in any case, it will not stop the transfer.

The effect is that people involved in the procedure are indirectly discouraged to claim their rights to appeal. The doubt arises that precise information on the procedure of appeal is lacking for the purpose of making transfers easier.

In our experience, it occurs very frequently that the Immigration Office explains the Dublin procedure in a superficial manner. As a consequence, some asylum-seekers think that the country which is declared competent “*wants them back*”.

**Case reported from Greece (QIII).** An Afghan man declares that his transfer from Belgium to Greece is due to his fingerprints but mostly because it is linked to the will of Greece “*to want him back*” (he explained the Dublin procedure exactly with these words). This example demonstrates how asylum-seekers are often very confused on the procedure. In the end, with the help of a lawyer, he lodged an appeal but only at the airport. Before his transfer the lawyer told him that he could not do anything.

In order to improve the “Dublin System” it is important to establish common European norms on the provision of information. It is a fact that asylum-seekers complain about not receiving enough information and help throughout the whole procedure. There is a wide gap between the description of the situation made by the Dublin Units and what is reported by partners who are confronted every day with the practice.

According to the Dublin Units, information is provided and asylum-seekers receive the help they need, whereas the partner organisations noticed the lack of information provided and faced the complaints of asylum-seekers who, in the end, consider that they are handling the situation on their own. All Dublin Units declare that asylum-seekers have access to clear and understandable information, but in practice many asylum-seekers understand the Dublin procedure only after their transfer<sup>8</sup>.

☺ **Good practices:**

On the basis of questionnaire n. III, in **Italy, Spain and Sweden** there were no cases transferred without respecting the right to be informed on the procedure before removal.

In **Sweden**, the decision about the transfer is communicated by the Migration Board official. During the meeting with the official the asylum-seeker obtains the written decision and at the same time receives an oral explanation of the contents and meaning of this decision in his/her native language. The applicant then has the opportunity to express his/her opinion about the decision.

In **Italy**, the decision of the Dublin Unit is communicated to the person in a written decision handed out by the Police. Nevertheless – sometimes – it is not very clear for the asylum-seeker that he/she can make an appeal: this information is often provided only by NGOs or private associations. In practice, however, unexpected deportations are not foreseen in Italy.

### **6.1.3 Recast and recommendations**

We welcome the Commission’s amendment which recasts art. 3 par. 4 with a new art. 4, as well as the extra amendment of the European Parliament, which states that “The information (...) shall be provided in writing in a language that the applicant **understands or may reasonably be presumed** to understand.”<sup>9</sup>

According to this new article, the authorities shall inform the asylum-seekers about the application of the Regulation, in particular about: the objectives, the criteria, time limits, the possible outcomes, the possibility to challenge a transfer decision, the existence of the right to have the data relating to him/her corrected. Member States shall also provide information in a manner appropriate to the age of the applicant and a common leaflet containing information on the application of the Dublin II Regulation.

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<sup>8</sup> Source: Questionnaire n. III.

<sup>9</sup> 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}, 3<sup>rd</sup> December 2008.

Both UNHCR<sup>10</sup> and ECRE<sup>11</sup> welcome the proposed amendments of the Commission.

ECRE underlines the right to the use of and the access to information for asylum-seekers. This proposal is seen not only as the best way to make the system more efficient in all countries, but also as a benefit for the asylum-seekers themselves.

The findings of our project fully support the Commission's intention to improve the System with regard to provision of information. However:

- As soon as asylum-seekers are subject to a Dublin hit, they should be specifically informed on the Regulation's criterion that will be applied in their case and should receive general information about the "Dublin System" at the beginning of the asylum procedure.
- The leaflet should be produced in a user-friendly way adapted to cultural and educational differences.
- The results of our project show that it is desirable that States explore alternative ways of providing information and promoting understanding of the "Dublin System" with special attention to age, gender, cultural diversity and illiteracy (e.g. audio, audio-visual information, DVD, etc.).
- We hope the Commission will monitor the practical implementation of these provisions, with special attention to the opinion of the asylum-seekers concerned.

## 6.2 COLLECTION AND USE OF RELEVANT INFORMATION FROM ASYLUM-SEEKERS

### 6.2.1. Description of the problem

Authority => Dubliner Dubliner => Authority
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The Member State responsible for the examination of an asylum application is determined on the basis of established criteria based, among others, on the information provided by the asylum-seeker.

Nevertheless, some problems arise both in the collection of this information and on the use of the elements collected.

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<sup>10</sup> UNHCR, *UNHCR comments on the European Commission's Proposal for a recast of the 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 ("Dublin II")* (COM(2008) 820, 3 December 2008) and the *European Commission's Proposal for a recast of the Regulation of the European Parliament and of the Council concerning the establishment of 'Eurodac' for the comparison of fingerprints for the effective application of [the Dublin II Regulation]* (COM(2008) 825, 3 December 2008), 18<sup>th</sup> March 2009.

<sup>11</sup> ECRE, *Comments from the European Council on Refugees and Exiles on the European Commission Proposal to recast the Dublin Regulation*, April 2009.

It is important to understand which authorities are responsible for providing information to the asylum-seekers. Research shows that in the 6 countries involved, the Police is often the competent authority to provide information on the “Dublin System”, especially when the person is returned to the competent State<sup>12</sup>. Sometimes, the Police authorities are supported in their work by NGOs and lawyers, but the decision on the relevant information they need to be sent to the Dublin Unit in order to establish the competent State is normally made by the Police, who often work in emergency situations.

This could present a problem for asylum-seekers and probably for the Dublin Units themselves. As far as exchange of information among Member States is concerned, questionnaire n. I has shown that Member States<sup>13</sup> sometimes omit relevant information, especially related to family links or health conditions of asylum-seekers, which could identify the responsibility of the requesting Member State for examining the asylum claim.

As far as the **collection of information** is concerned, the Dublin II Regulation does not provide Member States with appropriate instructions for performing interviews with asylum-seekers and for obtaining all adequate and useful information for a correct implementation of the Regulation.

For this reason, asylum-seekers are often unaware of the importance of providing personal information or are reluctant to share some information because they do not know the position of the person carrying out the interview, for what purpose it is performed and what the guarantees of privacy are.

The authorities often *do not ask for useful information, including family situation, health condition and cultural ties, or do not explain the meaning of some core terms* of their national legislations. On the contrary, information on family members<sup>14</sup> – for example – would be important for the application of the humanitarian clause (please refer to Chapter 6.5).

As far as the **use of information** is concerned, the authorities do not always take into consideration all of the information provided by asylum-seekers even though this could be important for the determination of the competent State.

As described in chapter 6.1, art. 3 of the Dublin II Regulation establishes that the asylum-seeker *shall be informed in writing in a language that he/she may reasonably expected to understand* on the application of the Regulation, its time limits and its effects. On the contrary, the Regulation does not foresee any provisions on the information asylum-seekers should provide regarding correct implementation of the Regulation itself.

### **6.2.2 National practices and findings**

As far as “cultural and family ties” are concerned, research revealed that *no specific questions are submitted to asylum-seekers about familial or other considerable links to a certain Member State*. In Greece 4 out of 11 asylum-seekers were asked for this information; in Italy 7/17; in Sweden 10/10; in Hungary 5/10; in Spain 6/9 and 1 did not answer; in Germany 3/7 and in 2 cases asylum-seekers were not able to answer the question<sup>15</sup>.

The present research also revealed that even when authorities asked asylum-seekers about

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<sup>12</sup> Nevertheless, this is not always the case. In Hungary, for example, when a person returns on his/her own the Police is not involved.

<sup>13</sup> The Italian and Greek Dublin Units and the German organization *Pro Asyl* have declared that it can happen that countries do not provide all relevant information, especially on family matters, to the requested Member State.

<sup>14</sup> It is important to underline that in theory article 15 of the Regulation can be applied on the basis not only of family but also of cultural links. It would be useful to ask even this type of information, even if we need to take into consideration the fact that the Regulation does not clarify what should be meant by “cultural considerations”.

<sup>15</sup> Source: Questionnaire n. III

family ties in other Member States, they were not informed on the rules governing family reunion or – for example – of the possibility, in certain Member States, for unmarried couples living together on a stable basis to be considered in a similar way as married couples<sup>16</sup>.

Even in the case where all of the interviewees were asked about their familiar links, as in the **Swedish** instance, most of the interviewees decided not to tell about their family links because they were afraid that it would lead to a negative outcome of their case.

In all the countries involved asylum-seekers basically believe that the State competent for the examination of an application is the one where they were “finger printed”.

The asylum-seekers also complain that no particular attention is paid to their feelings and that nobody gives them a real possibility to explain their personal situation. Even if NGOs or lawyers are able to explain the system in detail, no concrete remedies to appeal or revise the decision are offered to them.

