Jesuit Refugee Service Europe

# PROTECTION INTERRUPTED

## THE DUBLIN REGULATION'S IMPACT ON ASYLUM SEEKERS' PROTECTION

(The DIASP project)

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is co-financed by the
European Refugee Fund.

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The Jesuit Refugee Service (JRS)
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established in 1980 by Fr Pedro Arrupe SJ.
Its mission is to accompany, serve and defend
the cause of forcibly displaced people.

**Cover photo: T**he Hangar Open Centre Hal-Far, in Malta. People sent back to Malta via Dublin procedures are often returned here to this 'container village'.
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# Executive Summary

### *Introduction*

Ever since it was adopted into EU law, Council Regulation (EC) No 343/2003 – better known as the 'Dublin Regulation' – has never been short of controversy.

One of the original intentions of the regulation and the system it has since established was and remains to ensure that an EU government would be responsible for an asylum seeker's application. One application, one EU member state; this is the principle underlying the architecture of the Dublin system. The regulation also ensures that, by having one responsible member state for an individual asylum application, asylum seekers would not be able to move around Europe in search of a country that would grant them protection. To put an end to what is commonly termed 'asylum shopping', was a very worthy goal from the perspective of the EU and its member states.

But somewhere along the line, notably in 2007 when the European Commission evaluated the Dublin system,[1] these intentions went wrong in their implementation, and controversy began to grow. Numerous refugee NGOs throughout Europe have criticised the Dublin Regulation as failing to provide asylum seekers with access to fair and efficient asylum procedures in Europe. In the regulation's "hierarchy of criteria" to decide which member state is responsible for an asylum application, the 'first EU country of entry' criterion has attracted the most vociferous criticism. Critical voices have long argued that to force asylum seekers to process their claim in the first country to which they entered is unfair, because more likely than not the 'first EU country of entry' would have had more to do with happenstance than with a logical choice on the part of the asylum seeker.

A large amount of research done by a variety of stakeholders has since substantiated these criticisms. As a result of the Dublin Regulation, people are forced to be in EU countries with weak asylum systems; families are split apart; detention is often used to undertake 'Dublin transfers'; people's asylum applications get lost in the din of complexity that results from applying a rigid system to nuanced human need.

Although the Dublin Regulation itself is the source of many concerns, it is not the main culprit. Rather, differing reception conditions and asylum procedures among the EU member states are known to be a root cause of many of the problems. The Dublin Regulation is supposed to be situated within a *Common European Asylum System*, in which an asylum seeker can have access to the same conditions and procedures regardless of whichever EU country they are in. Sadly, this is far from the reality at hand. In one country, an asylum seeker may enjoy state accommodation and a decent subsistence allowance; in another, they may live on streets. An individual may have a better chance of getting their asylum claim accepted in one member state than another. These differences are not superficial: they are at the crux of what goes wrong with the Dublin Regulation, and by connection, the EU asylum system.

### *A new perspective: the DIASP methodology*

The objective of the research that is at the heart of this report is to examine these issues from a particular perspective: that of the asylum seeker and migrant who is in the Dublin system. Much of the existing research on the Dublin Regulation has been done from an institutional perspective: member state 'Dublin practices', legal reasoning in court judgements, the quality of reception conditions and access to asylum procedures. Yet there is still much to learn from the point of the view of the people who are directly concerned with the Dublin Regulation.

Thus we and our partners sought out to systematically interview asylum seekers and migrants in the Dublin system, using a mixed qualitative-quantitative social questionnaire to gauge their experience with several areas related to their fundamental rights. We assessed their knowledge of Dublin procedures and of their asylum case; their experience with appealing Dublin decisions and their knowledge of the so-called 'discretionary clauses'; their take on the level of reception conditions where they were, and how it affected their daily needs; the impact of the regulation on their family, and

[1] COM (2007) 299 final, Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system; available at: http://www.detention-in-europe.org/images/stories/commission%20evaluation%20of%20dublin.pdf

experiences with detention. We concluded every interview by asking people to share their personal opinions about the Dublin system, and what they would think to be the best solution for their own situation.

One of the best ways to evaluate a policy is to know more about the people who are affected by it. Asylum seekers and migrants in the Dublin system are regularly interviewed by member state authorities, but only to obtain just enough information so a state can decide how to handle a person's Dublin procedure. Our methodology aspires to know something more: how the Dublin Regulation impacts their ability to seek protection in Europe.

To this end, our partners interviewed 257 asylum seekers and migrants in nine EU countries. These interviews were analysed to understand how frequently people have access to fundamental rights – to information, judicial remedies, family unit, freedom of movement – and which relationships exist between particular factors. These interviews are situated in an objective account of how EU member states implement the Dublin Regulation, which we did in order to learn how specific practices affect people, and to assess which support people's fundamental rights and which do not. We also examined how the Dublin Regulation sits with national, regional and international case law and human rights standards, to be aware of the broader implications it poses for asylum protection.

This report is divided into four main parts: 1) the interview data findings, analytic conclusions and policy recommendations, 2) an assessment of EU member state Dublin practices based on the research, 3) a review of the Dublin Regulation based on case law and human rights standards, and 4) national reports from each of our 10 project partners. **The main highlights from the first three sections** are described in this executive summary.

## *DIASP interviews: Data findings*

***Who did we interview?***

Out of the 257 interviews collected, 59.1% were in the transfer process, i.e. 'transferees', and 40.9% had been returned from another EU member state, i.e. 'returnees'.

Four tenths of our interviewees said their family was present in the EU, most likely in France, Germany or Sweden. About 75% claimed they could speak a second language, with most saying they could communicate in English, French, Russian, Italian and Arabic.

Among transferees, 46% were still awaiting a decision as to whether they would be transferred or not, and 35% had already received a transfer order. A minority were holders of subsidiary protection, all of whom were interviewed in Italy and Malta.

Transferees had spent an average of 2.48 months in Dublin procedures. A small number had spent from 12 to 21 months. Four tenths of all interviewees were detained for an average duration of 1.90 months. The longest duration recorded was 10 months.

***Personal 'Dublin stories'***

Every interviewee was asked to tell their Dublin story. People's interactions with the Dublin system are never as linear as the text of the regulation. This is why we felt it important to allow people to express themselves freely at the beginning. In doing so we learned that people describe their Dublin journey in Europe in four ways.

First, people describe their experience with the regulation in terms of the country of first entry. Most have difficulty coming to terms with this criterion in the hierarchy of member state responsibility. For most it does not make sense that they are sent back to the country through which they first entered the EU, because in all likelihood they came through that country by happenstance, and not as a logical choice of where they had wanted to be.

