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**FREEDOM, SECURITY AND JUSTICE**

## Managing Asylum Seeking in Europe: How to Revise the Dublin II Convention

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*“Today’s ruling by the European Court of Human Rights (ECtHR) clearly shows the EU’s need to urgently establish a Common European Asylum System and to support Member States in meeting their obligations to provide adequate international protection.”* Statement of Cecilia Malmström, European Commissioner for Home Affairs, 21 January 2011.

### Seeking asylum in Europe and the Dublin regulation

Long standing Member State concerns that asylum seekers from other continents were abusing their asylum systems, engaging into what has been called “asylum venue shopping”, have led, as early as 1990, to the creation of the Dublin Convention. The Dublin Convention (named after Dublin, Ireland, the city in which it was signed on 15 June 1990) first came into force on 1 September 1990, among the first 12 signatory states: Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and the United Kingdom). Later on 1 October 1997, Austria and Sweden joined, and on 1 January 1998, Finland did the same.

The idea behind the Dublin Convention was to limit the movement of asylum seekers transiting in Europe and avoid that they would lodge their application in the country that they preferred (because, for instance, they already had family or friends there, or because they spoke the language, or indeed because they heard that this country had a higher approval rate than another). The underlying idea was that although the right to asylum is indeed very important, people in need should purely seek international protection and not express a preference as to where they would like to receive this protection. In addition, of course, the underlying policy and political priority was that countries with the largest immigrant and refugee communities – such as the United Kingdom (UK), Germany, the Netherlands or France – should face less pressure, and that those countries in the periphery of Europe – the “natural” geographical stepping stones of asylum seekers – should receive at least part of these applications.

In 2003, the Dublin Convention was replaced by the Dublin Regulation (Regulation 2003/343/CE, in common parlance referred to as Dublin II). The Dublin Regulation is complemented by the EURODAC Regulation, which establishes a Europe-wide fingerprints’ database for unauthorized entrants to the European Union (EU). This database, combined with the provisions of the regulation, allows Member States to rapidly and relatively easily establish which Member State is responsible for dealing with an asylum claim and hence to transfer the asylum seeker to that Member State. Recently, Norway and Iceland joined and in December 2008 Switzerland, too. On 3 December 2008, the European Commission proposed amendments to the Dublin Regulation, creating an opportunity to reform the Dublin System.

### Failures of the European asylum system and the challenges ahead

Ironically, it may be argued that the Dublin II Regulation has been successful if we assume that its main aim has been to shift some (or indeed most) of the asylum seeking examination burden to the peripheral countries of the EU. If however the aim of the Dublin Convention and the Dublin II regulation has been the streamlining of the asylum system in Europe, then it has actually been an immense failure. Indeed, the side-effects have been important: southern European countries, which are the first safe countries asylum seekers from Asia and Africa encounter on their way – more often than not travelling on foot, by car, truck, with the help of human smugglers – face disproportionate pressures with which they are unable to deal.

Greece is perhaps the champion in this failure to adequately respond to Dublin II. Asylum seekers arriving in Greece hardly have the opportunity to seek asylum. Irregular migrants and potential asylum seekers arriving at Greek land and sea borders with Turkey are routinely detained in overcrowded reception centres and indeed in inhuman and degrading conditions. They do not receive information, regarding their right to claim asylum, in a language that they understand. It is their co-ethnics and smuggling networks who usually are the ones to inform them about the proper procedures for seeking asylum, notably the need to lodge applications at a special office located in Athens. Thus, the irregular migrants and potential asylum seekers usually arrive in Athens with an expulsion decision in hand, written in Greek, which invites them to leave the country within 30 days. Here, they often receive assistance from the Greek Council for Refugees, the only specialized Greek NGO dealing with asylum issues. Nonetheless, the procedure for lodging an application and the understaffing of the relevant police office in Athens makes submitting the application almost impossible.

Until recently, every week, on the night between Friday and Saturday, people used to queue outside police offices at Petrou Ralli, in downtown Athens. Early on Saturday mornings, the office would release about 300 numbers to the first 300 people standing in the queue. These numbers corresponded to 300 appointments for filing an application. Routinely, first

instance applications were rejected, mainly upon consideration of the country of origin of the applicant. The interview to which first instance applicants were subjected was rudimentary. The questions addressed to them were formulated in such a way so as to conclude that the applicant had come to Greece as an economic migrant.

This system was reformed in July 2009, abolishing the possibility to appeal to a first instance decision. This amendment led to the United Nations Refugee Agency's (UNHCR) withdrawal from assisting the Greek state in dealing with the applications. Eventually, the whole system came to a standstill in autumn 2009, leading to the additional piling-up of thousands of applications, creating an important backlog. In January 2011, law 3907/26.1.2011 was voted. This new law puts in place an adequate asylum system for Greece, but of course it will be several months before it is effectively implemented.