In many cases asylum-seekers also believe their removal to another State “will guarantee them the recognition of protection” in the receiving State. Nevertheless, this does not happen in **Sweden**, in cases where asylum-seekers have to be transferred to countries, such as Greece, Italy or Malta, where they have already experienced bad treatment<sup>17</sup>. Asylum-seekers who should be transferred from Sweden to the responsible State do not believe, after their previous experiences, that in the other country their asylum grounds would be examined according to the law. Consequently they try with all efforts to have their asylum grounds examined in Sweden and, if they do not succeed, most of them decide to stay in Sweden illegally rather than returning to the less favourable system they experienced in the first country. Asylum-seekers in Sweden complained about harsh treatment, inhuman conditions and the lack of guarantees which they experienced during the asylum process in the first country.

In order to correctly evaluate these data, it is necessary to take into consideration the conditions in which the asylum-seekers are interviewed by the authorities, often in a limited time, inside a detention centre, without any explanation on the reasons why this information is required, and sometimes without an interpreter.

**Case reported from Greece (QIII).** A Somali man, Mr. R., was removed from the Netherlands. He stated that both in the Netherlands and in Greece he had the opportunity to speak with a lawyer, but in Greece he was interviewed without the help of an interpreter. As a consequence, he did not understand the asylum procedure in Greece. Once he arrived there, he was released from the airport, and the Police only told him: “*you are a Dublin case*”.

**Case reported from Italy (QIII):** A man, Mr. N. from Montenegro, was removed from Sweden to Milan-Malpensa Airport in Italy. Mr. N.’s intention was to reach Sweden in order to ask for asylum, since his brother, his sister-in-law and his nephew had been living there since 2002. As he had a tourist visa released by the Italian authorities, he was transferred to Italy. Even when the Swedish authorities asked Mr. N. for information on his family links in Europe, his objections regarding transfer and the possibility of appeal or review of the negative decision were not taken into consideration. When he had to answer the questionnaire’s question on what changes would he suggest if he was in a position to implement changes in the Dublin procedure, Mr. N said “*more consideration of my problems and of the reason why I chose Sweden.*”

<sup>16</sup> In Germany, Sweden and Spain an *unmarried couple in a stable relationship* is treated in a way comparable to a married couple, while Italy, Spain and Greece have a different definition of “family members”, which does not include the unmarried couple.

<sup>17</sup> Source: Questionnaire n. III, Sweden.

We did not consider it useful to indicate the **bad and good practices** in this chapter, since the general feeling and the experiences reported from asylum-seekers are very similar and the declarations of the Dublin Units demonstrate the need to improve the information system in favour of asylum-seekers and among Member States themselves.

### 6.2.3 Recast and recommendations

- We welcome the **Commission's proposal<sup>18</sup> to introduce new article 5**, especially where it foresees that Member States shall give applicants the opportunity of:
  - A personal interview with a qualified person under national law to conduct such an interview (par 1);
  - The selection of an interpreter (par 4);
  - The drafting of a short written report containing the main information given by the applicant during the interview and a copy of that report (par. 6).
- We agree with the recommendations made by UNHCR and ECRE on this issue.

UNHCR welcomes the requirement to conduct a personal interview for all Dublin cases, in which applicants are informed of the proposed application of the Regulation to their case and of the possible transfer to a particular State<sup>19</sup>.

UNHCR also welcomes, as a general principle, the insertion of several processes and limitations which would prevent the unauthorized use or dissemination of information concerning individual applicants and their claims<sup>20</sup>.

ECRE welcomes the requirement to conduct a personal interview, but is concerned about the potential prejudice that inappropriate use of information gathered at the interview could cause<sup>21</sup>.

- We hope Member States will make an effort to improve consistency in the gathering of relevant data, which could be achieved through the elaboration of a common form, initiated by the EU Commission.

## 6.3 DETENTION AND RECEPTION

### 6.3.1 Description of the problem

In some cases, the “Dublin System” may be used as a legal ground for detention. As ECRE puts it: “during determination procedures under the Regulation, asylum-seekers wait in limbo, too often in detention, with their protection needs unassessed”.

Asylum-seekers can be detained both in the sending country, prior to transfer, and in the receiving country, after arrival. Nevertheless, detention is more frequent while awaiting transfer than after arrival in the receiving country. In some cases, in Germany and Hungary for example, asylum-seekers can be detained for the entire length of the procedure. This determines an important difference in the treatment of asylum-seekers under Dublin procedure compared to that of other applicants. In the countries where detention is foreseen,

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18 European Commission, *Recast*, cit., 3<sup>rd</sup> December 2008.

19 UNHCR, *UNHCR comments on the European Commission's Proposal*, cit., 18 March 2009, p.16.

20 UNHCR, *UNHCR comments on the European Commission's Proposal*, cit., p. 19.

21 ECRE, *op.cit.*, April 2009, p. 5.

not only is the detention period often longer for *Dubliners*, but in some instances, detention is applied exclusively to these cases, this difference being perceived by the asylum-seekers themselves.

The main problem is that the Dublin Regulation does not foresee a framework regulating detention, thus leaving this issue to the discretion of national legislation (article 19 and 20). The European Commission Recast<sup>22</sup> has the merit of providing the Regulation with a specific new article (article 27) on detention (see below). Even if it does not prohibit detention *tout court*, the article provides a sort of legal framework that applies to all Member States, limiting arbitrariness concerning the use of detention.

With regard to reception the Regulation does not provide for a homogenous treatment of asylum-seekers and they are often discriminated with respect to the treatment other applicants receive regarding accommodation, right to work, health care and education. The reception conditions provided by Member States to the transferred asylum-seekers vary significantly from country to country, thus creating a real and perceived discrimination of *Dubliners*. One of the reasons for this situation is that, as the Commission's Recast puts it, the Dublin Regulation can create "additional burdens on Member States faced with a particularly urgent situation which places an exceptionally heavy pressure on their reception capacities, asylum system or infrastructure"<sup>23</sup>.

### 6.3.2 National practices and findings

#### ⊖ **Bad practices:**

- **The "Dublin System" can seriously contribute to the application or prolongation of detention measures.** Detention is practiced during the **sending procedure** especially by Germany and Hungary, while Greece detains asylum-seekers under Dublin procedure when **receiving** them. In Germany, asylum-seekers, including those detained on Dublin grounds, can also be held in penitentiary institutions.

With regard to the **receiving procedure**, in **Germany** transferred asylum-seekers are not detained, but rejected applicants are detained if the deportation procedure has already started.

In **Hungary**, asylum-seekers can be detained also after their arrival, even if for a shorter period of time than when they are detained before transfer. Most of the applicants interviewed actually declared that after being transferred to Hungary they had to stay in the closed camp of Békéscsaba (see below) for 15 days and were then moved to an open one. Nevertheless, this treatment is not discriminatory, since in Hungary all asylum-seekers are detained for 15 days, during the pre-admissibility procedure.

In **Greece**, the authorities declare that transferred asylum-seekers are not detained if they submit an application or if they still have rights within the asylum procedure. Nevertheless, many transferred asylum-seekers have reported that they have been detained during the reception phase, normally for 4-5 days, sometimes for weeks, on one occasion for months.

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<sup>22</sup> European Commission, *Recast*, cit., 3<sup>rd</sup> December 2008.

<sup>23</sup> European Commission, *Recast*, cit., 3<sup>rd</sup> December 2008, Preamble n. 21.

**Case reported from Greece (QIII).** A young Afghan man who had left his country because of ethnic discrimination and wanting to go to Norway where he had relatives was detained during both the sending and the receiving procedure under the Dublin Regulation. In Europe he crossed several countries: Greece, Italy, France and Germany, where he first applied for asylum. In Germany, he was detained in prison for two days and then closed in a reception centre for two months. In this centre his freedom of movement was limited, thus resulting in a *de facto* detention. When transferred to Greece, he was detained in Rodos for three months. While conditions and treatment during detention were good in Germany, in Rodos the Afghan refugee described the detention conditions as being awful: “*the general situation was terrible, like in the Middle ages*” he declared. He also reported having been negatively affected by the detention experience in this country.

**Case reported from Greece (QIII).** Another asylum-seeker, this time an Iranian woman, suffered from detention both in the sending and in the receiving country, Germany and Greece respectively. Having come to Europe legally, she decided to stay after the situation in her country of origin had changed (*réfugié sur place*). While staying with her husband at a camp in **Germany**, they were told by two policemen about a deportation order to Greece that was dated 15 days earlier and of which she had not been informed. Mrs. G and her husband were accompanied to the Police headquarters and separated. Here they were treated as criminals although they were in Germany legally: she was forced to strip naked, her body was searched and her fingerprints were taken. The Police wanted to detain her alone but after her loud protests the two of them were put in a cell in the basement together, for one night, with no food nor water. When recalling her detention, Mrs. G describes it as being cruel and horrible; she says she was not treated as a human being and that she feels depressed when thinking about it. As if this was not enough, Mrs. G and her husband were then detained 5 days at the airport upon arrival in Greece, where fortunately the detention conditions were at least acceptable.