Secondly, people describe their frequent travels between EU countries. On average, our interviewees had made four to five trips between member states prior to their DIASP interview. If people are not where they want to be, then move onward, travelling until they reach an EU country where they want to submit their asylum claim. They base their decision

on wherever they feel they can get the best protection possible; more often than not, they also take into account a country's reception conditions into their decision on where the best protection is. Ultimately people are subjected to a game of human Ping-Pong with severely negative impacts: frequent detention, interrupted asylum applications and separated families.

Thirdly, people often speak of detention. Most EU countries detain during the transfer process. Under the Dublin Regulation there are no common rules on detention, meaning that practices vary widely among member states. Detention is thus a fact-of-life for the majority of people in the Dublin system. It is already known that detention severely harms anyone who experiences it; for people in the Dublin system, the harm is compounded because of the greater uncertainty of their situations.

Fourthly, people speak of the number of times they apply for asylum. Although the intention of Dublin is to limit people to one application, and one decision, in actuality people try to submit multiple applications in more than one member state. Among the holders of subsidiary protection, we spoke to many who had insisted on applying anew in another country because they wanted *refugee* protection. For the most part these decisions are too based on where the better reception conditions are.

The vast majority feel that the transfer process itself has worsened their chances to have their asylum application accepted. Most people feel this is so because they cannot choose where to submit their own asylum claim.

***Knowledge of Dublin procedures***

Ironically, people are more likely to know about Dublin procedures if they had made multiple journeys to the EU country where we interviewed them, or to other EU countries. But as the regulation is there to limit secondary movements, this is obviously not a sustainable way for people to learn about the Dublin system.

Ultimately people do not know enough. The majority claims to know little or nothing about Dublin procedures. And for those who do know something, it is mostly about the 'responsible EU country' and less about the other technical aspects of the regulation.

We found that any information about Dublin procedures is more likely to be understood if people are given repeated and thorough oral explanations, rather than *only* being given written documentation. Lawyers help people to understand specific and technical aspects of the Dublin Regulation; NGOs help people understand the bigger picture that comprises the Dublin system in Europe.

***Appeals***

Nearly half of interviewees did not know how to appeal a Dublin transfer, and 60% had never tried to actually challenge a transfer. Our findings show that people are more likely to appeal a transfer if they have been informed about it, especially by a lawyer.

Most people did not know about articles 3 and 15 of the Dublin Regulation: the sovereignty and humanitarian clauses, respectively (and to be called the 'discretionary clause' in the Dublin III Regulation). People who know about the discretionary clauses are more likely to take action to appeal their transfer. Also, people who are informed about these clauses via oral and written means are more likely to take action on them than if they are informed by only an oral explanation, or by only written information. In this sense knowledge is indeed power.

***Asylum case***

Nearly half of the asylum seekers in our sample knew little or nothing about their case. As in other areas, people are likely to know more about their asylum case if they are being supported by a lawyer.

Nearly half of the transferees we interviewed did not know how to apply for asylum in the country they were being transferred to; the majority did not know what they would do with their lives after they were transferred. Only 39% of returnees said they had gotten information about the asylum system of the country where we interviewed them prior to having been transferred there.

***Personal well-being***

Interviewees were asked to rate their experiences with several reception conditions that are closely connected to their well-being. Medical care is the most widely accessed reception condition.

Conversely, people felt the most negatively about access to accommodation, with 65% saying that it was either poorly provided or not at all in the countries where we interviewed them. There are great differences between member states: in some countries people are left homeless, and in others they must resort to squatting in buildings or staying with friends and families; some states are able to provide state accommodation, but others resort to detention, which we do not consider as an appropriate form of housing.

Reception conditions are a key determinant of how protected a person feels. We found that the availability of basic services – such as public transportation, food and clothing, housing and subsistence payments – and sharing the same language are important reasons who one might feel more connected to one particular EU country than another. Interestingly, we find that transferees are more likely to feel a connection to the EU country they are in than returnees, showing that people in the transfer process are being sent away from countries where they may actually prefer to be in.

Just over one-third of interviewees felt that the regulation negatively impacted their family situation. Most spoke of family separation as the most negative consequence.

Four tenths of all interviewees were in detention. We find that detainees are much less informed about Dublin procedures than non-detainees are. Detainees are less likely to speak a second language than non-detainees, which is important because the people in our sample who know multiple languages are also more knowledgeable about Dublin procedures. People in Dublin detention also expressed suffering from severe stress and symptoms related to anxiety and depression, which corroborates our findings from an earlier study: that people detained during Dublin procedures are more vulnerable to harm than non-Dublin detainees.[2]

A significant majority of people, or 70%, had never absconded from the authorities. People very much base their decision to do so on their well-being. Individuals who fear the state authorities, or who feel that the reception conditions of an EU country are inadequate, may try to abscond as a means of personal survival rather than on a decision to undermine the system.

Worryingly, we found that most of the detainees we interviewed had never had prior experience with absconding, putting into question why they were detained in the first place. This finding also raises the question of the efficacy of member state risk assessment procedures, if they exist at all.

***Personal opinions about the Dublin system***

The vast majority of interviewees feel that the Dublin system is unfair and unjust. Most feel this way because it restricts where they can choose to apply for asylum. Interestingly, people interviewed at the eastern and southern EU borders – typically the first EU countries of entry for most – feel the most negatively about the Dublin Regulation.

Detention, the inability to work and the lack of stability are the three biggest problems people experience as a consequence of the Dublin system. Transferees are particularly fearful of being sent to their first EU country of entry; returnees are deeply concerned about being separated from their families.

People's ideas for how they would feel protected are as unique as people's reasons for fleeing persecution. Yet we find that most people want to stay in the EU country where they are and obtain a refugee status or a residence permit. Many people just want to be somewhere where they can feel dignified and protected, and integrated in an EU country that provides for this.

[2] JRS Europe (2010). *Becoming Vulnerable in Detention*, p. 69; available at http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf.

## *DIASP interviews: Analysis*

***Information is a key factor for fundamental rights***

The complexity of the Dublin system means that people typically understand only one aspect of it: that they must be transferred to the 'responsible' EU member state. This is the part of the Dublin system that asylum seekers and other migrants most frequently encounter. That only 20% of the persons we interviewed could express an advanced understanding of Dublin is indicative of a system that is difficult for many to grasp.

One of the most negative implications of being poorly informed about the Dublin Regulation is that a person's ability to access their fundamental rights becomes severely limited.

In our sample, 47% of persons were not informed on how to appeal a transfer and 64% were not informed about the discretionary clauses. The consequence is that these persons were not aware of the two aspects in the Dublin system – appeals and the discretionary clauses – that may have positively impacted their cases; at the least, they might have had an opportunity to express their wishes and personal choices.