Asian and African irregular migrants and asylum claimants often travel through Turkey and then Greece, making Greece one of the main geographical points of entry to the EU. In three years time, apprehensions of irregular migrants (including potential asylum seekers) at Greek-Turkish land and sea borders have nearly doubled (from 32,000 in 2007 to 53,000 in 2010).

Clearly Greece has, until recently, lacked the political will to implement an appropriate asylum system. But due to its geographical position as well as to Turkey's unwillingness to cooperate in taming these flows, the country has also been subject to disproportionately high irregular migration pressures. While given the geographical position of the country such pressures may not be avoided, actually it may be avoided that all asylum seekers who arrive at the Greek-Turkish border have to have their applications lodged and examined by Greek authorities.

Recognising Greece's failure to implement the Dublin II Regulation, the European Commission started infringement proceedings against Greece on 31 January 2009, bringing the country in front of the European Court of Justice. The infringement concerned mainly the fact that Greece lacked the legal guarantees necessary for a substantial examination of all asylum claimants' applications. Not only were asylum applicants routinely placed in detention and, when released, given no housing or subsistence assistance, but also, and most importantly, the applicants' applications were routinely rejected without a proper examination or interview.

In a report published in March 2008, under the title: "Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered", the European Council for Refugees and Exiles (ECRE) showed the limitations and injustices of the current system. In particular, it noted that 10 years after its full operation, responsibility for examining asylum claims was assigned, but not carried out by the Member States concerned – multiple claims and secondary movement persisted. The report argued that by requiring those fleeing persecution to claim asylum in the first safe country they reach, the system assumed there was a level playing field of protection

across the EU. But this was not the case. For instance, the report concluded that the recognition rate of Iraqi asylum seekers in 2007 varied from over 80% in some Member States to practically null in others.

Along with this report were related decisions by specific Member States, acknowledging the failure of the system, in particular concerning the role of Greece as a safe country: Soon after Norway stopped sending asylum seekers to Greece, in March 2008 a Swedish court stopped the extradition of an Iraqi asylum seeker to Greece, but it was only in November 2010 that Sweden revoked the application of the Dublin regulation as regards Greece. Finland stopped returning asylum seekers to Greece on 18 April 2008. The UK stopped returning asylum seekers to Greece in September 2010, while in late January 2011 Germany did the same.

In May 2009, the European Parliament (EP) voted an asylum package that aimed to better safeguard the rights of asylum seekers seeking protection in the EU. In particular, the EP argued that solidarity among Member States could not work (as experience had proven) by voluntary measures alone and that compulsory instruments were necessary to assist Member States receiving large numbers of asylum applications. Members of the European Parliament (MEPs) deplored the reluctance of the Council of Ministers to introduce in fact binding mechanisms in the Dublin asylum system. In May 2010, the EP introduced financial incentives for countries that would volunteer to host resettled refugees. Indeed, the UNHCR documented that nearly 800,000 people are in need of resettlement, and that, in terms of resettlement programmes, Canada and the United States are doing much more than the EU. On that occasion, the EP also decided to create a European Asylum Support Office in Malta.

Most recently on 21 January 2011, the European Court of Human Rights (ECHR) found that Greece's broken asylum system and its appalling detention conditions meant that Belgium's transfer, in 2009, of an Afghan asylum seeker to Greece, under the Dublin II Regulation, had breached the prohibition on ill-treatment and denied the asylum seeker an effective remedy.

In the MEP session of 15 February 2011, the MEPs concluded that the European asylum system was not only a problem for Spain, Italy, Malta or Greece, and that it should be treated as a genuinely European problem. They acknowledged that the ECHR decision of 21 January indeed marked a turning point, showing that the European asylum system is in dire need of reform. The measures that need to be taken include not only financial and operational assistance to the countries receiving most asylum seekers, but also better cooperation with neighbouring countries through which asylum seekers transit, Turkey in particular.

Current developments in North Africa put the situation under new light and indeed call for immediate action on the part of European institutions. The current dramatic situation in Libya will produce a high number of people in need of temporary international protection at Europe's southern shores. The Italian Minister of Foreign Affairs, Franco Frattini, estimated

that the Libyan crisis would produce between 200,000 and 300,000 arrivals in the EU.<sup>1</sup> On 2 March 2011, José Manuel Barroso noted, among other things, that FRONTEX and Italy are continuing their joint operation, called HERMES, patrolling the central Mediterranean Sea, where most transits are expected to take place. Arrivals (mainly of Tunisians, and to a lesser extent of sub Saharan Africans escaping Libya) at the small island of Lampedusa, south of Sicily, stand at 18,000 for the period January to March 2011 (compared to 27 only, for the same period in 2010), creating a true emergency for Italy. The Italian government (which had managed during the previous three years to reduce the number of arrivals from North Africa to one tenth of what it used to be, essentially with the cooperation of the Gheddafi government and its dubious migration control methods) emphasises that the issue is a European and not a specifically Italian one. But other EU countries stay silent while France reinforces land border patrols at the southeast, close to the Ventimiglia border crossing where several hundreds of young Tunisian men (who had escaped from the reception centres in southern Italy) have been gathering during the last weeks, with the aim of crossing to France.