With regard to the **sending procedure**, in **Germany** asylum-seekers can be detained pending their transfer and no time limit is foreseen. In this way, *Dubliners* can be put under detention as long as the transfer procedure is underway. This is very different from the detention of other asylum-seekers, not falling under the Dublin procedure and detained on other grounds, for whom a time limit of 4 weeks is foreseen. The Asylum Procedure Act requires that the detention order is made before the application is lodged. In practice what happens is that the border guards make sure that this order is issued before the asylum application reaches the Federal Office for Migration and Refugees.

Even if they are not detained, applicants are obliged to live in restricted areas, often outside urban environment, in isolated conditions and with a high level of discrimination.

**Case reported from Germany (“life story”).** Family A. had to flee from Chechnya, after they had suffered extreme assaults and attacks: family members and neighbors were mistreated, hijacked and even murdered. When they could bear it no longer, they decided to leave the country. They traveled through Poland to Germany. They didn’t want to stay in Poland because they were afraid of the Russian Secret Service which they presumed had spies in the refugee camps. Only when they arrived to Germany they found out that under the Dublin Regulation they had no right to stay there. Mrs. A was already psychologically ill because of what she had experienced in Chechnya: she felt panic when she thought she would be forced to go back to Poland where she didn’t feel safe. In this situation she felt completely desperate and tried to commit suicide, but was rescued at the last moment. The cynical reaction of the authorities was to put her under detention, justifying their decision by saying that there was a reasonable suspicion that Mrs. A would hurt herself again in order to avoid being deported to Poland. The court that had to review this decision, confirmed this by saying that there was the danger of absconding (flight). Mrs. A.’s lawyer appealed to the next instance and was finally successful. The detention decision was declared unlawful and Mrs. A. was released. After this case was reported in the newspapers the German Asylum Department used the Sovereignty Clause to take over responsibility for the Asylum Procedure.

**In Hungary**, after transfer asylum-seekers are usually held in the refugee camp of Békéscsaba, where their freedom of movement is limited. This results in a *de facto* detention without clear legal basis, without the provision for a maximum period of detention and without the possibility of judicial review. This facility is equipped with 3 metre high fences, barbed-wire and surveillance cameras. A private company also provides the centre with security guards with dogs. Applicants are forced to stay in this closed camp, designed for the admissibility phase and therefore not for prolonged stays, for longer periods of time than other asylum-seekers: detention can in fact last several months. According to the applicants interviewed, the general conditions in the camp are good but there is not any kind of occupation or entertainment and they are not informed about the reasons for this prolonged detention. Contrary to the Asylum Act, **asylum-seekers are *de facto* detained during the whole Dublin procedure as the restriction of freedom of movement of this category of asylum-seekers lacks proper legal basis and safeguards.**

- Some asylum-seekers, including those whose detention is prolonged because of Dublin procedures, are held in **high-security detention facilities.**

**In Hungary** some asylum-seekers are held in alien policing detention centres during the admissibility procedure. Two of four facilities are characterized by a harsh detention regime which is normally applied to criminals who have committed very serious crimes. Asylum-seekers detained here are locked in their cells nearly all day long, with no possibility of working, doing sport activities or receiving social or psychological care. The maximum period of detention in these centres is 6 months.

- Many asylum-seekers detained because of the Dublin procedure, complain about the **detention conditions.**

Especially in **Greece**, where asylum-seekers are detained even during the receiving procedure, asylum-seekers have reported they have received “awful treatment” during detention and have experienced “inhuman conditions”. An asylum-seeker from Iraq, transferred from Sweden to Greece, talked about feeling “*like an animal*”.

- **Detention has reportedly been applied even in cases where the asylum-seekers manifested their interest in cooperating with and accelerating the transfer.**

Asylum-seekers transferred to Spain under the Dublin procedure (from countries such as Belgium, France, Norway) have reported that they have been detained in the sending countries even when – after a transfer decision had been taken – they actually wanted to go back to Spain. For example, an asylum-seeker waiting to be transferred to Spain was detained for more than two months in Belgium after having declared to the Police, prior to his transfer, his desire to go back to Spain.

- Those received from another Member State under Dublin procedure can have in practice **worse access to reception facilities** than asylum-seekers in general.

In **Italy** and **Greece**, after transfer, *Dubliners* are often left without a place to stay: interviewees have sometimes declared that even if they experienced extremely difficult journey by sea before landing in Europe, reception and treatment experienced afterwards in these countries was even worse.

In **Italy**, for example, this happens mainly because the asylum procedure of most *Dublin returnees* transferred to Italy has already been concluded. Thus, the individuals concerned are no longer considered asylum-seekers and lose their right to be received in the Reception Centre for Asylum-seekers (*Centro di Accoglienza per Richiedenti Asilo - CARA*). Consequently, these applicants do not have access to first forms of reception, and it is difficult for them to find accommodation *tout court*. Even if from a formal point of view, when the procedure is concluded *non-Dubliners* are in the same situation, it is also true that if asylum-seekers are sent back to a country because of the Dublin Regulation this country should be able to receive them.

In **Greece**, for housing, there are currently approximately 850 places in camps or other forms of accommodation for asylum seekers. Of these places approximately 250 are reserved for unaccompanied minors and 150 for families. There were over 16,000 new asylum applications filed in Greece during 2009, the majority of whom were in need of accommodation. It therefore appears that only a very small percentage of asylum-seekers have a chance of receiving accommodation.

In this situation, *Dublin returnees* have equally few chances of being granted accommodation, since they do not receive any priority over other asylum seekers. As a result, most *Dublin returnees* are forced to remain homeless for long periods of time. This situation also affects unaccompanied minors and families with small children, since places in camps cannot be found immediately even following the intervention of NGOs. The social service of the Greek Council for Refugees has a list of about 70 families who are homeless and waiting for accommodation. The average waiting time is about 2 months, with some families waiting for as long as 6 months and even up to a year. Single adults without health problems are almost never sent to refugee camps.

☺ **Good practices:**

- **Detention is not used, even to solve the problem of absconding of asylum-seekers subject to a transfer decision, in Spain and Italy.**

In **Spain**, detention is never applied, neither prior to transfer nor if a negative answer from the country in question is received.

In **Italy**, detention is not applied under the Dublin procedure. Applicants are held in Centres for Identification and Expulsion (CIE) only in cases foreseen by the law and handled by Police officers, more specifically when an expulsion or a rejection order is issued against them.

In **Sweden**, the Swedish Migration Board opts for detention only in a few cases. The Swedish Migration Board decides about detention if there is suspicion of absconding. The suspicion is usually based on previous experiences or on the person's declaration not to collaborate on his/her transfer. The time limit for detention is two months with the possibility to extend it for two more months after an interview with the detained and a decision by the authority. An applicant who is detained under the Dublin procedure is usually transferred to another Dublin State within three days. For transferred cases, the Migration Board can decide on detention, but in the majority of cases transfer from another Member State does not result in detention. In any case, unaccompanied minors are never detained (as in all of the countries analyzed with the exception of Greece) but are accommodated in a specific shelter.

- **Detention can be avoided in cases where the persons manifest their interest in cooperating with and accelerating the transfer.**

In **Germany** one interviewed Dubliner<sup>24</sup> stated that after requesting not to put her family into custody, the Police took them directly to the plane without applying detention.

- **Asylum-seekers transferred to a Member State under Dublin procedure can be received also by civil personnel.**

In Italy, for example, *Dublin returnees* are received by a service for incoming asylum-seekers set up at the border points by the Department of Civil Freedom and Immigration of the Ministry of Interior and managed by NGOs through specific agreements with the local Prefectures. Nevertheless, not all asylum-seekers are received at the border points and some cases arrive by crossing the land border without any assistance.

### **6.3.3 Recast and recommendations**

The Council Regulation does not take into account the specific issue of detention. It is therefore significant that the Commission has decided to add a specific new article and a new section (article 27, section V) regulating “detention for the purpose of transfer”. As the European Commission puts it in its Explanatory Memorandum, “a new provision recalling the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection is included. (...) Moreover, in order to ensure that detention of asylum-seekers under the Dublin procedure is not arbitrary, limited specific grounds for such detention are proposed.”

The same is done in relation to reception. In its Preamble, the Commission refers to the EU Directive laying down minimum standards for reception of asylum-seekers<sup>25</sup>, stipulating that it “should apply to the procedure regarding the determination of the Member State responsible as regulated under [the] Regulation”. In this way the Recast tries to provide a legal framework for reception that was absent in the Dublin Regulation (see also chapter 6.7 with regard to the provision on temporary suspensions of transfers), even if the mentioned directive is not sufficient to avoid some arbitrariness in application of detention.

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<sup>24</sup> Source: Questionnaire III, Hungary.

<sup>25</sup> Council of the European Union, *Council Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers*, 27<sup>th</sup> January 2003.

Article 27 stipulates that detention has to be applied exceptionally, exclusively on a case to case basis, only if other less coercive measures cannot be applied effectively and only “if there is a significant risk of absconding”. Alternatives to detention are also taken into account, such as regular reporting to the authorities, the deposit of a financial guarantee and an obligation to stay at a designated place. Finally, “due account must be taken of the situation of minors whose detention is only allowed if it is in their best interests, whereas unaccompanied minors must never be detained.” Nevertheless the Recast avoids detailed clarification of some important elements, especially with regard to time limits and places of detention.