There are strong relationships between being informed about appeals and/or the discretionary clauses, and actually taking action on them. The alarming conclusion is that so many people are unable to enforce their right to challenge a Dublin decision simply because they are uninformed about it.

Language is a key means for people to understand information that is given to them. Knowing multiple languages is correlated with being well informed about the Dublin system. For those who do not know more than one language, it would thus be important to provide them with information in their mother tongue.

It is also important for people to receive multiple explanations that are thorough and presented orally and in writing. A person is more likely to understand Dublin procedures, as well as the appeals process and the discretionary clauses, if they are given both written documentation and repeated verbal explanations.

***Access to lawyers and legal assistance is important***

People who had met with a lawyer are more likely to understand the technical aspects of the Dublin Regulation than people who had not. People who are in contact with and informed by a lawyer – whether or not they are detained – are much more likely to actually challenge a transfer or demand that the discretionary clauses be applied in their case. Lawyers thus play a critical role with safeguarding the fundamental rights of people in the Dublin system, especially when it comes to being informed and enforcing judicial remedies.

***'Protection' also means reception conditions***

People assess their safety not only in terms of their ability to apply for asylum, but also on the quality of reception conditions in a particular country. Poor reception conditions are a major factor for people's negative attitudes towards the Dublin system in general. Half of the people who felt that the Dublin system is 'unfair and unjust' also said they were not provided with basic services in the country where we interviewed them.

People's perceptions of an EU country's reception conditions also affect how they interact with the Dublin system. Those who feel negatively about a country's basic services, for example, are more likely to abscond than people who feel more positively.

Most of the people we interviewed assess the Dublin system based on how well reception conditions uphold their dignity. Homelessness or inadequate housing and a lack of basic services run counter to people's sense of dignity. And the concept of dignity is important because it is equated with protection.

***Detention still a negative measure***

From our interviews it is clear that detention is one of the most negative measures of the Dublin system. From the point of view of the asylum seeker or migrant, detention achieves no other purpose than to increase people's frustration.

Though detention and the Dublin Regulation often go hand-in-hand, it is important to emphasise that a sizable number of our interviewees were not in detention: 60% of the entire sample and 55% of transferees specifically. This raises an important question: If not everyone is detained, then is it necessary to detain anyone in the Dublin system in the first place? From the data we see that people are detained for very unclear reasons.

The variance in the number of people who are detained seems to have much to do with incidental EU member state practices than with any systematic needs or risk assessment of an individual's case. This means that detention appears to be used rather inconsistently in the Dublin system.

The consequences of the arbitrary use of detention are startling. Detainees are poorly informed about Dublin procedures, and they are less likely to actually appeal a Dublin decision than non-detained persons are. Detainees have less access to lawyers, who can in turn help them appeal Dublin decisions. Moreover, the closed nature of a detention centre means that detainees learn about the discretionary clauses much later than non-detained persons. Detained persons are therefore at a stark disadvantage when it comes to the realisation of their fundamental rights.

***Personal choice as a measure of dignity***

Personal choice matters. A procedure that systematically removes personal choice from the calculus of asylum protection cannot be sustainable for very long.

People choose to travel to a particular EU country based on a variety of factors. Despite these many differences it is still possible to broadly stratify people's reasons for choosing a particular EU country to be in.

First and foremost is how well a person feels he or she would be protected. Secondly, people choose where in the EU to go based also on where they feel they can best maintain a livelihood and uphold their well-being. Since asylum seekers in the EU generally cannot work, despite their eagerness to do so, the only way to sustain a livelihood is to be in an EU member state with decent reception conditions. Aside from reception conditions, people are keen to maintain their livelihood by being close to family; knowing the same language helps, too.

At the root of people's choices of where they want to seek protection is their desire to safeguard their dignity. People often manifest their sense of dignity through their freedom to choose: in this case, 'choice' is about where to people can protect themselves and their loved ones, where to live and how to maintain a livelihood. Against this standard, the Dublin Regulation continues to perform poorly because it suppresses nearly every element of individual choice.

***A disruptive system***

The biggest effect of the Dublin system is the way that it severely disrupts people's lives. Asylum seekers and others who are seeking protection come to Europe with a definitive plan that is more often than not scattered to pieces because they are transferred to other EU countries not of their choosing. This begs the question: does the Dublin Regulation meaningfully contribute to people's fundamental right to seek protection, or does it just needlessly disrupt people's lives?

Many NGOs in the asylum sector in Europe have already expressed their agreement to the latter point. After analysing the interviews, we too cannot arrive to any other conclusion. Just as detention is harmful for nearly everyone who experiences it, so too is the Dublin Regulation for nearly any asylum seeker or third country national who comes into contact with it.

There is no evidence that the Dublin Regulation makes it any easier, safer or more reliable for a person to access an asylum procedure somewhere in Europe. Rather, from the perspective of the asylum seeker, the regulation is an obstacle to their protection. It is also an obstacle to integration: people that spend much of their time moving around Europe in search of genuine protection become excluded from our communities.

Aside from the difficulties posed by the regulation for asylum seekers, are those posed for EU member states. Dublin transfers are resource-intensive, and bring governments no closer towards fulfilling the original intentions of the Dublin system. 'Dublin practices' have come to highly differ from one member state to the next. This has created an uneven terrain which has costly implications for the Dublin system as a whole. Court judgements lead to blockages in the system that force governments to expend resources even if Dublin transfers are not possible. Moreover, governments expend resources on detention and countering legal challenges brought forth by lawyers.

Aside from our conclusion that member state Dublin practices ineffectively people's protection needs, from our interviews with asylum seekers and other migrants we can also infer that the expenditure of state resources on the Dublin system appears to bring little or no added value to the *Common European Asylum System.* People are not accessing asylum procedures any more easily or effectively. If such a malfunctioning policy were to exist in any other sector, it would surely be scrapped.

Further evidence that the Dublin system needlessly disrupts lives can be found at the core of its very existence: in spite of the regulation's primary intention to prevent secondary asylum movements, people still move around Europe to an alarming degree. Asylum seekers and other migrants are still in orbit.

People circumvent the system to better protect themselves because they perceive the system to not protect them enough. Poor reception conditions in particular EU countries, which force people into homelessness and destitution, are a major reason for people's secondary or tertiary movements.

However, circumventing the Dublin system comes with a high degree of personal risk: interception by the authorities, detention and transfer to another member state, separation from family and so forth. That so many people feel they must take this great personal risk to protect themselves is perhaps the biggest indictment of the Dublin Regulation as a system that needlessly disrupts people's lives and interrupts their search for protection.

## *Summary of EU member state practices*

***Provision of information***

Although most EU countries provide information about the Dublin system in one way or another, most do not offer comprehensive information. This means that many people do not learn about the technical aspects of the regulation, such as how transfer decisions are made, and how to access procedural safeguards such as judicial remedies.