In the meantime, more than 200,000 people have crossed from Libya to Egypt and Tunisia, two countries that are themselves in a phase of political transition and turmoil. On 3 March 2011, the European Commission raised the sum allocated for humanitarian relief in the region to €30 million, while about €16 million are available through the European Refugee Fund, which could be allocated by Home Affairs Commissioner Cecilia Malmström to address the effects of the crisis in Libya.

During this crisis it becomes clear how much asylum, temporary international protection and irregular migration are entrenched as realities and as concerns for European governments and for EU institutions. The question arises with pressing urgency: how to deal with irregular migration while allowing potential refugees to lodge an application? And how to deal with humanitarian or political crises that take place near the EU's external borders and which unavoidably produce large numbers of people in need of temporary protection?

## How to reform the European asylum system?

The above picture clearly shows that the Dublin II Regulation is in need of urgent reform. However, the reform is not in the direction taken so far by the European Parliament or the European Commission. More guarantees for asylum seekers rights or the expansion of the resettlement programmes in the EU will not effectively change the main flaws of the Dublin II asylum system. What needs to be reformed is the “first safe country” principle. Since geography cannot be changed and since asylum seekers usually travel by the cheapest means of transport available, and not by plane, people fleeing persecution and ethnic conflict in Asia and Africa will continue

travelling for instance through Iran, Iraq, and Turkey, or through the Sahara to North Africa, and hence will always land first in Europe's southern shores. The vast majority will always reach Greece, Italy, Spain or Malta first, rather than Sweden, the Netherlands, Britain or Germany.

The creation of a Common European Asylum System as proclaimed in the Stockholm Programme requires – contrary to what is suggested in the Programme – the thorough revision of Dublin II. In particular we recommend that:

- Asylum applicants should be allowed to lodge their applications to the country where they wish or where they are able to do so, regardless of their first safe country of entry. Upon examination and acceptance of their claim, they should normally stay in the country where their claim has been accepted.
- There should also be, however, a system of annual asylum quotas. Each country should have a certain number of permits available each year for recognized refugees and for people under temporary international protection. This number should be a percentage of population – for example, France has 62 million inhabitants, the related quota could be 0.10%, i.e. 62,000 permits. When, within a year, a country has achieved its annual quota, the remaining asylum seekers accepted in this country should be immediately resettled to one of the countries that still have available slots in their own quota. The existence of an annual quota of refugees for each country and the possibility of resettlement when a country exceeds its quota ensures that all countries share equally in the European asylum system. It also takes away the incentive of rejecting all applicants with a view of (a) spreading the rumour that X country is not a good place to apply for asylum, (b) expelling the asylum seekers and thus “solving” the “problem” of having too many asylum seekers in the country.
- The selection of the country where refugees should be resettled will take into account the wish of the applicants and effective proof of where they have family, or where they know the language or prefer to live.
- In cases of (imminent or actual) mass influxes of displaced persons, from third countries, who are temporarily unable to return to their country of origin and hence in need of temporary international protection, a double course of action is needed. On one hand, affected EU countries should receive immediate financial and operational aid from the European Refugee Fund and if necessary through exceptional humanitarian relief funds. On the other hand, the people concerned should be exempted from the Dublin II regulation and hence be able to seek temporary protection in any EU country.

In addition to the above, it will be necessary that the European Refugee Fund continues to support capacity building in countries whose borders are external EU borders and which naturally face the largest incoming irregular migration and asylum seeking flows. Here, the challenge is not only to tame irregular migration, but truly to do so without compromising the possibility that people in need of international protection can apply for asylum. For this reason, Greece, but also Spain, Italy and Malta should step up their efforts for putting an efficient and fair asylum system in place, honouring thus their international obligations.

1. Alessandra Arachi, “Un’ ondata di 300 mila arrivi Il dopo-Gheddafi è un’ incognita”, *Corriere della Sera*, 23 February 2011. Available at : [http://archiviostorico.corriere.it/2011/febbraio/23/ondata\\_300\\_mila\\_arrivi\\_dopo\\_co\\_8\\_110223006.shtml](http://archiviostorico.corriere.it/2011/febbraio/23/ondata_300_mila_arrivi_dopo_co_8_110223006.shtml)