In some cases, the Parliament Amendments<sup>26</sup> to the Commission’s Recast confront these flaws promptly, but in other cases they seem less protective than the Commission’s proposal. For example, while the Commission stipulates that Member States may detain an asylum-seeker or a person who is subject to a decision of transfer to the responsible Member State, only if there is a **significant** risk of him/her absconding<sup>27</sup>, for the Parliament only a risk of absconding is necessary<sup>28</sup>.

- **“Voluntary” methods of transfer** should be promoted and applied whenever possible. “Voluntary” should mean that the person agrees with the transfer and is not escorted, but the State remains in charge of organising the transfer or covering such cost. When the person concerned clearly shows his or her intention to comply with the transfer, no detention measures should be applied. As the Parliament’s Amendment number 33<sup>29</sup> stipulates:

1. *The Member State carrying out the transfer shall promote voluntary transfers by providing adequate information to the applicant.*

2. *If transfers to the Member State responsible are carried out by supervised departure or under escort, Member States shall ensure that they are carried out in a humane manner and with full respect for fundamental rights and human dignity.*

- In line with ECRE’s position<sup>30</sup>, it would be important to elaborate, with regard to article 2 (l)<sup>31</sup>, an exhaustive and narrow list of objective criteria on the basis of which the **risk of absconding** should be assessed by Member States. In this matter, we are concerned, in line with UNHCR’s position, that “it should not be possible under such a formulation to determine that the mere fact of being subject to the Dublin Regulation creates a risk of absconding that justifies detaining the applicant.”<sup>32</sup>

- There is the need of an exhaustive list of objective criteria on the basis of which the term **“time reasonably necessary”** as set forth in article 27 (5) of the Recast shall be interpreted by Member States. It is important to remember that according to the Recast, detention pursuant to paragraph 2 shall be ordered for the shortest period

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26 European Parliament, *Legislative resolution on the 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)*, 7<sup>th</sup> May 2009, ref: P6\_TA(2009)0377.

27 European Commission, *Recast*, cit., art. 27, paragraph 2.

28 European Parliament, *Legislative resolution*, P6\_TA(2009)0377, cit., Amendment 29.

29 With regard to article 30a of the Commission’s Recast.

30 ECRE, *op.cit.*, April 2009.

31 In its Recast, the Commission stipulates that: ““risk of absconding” means the existence of reasons in an individual case, which are based on objective criteria defined by law, to believe that an applicant or a third-country national or a stateless person who is subject to a transfer decision may abscond” (article 2l).

32 UNHCR, *UNHCR comments on the European Commission’s Proposal*, cit., 18<sup>th</sup> March 2009.

possible. It shall be no longer than the time reasonably necessary to fulfill the required administrative procedures for carrying out a transfer.

- In line with ECRE's position States would have to apply **non-custodial measures** to an individual before that person could be detained by amending article 27, paragraph (2) to read, "...if other less coercive measures have demonstrably failed...". In this regard, it is important to underline that even the Parliament has amended this part of the Commission's Recast by affirming that: "when it proves necessary, on the basis of an individual assessment of each case Member States may detain an asylum-seeker or another person (...) **only if other less coercive measures have not been effective** (...)." <sup>33</sup>
- It is significant that the Commission's Recast state that *Dubliners* should not be kept in penitentiary institutions, and that the Parliament's amendment, going beyond the Commission<sup>34</sup>, stipulates that "Member States may detain an asylum-seeker or another person (...), **in a non-detention facility** (...)." <sup>35</sup>
- States should ensure that *Dubliners* waiting for transfer are **not kept in detention facilities with a strict regime**, such as high-security prisons, and that the humanitarian conditions, such as access to outdoor activities, psycho-social care, etc., are in line with non-penitentiary grounds for detention, are not of a punishing nature and are therefore more favourable than those in penitentiary institutions.
- **Dublin Regulation shall not be used as grounds for detention after transfer.**
- As in article 27(12) of the Commission's Recast: "Member States shall ensure that asylum-seekers detained (...) enjoy the same level of reception conditions for detained applicants as those laid down in particular in Articles 10 and 11 of Directive 2003/9/EC.
- According to UNHCR, "the obligation in Recast article 27(7) to inform detained persons immediately of "the reasons for detention (...) in a language they are reasonably supposed to understand" falls short of the obligation under Article 5(2) of the European Convention on Human Rights."<sup>36</sup> We agree with the UNHCR's position stating that "the proposal should thus require reasons for detention to be furnished in a language that the applicant understands". In this regard, UNHCR proposes the following amendment of Recast Article 27(7), subparagraph 2: "*Detained persons shall immediately be informed of the reasons for detention, the intended duration of the detention and the procedures laid down in national law for challenging the detention order, in a language they understand.*"
- The shortcomings of the "Dublin System" require what the Commission has proposed on the provision for **other guarantees** such as the need for a detention order made by a judiciary authority, judicial review of detention, time limits and the obligation to

<sup>33</sup> European Parliament, *Legislative resolution*, P6\_TA(2009)0377, cit., Amendment n. 29.

<sup>34</sup> European Commission, *Recast*, cit., December 2008, Article 27, paragraph 2. "Without prejudice to Article 8(2) of Directive [...]/EC [laying down minimum standards for the reception of asylum-seekers], when it proves necessary, on the basis of an individual assessment of each case, and if other less coercive measures cannot be applied effectively, Member States may detain an asylum-seeker or another person as referred to in Article 18(1)(d), who is subject of a decision of transfer to the responsible Member State, **to a particular place** only if there is a *significant* risk of him/her absconding."

<sup>35</sup> European Parliament, *Legislative resolution*, P6\_TA(2009)0377, cit., Amendment 29.

<sup>36</sup> "Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him." See: Council of Europe, *Convention for the Protection of Human Rights and Fundamental Freedoms*, 4<sup>th</sup> of November 1950.

inform the applicant on the reasons for his detention as it constitutes an important safeguard to the right of liberty and to freedom of movement of asylum-seekers.

- As it relies on national legislation on detention the Dublin flaw regarding detention cannot be totally addressed except in a Common European Asylum System perspective.
- It is important that **Dubliners are not discriminated** with respect to other asylum-seekers regarding access to reception facilities and related services.
- **Reception should be carried out also by civilians** and not exclusively by Police authorities. More generally, reception should be conducted respecting the dignity and needs of asylum-seekers who should be **treated in a humane way** in every Member State

## 6.4 FAMILY UNIT

### 6.4.1. Description of the problem

The presence of relatives in Member States is one of the most important factors determining the secondary movement of asylum-seekers. Often, asylum-seekers leave their countries of origin alone and the possibility of reaching family members represents the only way of avoiding continuous removals from one State to another on one hand and greater opportunities of integration in the host society on the other.

Considering “family members” in a restrictive way, as in the Dublin II Regulation, means excluding part of the asylum-seeker’s “family”. Furthermore, it means that reunification is often left to the discretionary evaluation of the authorities, on the basis, for example, of art. 15, which is often interpreted without taking into account the material assistance family members can provide or the emotional links the asylum-seeker may have (see chapter 6.5). In practice, family reunification is not always effective. As a matter of fact, it is often difficult for asylum-seekers to provide authorities with sufficient proof on their family relationships. Sometimes they are even afraid of speaking about their family, thinking that their declarations could have a negative outcome on their case or that by not doing so they could protect their family<sup>37</sup>.

Recital n. 6 of the Dublin II Regulation states that “*the family unit should be preserved in so far as this is compatible with the other objectives pursued*”. Recital n. 7 establishes the possibility for the competent State to derogate from the responsibility criteria “*so as to make it possible to bring family members together where this is necessary on humanitarian grounds*”.

As for the definition of “family members”, art. 2 (i) of the Dublin II Regulation states the following:

“(..) *insofar as the family already existed in the country of origin(..):*”

- “*The spouse of the asylum-seeker or his or her unmarried partner in a stable relationship where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens*”;
- “*The minor children of couples referred to in point (i) or of the applicant (..)*”;
- “*The father, mother or guardian when the applicant or refugee is a minor and unmarried.*”

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<sup>37</sup> Source: Questionnaire III, Italy and Sweden.

It is true that the importance of family ties clearly emerges from the hierarchy of the criteria for determining the responsible Member State found in the Regulation.

The first criterion concerns the unaccompanied minor and is established in art. 6 : *“The Member State responsible for examining the application shall be that where a member of his or her family is legally present.”* Art. 7 states that *“where the asylum-seeker has a family member, regardless of whether the family was previously formed in the country of origin, who has been allowed to reside as a refugee in a member state, that Member State shall be responsible for examining the application for asylum.”*

Finally, art. 8 states that *“if the asylum-seeker has a family member in a Member State whose application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible for examining the application for asylum.”*

Questionnaire n. II shows that in Sweden and in Spain stable unmarried relationships are recognised, while in Hungary, Greece and Italy they are not.