In Belgium, asylum seekers receive information and can express their story during a 'Dublin interview' with the national authorities. Though this is an exceptional practice, it is a good one because people can express specific vulnerabilities and needs, and the authorities can better determine whether the discretionary clauses can be used. Having the chance to do this is an important element of personal dignity, and may lead to a fairer procedure over all.

However in Italy, asylum seekers have great difficulty with being informed because the Dublin Unit does not offer does not provide it. This is a missed opportunity because in our research we find that people tend to feel more knowledgeable about Dublin procedures if they receive information from the authorities.

***Linguistic assistance***

Good practices were found with member states that regularly provide interpreters to people in the Dublin system. the DIASP research shows that people are more likely to understand the Dublin system if they are informed in a language they can understand Language is a critical element of comprehension, and thus a crucial key to accessing one's fundamental right to information.

In some states the quality of interpretation is insufficient, with some interpreters being unable to describe administrative asylum procedures in a person's own language. In France and Italy, important documentation and proceedings are not interpreted into languages that most migrants can understand which leaves many feeling left out of the process and unable to enforce their rights.

***Legal assistance, access and quality***

Some form of legal aid and assistance is available to asylum seekers in many EU member states, but accessing it can be difficult for several reasons.

Lawyer reimbursement schemes can be low, as in Germany, which discourage lawyers from assisting asylum seekers. In Belgium and Poland, lawyers are not always specialised in asylum and immigration law and in Dublin procedures,

reducing the effectiveness of their assistance. And legal assistance is not provided at all stages of the Dublin procedure, as in Sweden: there the Dublin procedure is considered only as a formal process and not a substantive one, so people are left without legal assistance.

Each of these obstacles is to the detriment of asylum seekers. Our research shows that lawyers help people to understand the technical aspects of the Dublin process, especially appealing decisions and the discretionary clauses. Thus having a lawyer is a crucial element in accessing one's fundamental rights to information and judicial remedies.

***Transparency of Dublin procedures***

Data on Dublin procedures is published by the state on the Internet, as in Sweden and Belgium. Having access to reliable data is absolutely necessary for the analysis of policies and their impacts. The DIASP project itself has benefitted from the openness of some member state authorities. It would also be important for lawyers and NGOs who are supporting asylum seekers to have access to such information so they can help people feel better protected and dignified.

***Use of the discretionary clauses***

In every country the discretionary clauses – articles 3 and 15 of the Dublin Regulation – are scantily used. Nor are people regularly informed about their existence. The discretionary clauses are the one facet of the Dublin system that enables asylum seekers to express at least a modicum of personal choice based on particular factors. Interviewees who were not informed of these clauses were likely to not have appealed their Dublin decisions. People cannot uphold their fundamental rights if they are not informed of the procedures that would allow them to do so, nor if they are left without the agency to actually take action.

There are few guidelines to assist states with deciding on whether to use the discretionary clauses for a particular case. But even in states that do systematise their decisions, implementation rates remain low. Sweden, for example, rarely uses the discretionary clauses even though it bases its application on guidelines from a chief juridical officer of the Swedish Migration Board. In Belgium, the 'Dublin interviews' are structured to assess whether a person can benefit from the discretionary clause, which in itself is a good practice, though asylum systems must know that such a possibility exists in order for them to request its usage.

***Appeals and judicial remedies***

Most member states do not provide for an automatic suspensive effect during an appeal. The Dublin transfer deprives people of agency. People who feel that they did not have a fair procedure are likely to circumvent the system. Fair procedures at every step of the Dublin process, especially at the appeals stage which ought to include a suspensive effect, are a minimum of what asylum seekers should get on the basis of their dignity.

There are a few exceptional practices. In Poland, appeals made on transfer decisions come with an automatic suspensive effect; in Malta this is also done in practice (though it is not specified in law). As our research shows that the transfer is the most disruptive part of the Dublin process, it behoves member states to suspend a transfer until all appeals and challenges are dealt with.

In Germany, courts now take into account the asylum system of an EU member state where a person may be transferred to when considering a decision to suspend a transfer. This is a positive step because it allows a state to examine more closely whether a transfer to a particular country might pose harm for the concerned individual; unfortunately, it is an exceptional practice in Europe.

***Reception conditions***

Belgium, Germany, Poland and Sweden provide reception conditions to people in the Dublin system in the same way as to other asylum seekers: accommodation, daily allowance, food and health care. Yet Belgium and Germany also frequently detain Dublin asylum seekers, which is not appropriate as a reception condition.

Dublin asylum seekers in France are excluded from vital reception conditions that other asylum seekers are entitled to, such as the daily allowance and accommodation in state-run centres.

Our research shows that reception conditions are one of the top three problems experienced by our interviewees. The lack of decent housing is a particular concern. Having a temporary fixed address means everything: a place where a person can receive important documents by post, a place to sleep for the night, a space for privacy and a place to feel safe. Aside from accommodation, interviewees rate 'basic services' as another important condition. These include daily subsistence allowances, assistance with paying for public transport and even having a space to wash one's clothing. These two elements are at the minimum of a dignified reception system.

***Detention***

The detention of asylum seekers and migrants in the Dublin system is the rule, rather than the exception. And detention seems to be ordered for people who are simply in a Dublin procedure, and not based on a systematic assessment of risk or needs. The DIASP research shows that detention is one of the three biggest problems faced by interviewees. Detainees in Dublin procedures face particularly high levels of stress and anxiety. Oftentimes people experience multiple detentions in many countries throughout Europe, as a consequence of regular Dublin transfers. This means that a person may be detained on several occasions before their asylum claim is assessed.

Better practices are found in Sweden, France and Italy where automatic detention during Dublin procedures is not the norm. Our research demonstrates that non-detained persons are better informed about the Dublin system, have greater access to lawyers and other sources of support and are more likely to enforce their fundamental rights to judicial remedies. That said, although France and Italy do not regularly detain Dublin asylum seekers, there is also a lack of community housing which leaves many homeless.

***Implementation of Dublin decisions***

Some countries prioritise voluntary Dublin transfers, as in Sweden, France, Belgium and Poland. Since the transfer is an inherently disruptive process, it is important to allow asylum seekers to do it on their own terms as much possible, with appropriate support from the state.

In other countries, government authorities implement Dublin decisions with little notice. Transferees in Germany are only notified on the day the transfer is to be carried out, leaving no time to challenge the decision. The Italian authorities send letters to people asking that they go to the local *Questura*, without telling them that if they show up they will be immediately transferred. Member states ought to issue their decisions well in advance of its implementation. This is a minimum point of dignity for asylum seekers and the basis for a fairer Dublin procedure.