In Spain, it is even sufficient to provide – in the absence of a legal document – an official declaration of the partners demonstrating their relationship.

In Sweden, a *“de facto”* couple is recognised not only if partners live together, but also if they live partly together or separately.

Under art. 15 of the Dublin Regulation, Italy recognises as *“family members”* also older brothers, uncles or aunts who can assure concrete assistance to the young relatives, even if they are not minors.

As the Regulation refers to national legislations (and practices) for the definition of *“family members”* (art. 2 ii) and as these legislations consistently differ one from the other with regard to family matters, it is evident that asylum-seekers tend to reach the country where they are most likely to re-unite with their beloved ones. A broader definition of *“family members”* or a greater use of the humanitarian clause could avoid this kind of situation.

Furthermore, as described in chapter 6.2, the effective possibility of providing the authorities with information about the presence of relatives in other Member States is quite difficult. The questionnaires report that all countries usually ask for this kind of information during the first phase of the procedure, but, in practice, this information does not always represent a sufficient element to avoid transfer.

**Case reported from Sweden (QIII).** An Eritrean woman escaping from her country wanted to reach Sweden because her sister already had a residence permit there. S.H. first landed in Italy, where the authorities took her fingerprints. She told them she was going to Sweden and did not want to apply for asylum in Italy. The Italian authorities did not ask her the reasons why she was seeking for asylum and did not inform her about the Dublin procedure, so the first time she applied for asylum was upon her arrival in Sweden. She is now waiting for a decision of transfer to Italy, but as she puts it she *“would rather die than go back to Italy”*. The reception she received in Italy was much harsher than that in Sweden, where not only she has relatives, but where her small children receive health care and general assistance. As S. suffers from diabetes and occasionally becomes unconscious, she is extremely worried for her children and would like them to stay with her sister if she is obliged to go back to Italy. At the end of the interview she asked: *“If something happens to me, who will take care of my children in Italy?”*

In the above example the problem was not the lack of information, but rather a strict perspective of the *“Dublin System”*. Which is the better choice? To transfer a woman to a country where she has no relatives, no cultural ties, no opportunity to be assisted by her

own family, or to allow her to re-unite with her only sister in Europe? By doing so, is there an effective advantage with regard to the financial burden put on Member States? Furthermore, it is important to underline that, in order to be re-united, the family has to already exist in the country of origin. This means that if, for example, an asylum-seeker flees from Afghanistan to Turkey, gets married in Turkey with another asylum-seeker and then tries to get to the EU with his/her partner but end in a different Member State from his/her State, according to the Dublin II Regulation, this family is not recognized as such, since it was not formed in Afghanistan.

Finally, it is extremely important to consider the concept of “family” with regard to **unaccompanied minors**. In this case the possibility of re-uniting with a relative is of the utmost importance, considering the particular vulnerability of these individuals. Even the international instruments related to minors foresee specific measures for a minor asylum-seeker including the provision for Member States to make all efforts “*to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family*”<sup>38</sup>.

More generally, it is important to underline that in despite of the strict definition given by the Dublin Regulation, Member States are free to expand it, or are sometimes even obliged to do so, according to their international human rights obligations. The definition of “family member” under art. 8 of the European Convention on Human Rights is much wider than that of art. 2(i) of the Dublin Regulation: it encompasses core family ties, independently of when and where they were formed, and it may also include extended family relations in cases of particular dependency. As a consequence, the implementation of the Dublin criteria may give rise to the separation of “family members” within the meaning of article 8 of the ECHR.

#### **6.4.2 National practices and findings**

The results of questionnaire n. II show that in none of the involved countries there is a procedure or an established protocol for tracing family members in the European countries, and that the authorities do not effectively support asylum-seekers on this matter. Sometimes NGOs can give their support in tracing family members, but this is not a regular procedure. In **Hungary**, the Office of Immigration and Nationality (OIN) declares contacting immediately the other Member States if a minor or another asylum-seeker inform them about the presence of family members in Europe: this also happens in **Spain**, in **Sweden** and in **Italy**. In **Italy**, a Committee for foreign minors was established by the Alien Law 40/98. This Committee, among others things, is tasked with tracing family members in third countries. Nevertheless, in practice, the Dublin Unit often relies on other authorities, like other Dublin Units or Police Departments in other Member States to start tracing family members. Contrary to the results of questionnaire n. II, questionnaire n. III shows that *Dubliners* are not

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<sup>38</sup> United Nations, *UN Convention on the rights of the child*, 1989, art. 22: “*States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties. 2 For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason , as set forth in the present Convention.*”

always asked about their family ties in Europe and that sometimes they are separated from the family members with whom they arrive.

☹ **Bad practices:**

**Case reported from Germany (QIII).** A male Iraqi asylum-seeker, Mr. Z., fleeing his country because of religious persecution, wanted to go to Germany to join his sister and her family. He arrived in Turkey and then, travelling through Greece, arrived in Germany where he was detained with his brother, who arrived in Germany after him. The two were then separated and taken to two different camps in the country. Following this separation, his brother managed to stay in Germany, while Z. was deported to Greece. He was deported even though he was asked about the reasons for seeking asylum and about his family links in the European Union. As Z. puts it, detention was “harsh and inhumane” and the Police repeated to him that he would not have been able to return to Germany. He managed to return only a year later, when he was arrested and then detained. In the end, Z. finally obtained the refugee status. When asking him during the interview what changes would he suggest to be implemented in the Dublin procedure, Z. answered: *“The fact that my sister lives in Germany should have been taken into account”*.

😊 **Good practices:**

There have been cases where the authorities have made consistent efforts in order to reunite family members under the Dublin II Regulation.

**Case reported from Italy (“Life story”).** Family S. left Afghanistan ten years ago, after members of the family had been killed by the Taliban and Mr. S had been severely wounded. After staying in Pakistan and in Iran, they arrived in Europe. They first arrived in Greece, but had the intention of going to Switzerland. When leaving Greece, the *passeur* separated the family and the two little children, aged 8 and 10, along with Mrs. S’ younger brother (minor himself), were left behind. In the meantime, the rest of the family (Mr. and Mrs. S and their younger son) was transferred from Switzerland to **Italy**, where they applied for asylum. Nevertheless, as they had previously passed through Greece, under the Dublin procedure, the family needed to be transferred to this country. Because of the impossibility of undertaking the transfer (Mr.S had his leg amputated and Ms. S was 22 weeks pregnant), the Italian NGO sent a request to the Italian Dublin Unit demanding the Italian authorities to take charge of the family. The Unit accepted the request reversing the previous transfer decision and the asylum procedure continued in Italy. Consequently, according to the family reunion procedure under the Dublin Regulation, the two children and Mrs.S’s brother were transferred to Italy, finally joining the rest of the family. In the end, all the family obtained the refugee status. A long time passed before the family could finally be reunified. The effective family reunion was made possible by a broad cooperation between different subjects, such as the Italian Dublin Unit, the Italian NGO, the UNHCR, the Italian border police and a private Greek lawyer who assisted the minors during their stay in Greece.

### 6.4.3 Recast and recommendations

- We welcome the Commission's Recast inserting recital n. 11 which states that "... respect for family unity should be a **primary consideration** of Member States when applying this Regulation" and recital n. 12 recommending not to separate family members.
- We further welcome the new recital n. 13 which states that "*the existence of a relationship of dependency between an applicant and his/her extended family on account of pregnancy or maternity, their state of health or great age, should become binding responsibility criterion.*"
- We welcome the Commission's recast amending art. 15 with art. 11 ("Dependant relatives"). In the recast, art. 11(1) foresees that Member States responsible for examining the application shall be the "most appropriate" in the case that an applicant is dependent upon the assistance of a relative due to pregnancy, maternity, serious illness, handicap, or old age (or where the relative depends upon the applicant). Of the utmost importance is the article's provision stating " (...) *that the person concerned expressed their desire in writing. In determining the most appropriate Member State, the best interests of the persons concerned shall be taken into account (...).*" In line with the UNHCR recommendations, art. 11 list should not be exhaustive.
- The shortcomings of the Dublin Regulation require the Commission's recast for art. 6 ("Guarantees for minors") which states that: "*Member states shall establish procedures in national legislation for tracing the family members or other relatives present in the Member States of unaccompanied minors.*"
- The definition of family members in the Dublin context should in any case include:
  - A minimum group of core family members (as it is now), but this list should not be exhaustive.
  - The criterion of having the family established in the country of origin should be abolished.
  - The emotional and material dependency should be the primary consideration when evaluating family unity.
- Family members as a principle should not be separated.
- It would be important that the Commission considers elaborating a common protocol for tracing family members in cooperation with all relevant stakeholders.

## 6.5 DISCRETIONARY CLAUSES

### 6.5.1 Description of the problem

By "discretionary clauses" we mean the so called "sovereignty" clause (art. 3.2 of the Dublin II Regulation) and the "humanitarian" clause (art. 15)<sup>39</sup>.