## *DIASP conclusions & policy recommendations*

The long awaited *Common European Asylum System* (CEAS) is finally at hand. The European Parliament and the Council of the EU reached a political agreement on the recast Dublin Regulation – first proposed by the European Commission four years ago – by the end of 2012. A formal adoption of the new "Dublin III Regulation" by the European Parliament is expected by June 2013; the Council will follow soon after. This new EU asylum law will join with the newly agreed directives on qualification for protection, reception conditions, asylum procedures and the EURODAC regulation, to establish a CEAS. The decision-making process has indeed been difficult and complex. And for asylum seekers who have experienced the full brunt of the Dublin Regulation during the last decade, the difficulties and complexities have been no less daunting.

Although the research for this project took place while the negotiations on the recast Dublin Regulation were on-going, its focus is exclusively on the application of the Dublin "II" Regulation, which as of this writing is still in force. This report cannot influence the EU political negotiations on Dublin III as they are since concluded. But its research findings and conclusions are very relevant for how Dublin III will be implemented in the member states, and monitored by the European Commission and Parliament as well as other EU institutions, intergovernmental and nongovernmental organisations.

The new Dublin III Regulation, as stipulated in the Council's 'first reading' position as of 14 December 2012,[3] contains several major changes that already address many of the issues highlighted in this report, such as:

- A *right to information* (art. 4) obliging member states to inform asylum seekers on elements such as the objectives of Dublin, the criteria for determining responsibility, the chance to conduct a "personal interview" (art. 5) enabling the applicant to bring forth further information.
- The production of a *common leaflet* (art. 4.3) containing such information in a language the applicant understands "or is reasonably supposed to understand".
- *Guarantees for minors* (art. 6) which include the consideration of the minor's "well-being and social development".
- New guidelines on *detention* (art. 28) obliging member states to not "hold a person in detention for the sole reason that he or she is subject to the procedure established in this Regulation", and only insofar as "other less coercive alternative measures cannot be applied effectively."
- Guidelines on *judicial remedies* (art. 27) requiring that applicants have access to an effective remedy either as an appeal or a review, and have the option to suspend their transfer during an appeal of the transfer decision.
- Access to *legal assistance* and *linguistic assistance* (art. 27.5)
- The possibility to *suspend transfers to member states with "systemic flaws" in their asylum procedures and reception conditions* (art. 3.2), opening up the possibility that the determining member state becomes the responsible member state for a person's asylum application.

That these issues are to be addressed by Dublin III is a positive step; but it does not automatically resolve the variety of problems and protection gaps revealed in this report. Member states must now practically improve their Dublin procedures, and generally their asylum systems, in order to make the most out of the changes proposed by EU law. The Commission and Parliament must endeavour to closely monitor how Dublin III is implemented, too. In particular the Commission should stand ready to use the mechanisms available to it to decisively enforce Dublin III in a manner that protects the fundamental rights of asylum seekers.

**Below are a set of recommendations** that are based on the three major components parts of this report: 1) the qualitative and quantitative interviews with 257 migrants, 2) the analysis of Dublin based on case law and international human rights standards and 3) the summary of member state 'Dublin practices'. They are proposed with the motivation of achieving the best possible practice standards under the new Dublin III Regulation, and maintaining the highest level of human dignity and fundamental rights for asylum seekers and other migrants who experience this regulation.

**To the European Commission:**

1. <u>In view of creating a "common leaflet" of information about Dublin procedures</u>:[4]
   *It should have clearly worded and precise information on all aspects of the Dublin procedure* and what the asylum seeker ought to expect, including all avenues for judicial remedies and stages in which the asylum seeker can express the personal factors associated with his situation;
   *It should be available in a language that the asylum seeker can understand*;
   *Versions should be tested in advance with samples of asylum seekers and NGO practitioners* to ensure that the leaflet is as accessible and relevant as possible.

2. <u>Closely monitor member states' implementation of the current Dublin Regulation and its recast, "Dublin III",</u> to ensure that asylum seekers' fundamental rights are protected; if necessary, infringement procedures against member states should be taken.

[3] Council of the European Union, position of the Council at first reading with a view to the adoption of 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). ASILE 129, CODEC 2520, OC 601, Inter-institutional file: 2008/0243 (COD), Brussels, 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf; accessed on 07/05/2012.

[4] As foreseen in article 4.3 of the recast Dublin Regulation, Council first reading position of 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf (not yet formally adopted by the Parliament and Council), "The Commission shall, by means of implementing acts, draw up a common leaflet …"

3. Produce qualitative and quantitative research based on indicators such as family unity, access to information, use of the discretionary clauses, access to legal aid and detention, to demonstrate the extent and frequency to which they are applied in the implementation of Dublin at the national level.

4. Assist member states with the development of alternatives to detention in the Dublin system, by highlighting existing practices and applying them together with member states, with the participation of civil society organisations and asylum seekers.

5. Assist member states with the development of an assessment tool to aid states' decision-making on the usage of the discretionary clauses. Such an assessment tool should, for example, check for vulnerabilities, mental and physical illnesses and the person's family situation.

6. Develop benchmarks to determine whether Dublin transfers to a member state should be temporarily suspended due to systemic flaws in their asylum procedures and reception system. Such benchmarks should include, for example, the availability of housing, the availability of medical care, the quality of asylum procedures and the use and conditions of detention.

**To the EU member states:**

7. Thoroughly inform asylum seekers about all aspects of Dublin procedures as early as possible. Information should be provided by way of frequent oral explanation and through the provision of written documentation, in a language the asylum seeker can understand. Such information should cover the entire range of Dublin procedures, including (but not limited to) judicial remedies, rights and obligations, the discretionary clauses, detention and chances to reunite with family; such information should also enable asylum seekers to learn about the asylum systems of EU countries they may be transferred to.

8. End the automatic detention of asylum seekers in the Dublin system and implement instead a legal presumption against detention, and practical community-based alternatives, as a standard first step.

9. Provide for reception conditions that are of an appropriate standard, including (but not limited to) decent housing in the community, a daily subsistence allowance, access to educational activities, medical care for acute and chronic illnesses and basic services to assist asylums seekers with meeting day-to-day needs.

10. Provide asylum seekers with access to lawyers and legal aid free of charge; as much as possible ensure that assisting lawyers are competent in asylum and migration law.

11. Grant a 'personal interview' to all Dublin asylum seekers at the earliest stage of the procedure, and incorporate into the interview a point when the asylum seeker can express personal factors that might impact his or her case and the Dublin decision.

12. Implement the discretionary clauses on the basis of a detailed assessment tool that checks for vulnerabilities, physical and mental illness, family situation and other indicators, including which other EU member states the asylum seeker has travelled from and special connections the asylum seeker may have to a particular EU country; this tool should also take into account the asylum procedures and reception system of the potentially responsible EU member state, in order to suspend a transfer so as to avoid endangering an asylum seeker's fundamental rights and access to protection.