Both articles are of fundamental importance for the implementation of the Regulation, but the effective application is uneven and scarce and the reasons for implementation differ.

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<sup>39</sup> The Dublin II Regulation makes no reference to "discretionary clauses". It is in the Commission's Recast that the sovereignty and the humanitarian clauses are brought together under the same chapter – named "discretionary clauses" – and are both revised.

On one hand the articles are unclearly defined in the Dublin Regulation. Art 3.2 states that "(...) *Each Member state may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation and shall assume the obligations associated with the responsibility.*"

Art 15 states that "(...) *Any Member State, even where it is not responsible under the criteria set out in this Regulation, may bring together family members, as well as other dependant relatives, on humanitarian grounds in particular on family or cultural considerations (...)*"  
*"In cases in which the person concerned is dependent on the assistance of the other on account of pregnancy or a newborn child, serious illness, severe handicap or old age, Member States shall normally keep or bring together the asylum-seeker with another relative present in the territory of one of the Member States, provided that family ties existed in the country of origin(...)."*

On the other hand, the application should be considered in the light of the asylum-seekers' needs, which, as described in chapter 6.1 and 6.2, are not always taken into consideration, or if so, are not a sufficient reason to avoid the transfer decision.

Despite some efforts in applying the discretionary clauses, a transfer under these criteria often depends on the possibility for the asylum-seekers to be assisted by NGOs or lawyers, who can contact the Dublin Units directly to ask for the revision of a transfer decision.

### 6.5.2. National practices and findings

Questionnaire n. I shows statistics on the application of art 3.2 and 15 of the Regulation.

Year 2008	Germany	Greece	Italy	Hungary	Spain	Sweden
Sovereignty clause applied	130 (data related to cases with Greece only)	0	176	6	0	28
Humanitarian clause	n/a	6	2	0	0	0

Questionnaires I and II show the cases in which the sovereignty and humanitarian clauses are applied.

- **Sovereignty clause**

In 2008, **Germany** applied the sovereignty clause for 130 vulnerable cases for which Greece was responsible, thus remaining under the responsibility of the German authorities, but also reported of 222 cases transferred to Greece. Apart from cases concerning Greece the sovereignty clause is not applied and there are no general guidelines for the use of the sovereignty clause for humanitarian reasons. Generally speaking, Germany does not use the clause in relation to medical reasons presuming that all Member States are able to provide treatment for medical care.

According to a directive of the German Dublin Unit the sovereignty clause is used for "practical" reasons, when a claim appears to be "manifestly unfounded" on the basis of information gathered during the Dublin procedure and therefore when there is a good chance that the person can be quickly deported.

**Greece** did not apply the sovereignty clause in 2008 and the Dublin Unit did not give any explanations on this point. As far as **Hungary** is concerned, in 2008 the sovereignty clause

was applied for Somali people coming from Greece. No formal criteria are applied in the practice of the OIN regarding the sovereignty clause.

In **Spain** the sovereignty clause is applied on rare occasions, for vulnerable people or to guarantee the family unit. In 2009, the OAR applied the sovereignty clause in the case of a pregnant woman dependent on her partner but with whom she was not married. The partner and father of the child was a legal resident with regular employment in Spain. This case should be considered as a **good practice**.

In **Sweden**, the sovereignty clause is applied in case of bad health conditions of asylum-seekers; dependence on assistance from a family member and if the applicant gives birth to a child in Sweden and the father of the child is a Swedish citizen. The clause is applied by looking at each case individually, on a case-by-case basis, thus creating a kind of practice. The officer considers the possibility of applying the clause even without a specific application from the asylum-seeker, this being a **very good practice**, as the sovereignty clause is applied regardless of who is requesting the application or even if there is no such request at all.

In **Italy**, the sovereignty clause is applied for vulnerable categories, certified ill persons, members of a family group which are not close relatives and individuals who can demonstrate they can easily find a job in Italy. Like **Sweden**, **Italy** tries to apply the sovereignty clause even if it is not requested by the asylum-seekers.

Member States have all affirmed that the sovereignty clause is not applied in a country-specific manner but examination is made on a **case-by-case basis**. Normally, it is the caseworker or the director of the Dublin Unit who decides if the clause can be applied or not.

Questionnaires show that there have been cases where this clause was applied by the Dublin Units following an **appeal lodged against the first decision resulting in the Court's order to review the case** and apply the clause.

For example, in **Hungary**, the Hungarian Helsinki Committee (HHC) assisted an Afghan unaccompanied minor subject to the Dublin procedure and requested a judicial review of the OIN decision. In its decision, dated September 2009, the Metropolitan Court held that Hungarian authorities are obliged to examine international human rights instruments when applying the Dublin Regulation. The court considered that the prohibition of torture, inhuman or degrading treatment or punishment as set out in Article 3 of the European Convention on Human Rights (ECHR) constitutes an absolute ban on torture which has to be taken into consideration even when applying European Union's law. The Court accepted that reception conditions in Greece do not meet the requirements to prevent the potential breach of art. 3 of the ECHR in the case of vulnerable asylum-seekers. The OIN was ordered to reopen the case and take over responsibility to examine the application.

Recently HHC assisted a minor asylum-seeker from Afghanistan, who was to be removed to Greece under Dublin procedure. HHC sent a request to the European Court of Human Rights (ECtHR) to apply interim measures under Article 39 of the Rules of Court and to suspend the transfer to Greece. The HHC argued that in light of the minor's previous traumatizing experiences and of the well-documented evidence available on the serious flaws of the Greek asylum system, the young boy's return to Greece would violate his right to be free from inhuman or degrading treatment, as he would not have access to protection, including proper health care, as all unaccompanied minor asylum-seeker in Greece. The ECtHR decided to apply interim measures and asked the Hungarian government not to enforce the transfer to Greece. The Hungarian Immigration Office decided not to enforce the transfer to Greece and to examine the Afghan minor's asylum application in the regular asylum procedure.

In Hungary, during the judicial review against the decision ordering the applicant's transfer to another Member State, it is the Metropolitan Court in Budapest that decides on the request for review in a non-litigious procedure within eight days of receipt of the request for

review on the basis of available documents. In practice, it is quite problematic as there is no personal hearing in the procedure and no legal remedy is possible against the decision of the Court. During the Court review, even the application for the suspension of the transfer has no suspensive effect on the implementation of the decision. Therefore, the effectiveness of the remedy is questionable.

In its decision, the Court is entitled to change the decision of the OIN or to order the OIN to conduct a new procedure if the original decision or procedure was not in line with the relevant Regulation. Due to the lack of personal hearing and short deadlines in this non-litigious procedure, the Hungarian Helsinki Committee hardly witnessed any case where the OIN decision was changed or referred back to the OIN procedure. Cases of especially vulnerable asylum-seeking separated children led to the application of the sovereignty clause on very few occasions.

In **Germany**, there were cases where Courts decided that Germany was obliged to use the sovereignty clause – especially in some cases falling under Greek responsibility. Some 70 Courts have already decided upon the application of temporary measures regarding the legality of transfers to Greece. In several cases, the Courts made final decisions concluding that transfer to Greece is unlawful and that Germany is obliged to make use of the sovereignty clause under article 3, paragraph 2, of the Dublin II Regulation.

On the 8<sup>th</sup> July 2009, the *Verwaltungsgericht Frankfurt am Main*<sup>40</sup> held that according to the preamble of the Dublin II Regulation, the goal of article 3, paragraph 2 is to ensure the right to asylum guaranteed by article 18 of the EU Charter. The Court consequently held that when deciding upon the application of article 3, paragraph 2, of the Dublin II Regulation, EU Directives on asylum should be considered. The *Verwaltungsgericht*, taking into account reports from the UNHCR and Pro Asyl, considered claims regarding the lack of reception facilities, access to employment, prolonged procedures, lack of judicial information and lack of legal aid in Greece as credible.

It concluded that Greece is violating core articles of the Reception Directive as well as the Procedures Directive and ordered the national authorities to prevent the removal to Greece of the asylum-seeker concerned<sup>41</sup>. In a different decision made by another chamber of the *Verwaltungsgericht Frankfurt am Main*, the German authorities were ordered to suspend removal of the asylum-seeker concerned, because there were serious concerns as to whether Greece would abide by its international obligations<sup>42</sup>.

The Federal Constitutional Court of Germany (*Bundesverfassungsgericht*) will give legal clarification to Germany during the year 2010 on the question of whether it is legal to transfer asylum-seekers to Greece. There are several cases pending at the Federal Constitutional Court. The Court suspended removal of an asylum-seeker to Greece as a provisional measure for the first time the 8<sup>th</sup> September 2009. In its interim decision, the Court took into consideration that the asylum-seeker claimed, on the basis of sources that have to be taken seriously, that in practice he will not be able to register as an asylum-seeker in Greece and will possibly be forced to live on the streets. The *Bundesverfassungsgericht* held that if the assertions of the asylum-seeker were correct, there would be no assurance that he could be contacted when the Court dealt with the merits of his application. The *Bundesverfassungsgericht* concluded that the disadvantages of indicating a provisional measure have less weight, partly because the EU obligations of the authorities are at stake. The *Bundesverfassungsgericht* gave importance to the fact that the EU law, in article 19, paragraph 2 and article 20, paragraph 1e, of the Dublin II Regulation, offers the possibility for the Court to provide protection against transfer through the use of a provisional measure.