13. Allow relevant NGOs and other civil society groups to meet with Dublin asylum seekers; such groups should also be able to join member state authorities in providing information to asylum seekers.

14. Keep families together for the duration of Dublin procedures, and uphold the best interests of the child at all times.

15. Inform asylum seekers of Dublin decisions well in advance of the actual date and time of its implementation, and thoroughly explain available remedies and how decisions are to be implemented.

**To the European Parliament:**

16. Regularly request information from the Commission and the Council on the implementation of the Dublin III Regulation by member states, analyse existing and new protection gaps and request the Commission to make legislative proposals that would close these gaps.

17. Regularly consult relevant actors, most notably civil society organisations that work with Dublin cases, in order to be updated on developments in member states' policies and practices.
18. Urge the Commission to make proposals with a view of a further and real harmonisation of protection in the EU, taking into consideration that the Dublin system will never properly work as long as the differences across member states with regard to protection rates, refugee definition, asylum procedures and reception conditions continue to persist.

# Introduction

Ever since it was adopted into EU law, Council Regulation (EC) No 343/2003 – better known as the 'Dublin Regulation' – has never been short of controversy.[5]

One of the original intentions of the regulation and the system it has since established was and remains to ensure that an EU government would be responsible for an asylum seeker's application. One application, one EU member state; this is the principle underlying the architecture of the Dublin system. The regulation also ensures that, by having one responsible member state for an individual asylum application, asylum seekers would not be able to move around Europe in search of a country that would grant them protection. To put an end to what is commonly termed 'asylum shopping', was a very worthy goal from the perspective of the EU and its member states.

But somewhere along the line, notably in 2007 when the European Commission evaluated the Dublin system,[6] these intentions went wrong in their implementation, and controversy began to grow. Numerous refugee NGOs throughout Europe have criticised the Dublin Regulation as failing to provide asylum seekers with access to fair and efficient asylum procedures in Europe. In the regulation's "hierarchy of criteria" to decide which member state is responsible for an asylum application, the 'first EU country of entry' criterion has attracted the most vociferous criticism. Critical voices have long argued that to force asylum seekers to process their claim in the first country to which they entered is unfair, because more likely than not the 'first EU country of entry' would have had more to do with happenstance than with a logical choice on the part of the asylum seeker. Additionally NGOs and other civil society groups have criticised the regulation for splitting families apart, detaining individuals who are awaiting 'Dublin transfers', complicating people's search for protection and applying an overall rigid system to nuanced human need.

Although the Dublin Regulation itself is the source of many concerns, it is not the main culprit. Rather, differing reception conditions and asylum procedures among the EU member states are known to be a root cause of many of the problems. The Dublin Regulation is supposed to be situated within a *Common European Asylum System*,[7] in which an asylum seeker can have access to the same conditions and procedures regardless of whichever EU country they are in. Sadly, this is far from the reality at hand. In one country, an asylum seeker may enjoy state accommodation and a decent subsistence allowance; in another, they may live on streets. An individual may have a better chance of getting their asylum claim accepted in one member state than another.[8] These differences are not superficial: they are at the crux of what goes wrong with the Dublin Regulation, and by connection, the EU asylum system.[9]

### *The DIASP methodology*

The DIASP project (Dublin's Impact on Asylum Seekers' Protection) was co-financed under the 2010 European Refugee Fund Community Actions (HOME/2010/ERFX/CA/1712). The project was launched in October 2011. A first steering committee meeting was held in January 2012 with all project partners, to create the research instruments and decide on the project's methodology. A second steering committee was held in November 2012 to review a preliminary analysis of

[5] Council Regulation (EC) No 343/2003 of 18 February 2003 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. Accessible at: http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm

[6] COM (2007) 299 final, Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system; available at: http://www.detention-in-europe.org/images/stories/commission%20evaluation%20of%20dublin.pdf

[7] See European Commission DG Home Affairs, *Asylum*, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/asylum/index_en.htm; accessed on 22/05/2013.

[8] See European Council on Refugees and Exiles (ECRE), *Asylum Lottery in the EU in 2011*, http://www.ecre.org/component/content/article/56-ecre-actions/294-asylum-lottery-in-the-eu-in-2011.html; accessed on 22/05/2013.

[9] The literature on the Dublin Regulation is far too diverse and wide to cite in its entirety. For readers who are interested to learn more about NGO criticisms towards the Dublin Regulation, we would advise a browsing of these websites as they are a rich source of information: ECRE, *What is the Dublin System?* http://www.ecre.org/topics/areas-of-work/protection-in-europe/10-dublin-regulation.html; The Dublin Transnational Project, http://www.dublin-project.eu; UNHCR Ref World, search query "Dublin Regulation", http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&skip=0&query=Dublin+Regulation&coi=. Readers are also advised to review the European Commission's 2007 evaluation of the Dublin Regulation, which underscores many of the diverging practices among EU member states in their implementation of the regulation, and even their ability to carry out transfer decisions, http://www.detention-in-europe.org/images/stories/commission%20evaluation%20of%20dublin.pdf.

the data; a third and final meeting was held following the public conference organised by JRS Europe on 4 June 2013, to disseminate this report.

Asylum seeker and migrant interviews

The objective of the research that is at the heart of this report is to examine these issues from a particular perspective: that of the asylum seeker and migrant who is in the Dublin system. Much of the existing research on the Dublin Regulation has been done from an institutional perspective: member state 'Dublin practices', legal reasoning in court judgements, the quality of reception conditions and access to asylum procedures. Yet there is still much to learn from the point of the view of the people who are directly affected by the Dublin Regulation.

Thus we and our partners sought out to systematically interview asylum seekers and migrants in the Dublin system, using a mixed qualitative-quantitative social questionnaire to gauge their experience with several areas related to their fundamental rights. Our questions were organised under these headings:

- Personal 'Dublin story'
- Knowledge of Dublin procedures
- Knowledge of, and experience with, appealing Dublin decisions
- Knowledge of the so-called 'discretionary clauses' (articles 3 and 15 of the Dublin Regulation)
- Personal ratings of the level of reception conditions where they were, and how it affected their daily needs
- Special connections they felt to have had with particular EU countries
- The impact of the regulation on their family
- Experiences with detention and absconding
- Personal opinions about the Dublin system

We concluded every interview by asking people to describe what they would think to be the best solution for their own situation, by completing the sentence: "the best solution for me would be to …"

Two questionnaires were used for asylum seeker and migrant interviews: one for people in transfer procedures, i.e. *transferees*, and another for people who had been returned from another EU country, i.e. *returnees*. Both questionnaires contained nearly the same questions with a few exceptions. For example, we asked transferees, "Do you know how to apply for asylum in the country you will be transferred to?" and to returnees, "Did you receive information about this country's asylum system prior to be transferred here?"