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40 Administrative Court of Frankfurt.

41 Verwaltungsgericht Frankfurt am Main, 7 K 4376/07.F.A, 8th July 2009.

42 Verwaltungsgericht Frankfurt am Main, 12 L 1684/09.F.A, 8th July 2009.

Concerning **Italy**, there are some cases where Courts decided to uphold appeals lodged against a transfer decision, on the basis of art 3.2 of the Dublin Regulation. In 2008, the Italian Dublin Unit decided on a transfer decision to Greece for J.M., an Afghan asylum-seeker. The Administrative Court (TAR) in Lecce<sup>43</sup> upheld the appeal of the Afghan man, basing the decision on the violation of human rights in Greece.

The Court states that the Ministry of Interior did not point out the position of the UNHCR of the 15<sup>th</sup> April 2008<sup>44</sup> regarding transfers of asylum-seekers to Greece or its study on implementation of the qualification Directive<sup>45</sup>. In both positions the UNHCR recommends Member States to apply art. 3.2 of the Dublin Regulation in cases involving transfers to Greece. Consequently, the Administrative Court has upheld the appeal and revoked the transfer decision of the Italian Dublin Unit.

Another relevant case regards an Iranian asylum-seeker. Mr. A. had to be transferred from Italy to Greece after a decision taken by the Italian Dublin Unit considering Greece as a “safe third country” and not finding reasons for applying art. 3.2. Nevertheless, on the 16<sup>th</sup> February 2010, the Regional Administrative Court for the Region of Lazio<sup>46</sup> revoked the transfer decision considering the applicant’s appeal as valid.

According to the Court, the Italian administration should have undertaken a deeper evaluation of the situation the asylum-seeker would have had to face in Greece. Furthermore, the reasons for proceeding with the transfer and for not applying art. 3.2 had not been sufficiently verified by the Unit. The Court justified these considerations on the basis of the widely “known situation” of discrimination, abuse and violence that asylum-seekers transferred to Greece face. According to the Court, the Italian administration did not always take into consideration the position of “international organizations having a universally recognized moral status”. The Court mentions the UNHCR positions (2007 and 2008) on transferred asylum-seekers in Greece which had already brought Norway and Finland to suspend transfers to this country and had already been used as the basis to block transfers in other Italian cases. Furthermore, the Court refers to two decisions of the European Court of Human Rights concerning asylum-seekers transferred to Greece (one ordering Italy not to transfer an Afghan citizen) and to other Italian cases on the same issue (especially the Decision of the Regional Administrative Court for the Region of Puglia of the 24<sup>th</sup> June 2008).

This important decision confirms and consolidates the existence of a clear jurisprudence stipulating the necessity of suspending transfers to Greece and of applying the discretionary clause under the Dublin Regulation when, due to the particular situation in this country, transferred the fundamental rights of asylum-seekers would not be guaranteed.

In order to lodge an appeal or revise cases under the Dublin procedure, NGOs and the UNHCR are in some cases able to assist asylum-seekers. This is particularly true in **Italy**, where many cases have been directly revised by the Dublin Unit on the basis of individual applications.

Finally, there have been **cases reviewed without the Court’s intervention**, but such cases are, indeed, very rare. In **Hungary**, in March 2009, the Hungarian Helsinki Committee intervened in the case (different from the one mentioned above) of an Afghan unaccompanied minor asylum-seeker subject to a transfer to Greece. The child claimed that he had once faced serious hardship when staying in Greece. The HHC argued that the Greek reception conditions and asylum procedure would not be adequate for a separated child and that the

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43 Decision n. 1870/2008 of the Regional Administrative Court of Puglia, 24<sup>th</sup> June 2008.

44 UNHCR, *UNHCR Position on the Return of asylum-seekers to Greece under the “Dublin Regulation”*, 15<sup>th</sup> April 2008.

45 UNHCR, *Asylum in the European Union: A Study of the Implementation of the Qualification Directive*, November 2007

46 Decision 2249/10 of the Regional Administrative Court of the Region of Lazio.

best interest of the child would therefore not be respected. Due to the lack of appropriate housing facilities, legal aid, social and medical care, by sending underage asylum-seekers to Greece, Hungary would breach article 3 of the European Convention on Human Rights. The HHC thus approached the UNHCR to intervene in the case. As a result, the OIN reopened the case and established its responsibility to examine the asylum application.

**Case reported from Italy (“Life stories”)** H.S was born in Afghanistan in 1989. He is homosexual and his family never accepted his situation: to be homosexual in Afghanistan is considered a crime punishable by death penalty, a condition that needs to be kept hidden. Nevertheless, some senior supervisors from the local Mosque discovered his situation, tried to find him and denounced him to the Police, who started looking for him in the restaurant where he worked. When he heard that three other homosexual friends had been arrested, he went home to take some money and leave the country, but his father found him and started beating him with a stick, kicking and punching him all over his body, until he almost killed him. Despite his bad condition he managed to escape from Afghanistan and after two months he arrived in Greece. However he didn't ask for asylum there because he knew there was no effective protection in that country and finally he reached Italy. He was immediately transferred to a Centre for Kidney Transplant because of severe nephritic insufficiency caused by his father's assault. He was in a very difficult physical and psychological situation so that a new transfer to Greece could have been really dangerous for his health. By means of a direct claim to the Dublin Unit and avoiding an appeal, CIR asked the Dublin Unit to deal with Mr. H. S.' request for asylum by applying the sovereignty clause. He finally obtained the refugee status in Italy.

⊖ **Bad practices:**

The worst practice in the involved countries is represented by **Germany**. It is true that Germany has applied the sovereignty clause in 130 cases and that many Courts have decided that transfers to Greece should not be performed, while in other countries the clause is rarely applied and transfers to Greece continue. Nevertheless, as described above, Germany is the only Member State that applies the sovereignty clause to speed up deportation of asylum-seekers, contrary to the principle on the basis of which the clause should be used for humanitarian reasons.

- **Humanitarian clause**

Interpretations on the application of the humanitarian clause also vary in all of the Member States involved. Generally speaking, our research did not reveal any effort to collect relevant information and to sufficiently consider cultural and family ties in the context of the application of the humanitarian clause.

Questionnaires I and II show that in all the involved countries the clause is very rarely used and the criteria for application vary from country to country. In the case of **Greece** and **Germany** the questionnaires do not reveal any relevant reply. In **Italy**, the humanitarian clause is applied for vulnerable cases, for family re-union and for social inclusion. Sometimes the possibility to work in Italy is also taken into consideration. This could be considered as a **good practice**.

**In Hungary**, according to the OIN practice, Member States rarely apply the humanitarian clause. It is also rarely applied by the OIN itself which affirms that the nature and circumstances of the cases are not relevant for the application of the clause. The HHC is not aware of any case where reference was made to the humanitarian clause by the OIN.

In **Spain**, the clause has not been used recently. It appears that no case has met the relevant criteria on the basis of article 15.

In **Sweden**, according to the authorities, the Swedish Migration Board would make use of the possibility set out in art. 15, also considering cases where family members of asylum-seekers are dependent on the applicant because of bad health conditions. The article can in theory be applied in some cases by court decision on the basis of new circumstances. The Migration Board can make use of the possibility, but not in the first instance and only under condition of presenting new circumstances. The Swedish Migration Board has a very restrictive interpretation for the application of the humanitarian clause<sup>47</sup>. As a matter of fact, in 2008 this clause was never applied<sup>48</sup>.

All Member States face difficulties in collecting all useful information needed to justify the use of the humanitarian clause.

Sometimes, the “health problem” alone is considered not sufficient to avoid transfer, since Member States presume that all countries have the same standards of accommodation and medical care.

Even if this would be true, it appears that in some cases the application of the humanitarian clause is the only practicable solution.

As an example, we report a case which occurred in 2008. M.N., a 27 year old Eritrean girl, was returned from the UK, where she had a cousin, to Italy. By sending her back, the British authorities seriously put the woman’s health at risk. At Fiumicino Airport in Rome, when she spoke to the CIR operator at the border office, she said she had a very copious menstrual flow. The operator decided to call a first-aid doctor and it was discovered that she had had an induced abortion only four days before her return to Italy. The surgery had taken place in the doctor’s office at the detention centre where she was being retained. The girl was hospitalised near Fiumicino, where she received adequate treatment. She was discharged after two days and the CIR operator accompanied her with a taxi to “Collatina”, one of the places in Rome where the Eritrean Community lives. The girl preferred to join the Eritreans and their religious priest instead of being accommodated in a hostel or in one of the accommodation centres that are normally used. In view of the inhuman treatment the girl suffered in the United Kingdom, CIR wrote a letter of complaint to the Italian Dublin Unit in order to obtain clarification from the British authorities. Travelling by plane, only four days after an induced abortion, is contrary to the guiding principles of the Dublin II Regulation and to any ethical and moral principle. The result of CIR’s action has been a claim from the Dublin Unit to the British authorities to highlight that before the girl’s arrival in Italy no information on her health condition had been supplied and to find out the reason why the British authorities did not consider the possibility of applying art.15, at least temporarily.