Interviews were carried out by our project partners from January to December 2012. Each partner was asked to obtain 30 interviews using a random sampling method best suited to them. Some partners were able to interview people they normally provide services to, while others visited detention centres and open reception centres. In the end not every partner was able to obtain the requested 30 interviews, largely because of the difficultly with accessing an interview sample.

All interviews were conducted in a language the interviewee could understand, and with their full voluntary and informed consent. On average, each interview lasted for approximately one hour. Partners recorded the responses of every interviewee on the questionnaire itself.

All interviews were submitted to JRS Europe and analysed from September 2012 to May 2013. Each interviewed was entered into a central database and analysed for frequencies, correlations and cross-tabulations. The interviews of each project country were analysed individually and sent back to the project partners with a preliminary analysis to aid them with the writing of their national reports. Data from all project countries were analysed together for the European report.

Member state practices

Every project partner examined the 'Dublin practices' of their respective country. This was done by way of desk research and in-person interviews with government authorities, expert NGOs and lawyers, between January and December 2012. The purpose of doing this research was to better understand and contextualise the responses of asylum seekers and migrants, whom are of course affected by how an EU government enacts the Dublin Regulation. Together with our partners we investigated:

- The provision of information on Dublin procedures
- Linguistic assistance (translation and interpretation services)
- Legal assistance, access and quality
- The level of transparency of Dublin procedures
- The use of the discretionary clauses (articles 3 and 15 of the Dublin Regulation)
- Access to appeals and judicial remedies
- Availability and standard of reception conditions
- Asylum procedures
- Use of detention
- Implementation of Dublin decisions

In the chapter entitled, "summary of EU member state practices", a selection of practices are presented, some of which are labelled as being either *good* or *bad* practices. This assessment was made on the basis of our research conclusions from the asylum seeker and migrant interviews. A fuller reading of individual member state practices can be found within the national reports.

Regional and international case-law and human rights

Lastly, JRS Europe conducted a review of the Dublin Regulation based on relevant case-law and human rights standards at the regional and international level. This was done to better understand how the regulation fits with prevailing norms of fundamental human rights. Though this analysis is located in the appendix to this report, its relevance and importance is no less than the other two primary sections. It permits the reader to understand the broader context of individual asylum seeker and migrant responses as well as individual EU member state 'Dublin practices'. It demonstrates that any critical gaps in protection that were identified are not singular experiences, but ones that have occurred elsewhere in recent times and have been considered by other important stakeholders, such as the EU Court of Justice and the European Court of Human Rights. This paper was researched and written between January and April 2012 by JRS Europe.

The European report

This section comprises the findings of all 257 interviews we conducted and the summary of EU member state practices related to the Dublin Regulation. The former is sub-divided by research theme, and at the beginning of each sub-section the reader can find a summary of its main data findings. Following this is an analysis of the main themes that emerge from the interviews, and a listing of EU state Dublin practices. These two sections are completed by conclusions and policy recommendations.

The national reports

Each partner wrote a national report, which is a microcosm of the European report in that each report presents their country's Dublin practices, their interview data findings and analysis, and conclusions and policy recommendations. Though JRS Europe was closely involved in the preparation and editing of the national reports, sole authorship lies with the respective project partner.

Methodological shortcomings

All of our major research components – the interviews, member state practices, analysis of Dublin based on case-law and rights standards and national reports – capture a specific moment in time, and is thus vulnerable to changes in the political, legal and social context. The research was done while the Dublin II Regulation was still in force (and as of this writing, it still is); by June 2013, the European Parliament, and soon after the Council of the EU, will adopt a new Dublin "III" Regulation. Thus soon after this report his published, it is likely that the practices of EU member states will change in order to fit the new regulation.

Researching member state practices proved challenging with some countries due to the difficult in obtaining information from the authorities. Some of the interviews were conducted in stressful environments such as detention centres and immigration jails. This may have affected the quality of some responses. Finding people to interview proved difficult in some countries as the 'Dublin population' is a highly transitory one. It was relatively easier to interview people in transfer procedures because they are more easily identifiable because of their engagement with the state authorities. It was more difficult to interview returnees, because once returned they blend in with the country's asylum and immigration system. No

one was interviewed for a second time, meaning that the responses provided might have been particular to that given time and whichever stresses and circumstances were occurring.

The biggest methodological shortcoming of this study is that we were not able to conduct asylum seeker and migrant interviews in the United Kingdom. The UK Border Agency refused our project partner, JRS UK, permission to interview Dublin detainees at the Harmondsworth and Colnbrook Immigration Removal Centres (IRCs). Several efforts were made by JRS UK to reverse the UKBA's decision, with numerous inquiries made to parliamentarians and NGOs. As an alternative, attempts were made to recruit non-detained interviewees in the Dublin process, but this was unsuccessful. As a result, the national report of JRS UK – which describes UK Dublin practices – is placed as an annex to this report because they were not able to adhere to the project methodology.

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Most of all, JRS Europe and its partners are thankful every one of the 257 asylum seekers and migrants whom we interviewed for this project.

# *DIASP data findings*

- Whom did we interview?
- Personal ‘Dublin stories’
- Knowledge of Dublin procedures
- Appeals
- Asylum case
- Personal well-being
- Personal opinions about the Dublin system
- Research conclusions

# 1. Who did we interview?

### *1.1. Demographics, family presence in EU, frequency of travel to EU*

Our partners interviewed 257 persons in nine EU countries. Of these, 59.1% were people in the transfer process, i.e. *transferees*, and 40.9% were people who had been returned from another EU member state, i.e. *returnees*.

**Table 1 – Percentage of people interviewed in each DIASP partner country**

| | *General sample* (country % out of a total of 257) | *Transferees* (country % out of a total of 152) | *Returnees* (country % out of a total of 105) |
|---|---|---|---|
| **Belgium** | 15.6% | 26.9% | 0.0% |
| **Germany** | 12.8% | 20.4% | 1.9% |
| **Hungary** | 11.7% | 5.3% | 20.9% |
| **Italy** | 11.7% | 9.2% | 15.2% |
| **Poland** | 11.7% | 5.3% | 20.9% |
| **Sweden** | 10.9% | 15.1% | 4.8% |
| **France** | 10.5% | 17.7% | 0.0% |
| **Malta** | 8.9% | 0.0% | 21.9% |
| **Romania** | 6.2% | 0.7% | 14.3% |

In Belgium, Germany, France, Sweden we mostly interviewed transferees. Countries that lie at the eastern and southern EU periphery – Hungary, Italy, Poland, Malta, Romania – are where we interviewed a majority of returnees. This breakdown generally reflects the actual reality of incoming and outgoing Dublin requests from these particular countries from 2008 to 2011.[10]

The average interviewee is 29 years old, male and single; about a third are married. Our interviewees hail from nine different regions of the world, with the top three being South Asia (Afghanistan, Pakistan), West Africa (Nigeria, Ghana, Cote d'Ivoire) and East Africa (Eritrea, Somalia).