### **6.5.3 Recast and recommendations**

In the Commission’s Recast, the sovereignty clause and the humanitarian clause are brought together under the same chapter – “Discretionary clauses” – and are both revised.

- We welcome the Commission’s proposal to move part of the humanitarian clause under the provision for establishing the hierarchy of the criteria determining the responsible Member State.

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<sup>47</sup> As supported by the statistics. See Chapter 3.

<sup>48</sup> In Questionnaire n. I and II, the Swedish Dublin Unit reported that article 15 has been applied, but the statistics for 2008 show the opposite. Therefore, it seems that art. 15 was never applied during 2008, but was applied in the previous years (only in some cases, by court decision and under condition of presenting new circumstances).

New art. 11 (“*Dependent relatives*”) of the Recast states that responsibility will be attributed in cases where an applicant is dependent upon the assistance of a relative due to pregnancy, maternity, serious illness or handicap, or old age (or where the relative is dependent on the applicant). In such cases, the Member State responsible shall be the one considered “most appropriate” for keeping or bringing these persons together, subject to the consent of the persons concerned, taking into account their best interests, including for example, ability to travel<sup>49</sup>.

- The findings of our project support art. 17 of the Commission’s Recast which clarifies the two discretionary clauses.

Art.17 states that “*By way of derogation of art. 3, each Member State may in particular for humanitarian and compassionate reasons decide to examine an application for international protection lodged with it by a third country national or a stateless person, even if such examination is not responsibility under the criteria laid down in this Regulation.*”

Concerning the humanitarian clause, the Commission proposes a general clause allowing Member States to use it whenever strict application of the binding criteria will lead to separation of family members or of other relatives.

- The use of discretionary clauses should be based on a well-defined, objective though not exhaustive, list of criteria.
- We suggest the elaboration and use (in parallel with the discretionary clauses) of alternative and more effective mechanisms (such as the temporary suspension of transfers, as proposed by the Commission) to solve the problem of non-compliance of Member States with the EU asylum law and their international human rights obligations

## 6.6 VULNERABLE ASYLUM-SEEKERS

### 6.6.1 Description of the problem

The Dublin II Regulation does not **define** exhaustively the notion of vulnerable asylum-seekers. The Regulation refers to vulnerable groups only in the context of the humanitarian clause which can be applied for unaccompanied minors or for persons dependent on the assistance of others on account of pregnancy or a newborn child, serious illness, severe handicap or old age, but only when these persons are linked by kinship and when family ties existed in the country of origin.

However, considering Council Directive 2003/9/EC of the 27<sup>th</sup> January 2003 which sets out minimum standards for the reception of asylum seekers giving a definition of “vulnerable persons”<sup>50</sup>, we can assume that the notion of ‘vulnerable groups’ includes, but is not limited to, minors, unaccompanied minors, disabled people, elderly people, pregnant women, single

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49 UNHCR also welcomes the strengthening of this provision, currently contained in the optional “humanitarian” clause in Article 15. Cfr. UNHCR, UNHCR comments on the European Commission’s proposal, cit., 18 March 2009.

50 Art 17 states that “*Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence..*”

parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. Even though all refugees seeking protection are in a vulnerable position, these individuals have particular characteristics or have gone through particular traumatic experiences that make them more fragile.

All Member States affirm that there is the possibility to provide legal counselling to asylum-seekers through dedicated services. Nevertheless, the experience of NGOs in this field shows that the **specific instruments** set up by national authorities are sometimes inappropriate and interviews made to asylum-seekers do not take into account the risk of re-traumatisation, especially in the case where asylum-seekers are victims of torture or violence. The lack of specific training courses on this matter can have negative consequences on vulnerable asylum-seekers. From the account given by NGOs, there is a direct link between the lack of understanding the procedure and the non acceptance of transfers.

While a sort of definition of “vulnerable persons” does exist, no specific instruments are foreseen for the **identification** of vulnerable persons.

As far as **unaccompanied minors** are concerned, the age assessment is carried out in different ways. For example, in **Italy** the competence for the identification falls under the Police authorities who are responsible for taking them to the hospital, for wrist x-ray. The use of this method is severely criticized by NGOs as examination results are not reliable and as this type of procedure prejudices the minor’s dignity. In **Germany**, age assessment is guessed exclusively on the basis of physical appearance. This means no real examination takes place.

According to the OIN in **Hungary**, no special method to assess the age of unaccompanied minors is used. A case was reported, where the asylum-seeker claimed that the doctor determined that he was not a minor only by looking at his torso. In **Spain**, the Oficina de Asilo y Refugio affirms that the age assessment is provided by the prosecutor’s office. Practices vary in the different autonomous communities, but the “*Greulich and Pyle*” studies, sexual characteristics and dental examination are frequently used. Nevertheless, the refusal to undertake a medical examination does not jeopardize the asylum claim. **Sweden** bases the age assessment on the declarations of minors and on documents proving their age. If it is obvious that the asylum-seekers a minor, he/she is registered as such<sup>51</sup>.

The research revealed that only some Member States always try to consider the child’s prime interest when a Dublin decision is processed. Member States often do not transfer minors in countries where they do not have relatives.

**Age assessment** and the **age dispute** between States is surely an important issue, but the main problem is that vulnerability is not sufficiently considered when deciding to transfer someone or not. There are frequent cases where disputes on age occur between Member States. Asylum-seekers fingerprinted in the first country of arrival and considered by the authorities as adults on the basis of their declarations, were treated as unaccompanied minors in other countries. When transferred back to the first country they were treated as adults again, on the basis of their previous declarations and because of the difficulty in proving their age.

**Cooperation among Member States** on the specific condition of asylum-seekers during transfer is not always guaranteed. There have been cases of pregnant women or persons affected by HIV/AIDS transferred notwithstanding their situation.

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<sup>51</sup> As the authorities declare that when it is not obvious that the asylum-seeker is a minor the evaluation is made on a case-to-case basis, it is not clear if a medical examination is actually undertaken.

### 6.6.2. National practices and findings:

#### ⊖ **Bad practices:**

In Greece, the child's best interest is not taken into consideration: **detention** of unaccompanied minors is applied.

**Case reported from Greece (QIII).** In Greece, an Afghan minor was put in detention after his transfer. He arrived by plane from Belgium and in order to prevent him from escaping the Greek Police detained him at the airport for 5 days.

In **Germany**, minors arriving at the airport with their families in possession of false documents have to live in detention centres for adults, without having access to education.

In **Hungary**, even families with children are held in the closed center of Bekescsaba while waiting for a Dublin transfer<sup>52</sup>.

As regards the **admission or readmission of vulnerable groups**, in **Germany and Sweden**, only unaccompanied children have the right to a particular procedure, for instance regarding accommodation, but specific reception facilities for other vulnerable people are not foreseen.

In **Spain**, there is no particular procedure for vulnerable *Dubliners*, even if Dublin Units affirm that they receive the assistance needed. According to the new Law on Asylum and Subsidiary Protection – Law 12/2009 of 30<sup>th</sup> October 2009 – there is a specific rule for minors and for other vulnerable groups but no particular procedure for vulnerable *Dubliners* is included.

In **Italy**, even if the SPRAR (Protection Service for Asylum Seekers and Refugees), the national system designed to provide accommodation in Italy, foresees places for vulnerable groups, it is often unable to provide immediate solutions due to insufficient places available.

**Case reported from Germany (QIII; “Life story”).** A 68 year old woman was frightened she would be sent back to Poland. Throughout the whole procedure her age was never considered as a relevant factor. As *Pro Asyl* declared, there is no treatment available in Poland, even if German authorities state that “*the Reception Directive is the same everywhere*”. The reception for *Dubliners* should be the same in all countries, but it is not like this in reality. The German Dublin Unit's decision is not yet known.

**Italy** reported that it has received, without due notice, asylum-seekers whose mental or physical conditions would have required the application of the humanitarian clause by the sending country.

In these cases, the Italian Dublin Unit presents a complaint against the sending country<sup>53</sup>.

As an example, we report of one serious case concerning an Eritrean girl, seven months' pregnant, who was sent back from Norway to **Italy** on the basis of the Dublin II Regulation. When she arrived she had a blood loss, and for this reason first-aid was called in order to hospitalize her. Two days later, the girl was transferred to another hospital, because she risked a premature delivery.

CIR office informed the Dublin Unit on the case outlining its concern about the risk the woman - being seven months pregnant - had run during the journey.

<sup>52</sup> See chapter 6.3.

<sup>53</sup> Source: Questionnaire II , par. IV

















































