Four tenths of interviewees said that their family was present somewhere inside the EU. Germany, France and Sweden rank the highest in terms of where people's families are located, with the United Kingdom, Belgium and Netherlands just behind. Few people reported to have families in the eastern and southern EU periphery states that we researched.

Approximately 75% of interviewees told us that they can speak a second language. While we did not test their language abilities, at face value the breadth and scope of the languages they claim to speak is impressive: English and French are by far the most widely spoken second languages, followed by Russian, Italian and Arabic. Taken altogether, about 40 languages were represented in our sample.

Most of the transferees that we spoke with had never previously been to the country where we interviewed them. However a smaller group of transferees, 14%, told us that they had been to the country before. For example, a 27-year-old Cameroonian man we met in Belgium had come and gone from the country prior to our interview with him because of protection concerns.

> In November 2009 I went from Turkey to Cyprus, where I applied for asylum. I stayed for about a year in Cyprus. Then I left Cyprus to Turkey. I was wanted in Cameroon and I found out that they knew I was in

[10] Eurostat, *Asylum Statistics*, http://epp.eurostat.ec.europa.eu/statistics_explained/index.php/Asylum_statistics, accessed on 30-04-2013; outgoing requests, last updated on 26-04-2013, http://appsso.eurostat.ec.europa.eu/nui/show.do, accessed on 30-04-2013; incoming requests, last updated on 26-04-2013, http://appsso.eurostat.ec.europa.eu/nui/show.do?dataset=migr_dubin&lang=en, accessed on 30-04-2013.

> Turkey. So I left Turkey for Greece, and from there I went to Belgium. I left Belgium for the Netherlands because Cameroon got to know that I was staying here (sometimes he calls his sister in Cameroon and that's how they could trace him). I was arrested in the Netherlands and detained for two months before I was sent to Belgium.

Another person we met in Belgium, a 21-year-old Afghani man, had moved between other EU countries and Belgium in what amounted to a search for decent reception conditions. With 30 other people he took a boat from Greece to Italy, where they were immediately intercepted at a train station. Knowing that they could not be returned to Greece, the authorities offered a basic accommodation but with no access to food. He left the housing and lived on the streets for over a week; soon after he travelled to Belgium where a cousin of his was living. He applied for asylum in Belgium but accommodation was not available. The authorities advised him to find his own housing and that they would reimburse him, but because he could not speak the local language he could not find a flat. He stayed at friends' houses and in railway stations. Eventually the Belgian authorities arrested him and transferred him back to Italy, where he again was left homeless due to the lack of housing. Having no other option, he returned to Belgium, where he again tried to apply for asylum. When JRS Belgium had met with him, a decision was pending to transfer him back to Italy.

Most of the returnees we interviewed had of course previously been to the country where we interviewed them. Yet for an exceptional few this was not the case. These individuals who had come from Greece but, since Dublin transfers to that country are not possible, they were transferred elsewhere. In other cases, people were transferred to an EU country they had never been to only because they were intercepted with a group of migrants who *had* been to that country.

- "As a student I had problems in Pakistan. I was beaten at a rally and I am still injured. I have newspaper articles with me documenting my case. I had to flee. I first went to Greece and then to Austria. I spent six months in Austria. I applied for asylum there and had two interviews but was rejected. I was stopped by the police there, put into jail in Vienna for five days and then I was deported to Hungary despite the fact that I have never been to Hungary before. I do not have my fingerprints here." *24-year-old Pakistani man interviewed in Hungary*

- "I first went to Greece and then to Austria. From Austria I went to Germany where I was caught together with three other people. I was sent back to Austria. There I was stopped by the police on together with a group of people who came through Hungary and Serbia. Together with them I was deported to Hungary despite the fact that I did not come through Hungary and they took my fingerprint in Austria. I am also injured. When we were deported to Hungary some people were sent to the open camp in Debrecen and some were detained like me." *32-year-old Afghani man interviewed in Hungary*

### *1.2. Stage and length in Dublin procedures, legal statuses, detention*

Among transferees, 35% had received a transfer order and were awaiting its implementation, 46% were still awaiting a decision whether they would be transferred or not, and 9% were in the process of appealing a transfer order they had already received.

Among returnees, 43% were asylum seekers in the procedure. Nearly all of these persons were predominately from Afghanistan and Russia, and most of them were interviewed by our DIASP partners in Poland and Hungary. Also among returnees, 21% were holders of subsidiary protection interviewed exclusively in Italy and Malta, and 20% were refused asylum seekers, most of who were interviewed in Hungary but also Malta, Romania and Sweden. Two and three per cent of returnees were undocumented and recognised refugees, respectively; all of the recognised refugees were interviewed in Italy.

A third of returnees said they were returned to the responsible member state with no further action planned, meaning they did not intend to apply for protection or did not know what they would do. Another one-third of returnees said they had been returned and were applying for asylum; approximately a quarter of returnees said they had been returned to a member state who had already given them some form of protection. For this latter group the responsible states were Malta and Italy, and the majority had previously been given subsidiary protection status.

Transferees spent an average of 2.48 months in Dublin procedures. Nineteen of these persons spent six months or more in Dublin procedures when they were interviewed. Six people had spent 12 to 21 months; five of these persons were interviewed in Germany, and two in Italy. Below is a testimony for a 25-year-old Chechen man who had been in Dublin procedures for 12 months, and was in the process of challenging his transfer, when we interviewed him.

> At first I came to Poland, where the police interviewed me and took my fingerprints. The Polish police were very mad and unfriendly to all refugees. It was a hell. After the interview, they arrested me and I was in a jail for couple of days. After arrest they gave me a paper and I was directed to the refugee camp, but I used the moment to escape. I took the taxi to the German border. I was so afraid to stay in Poland. Some of refugees whom I met in Poland told me that a lot of refugees from Chechnya disappear in Poland. And behind these incidents are people [sent by] Chechnya president Ramzan Kadryow. I heard that they kill refugees. When I came to Berlin I went to the central place for asylum seekers in the *Turmstraße*. I showed to the people working there the paper which I got in Poland after arrest. I asked to go to the camp. It was another very bad experience after staying in Poland. The workers had a very bad attitude without any sense of respect. They treated us like dogs. I got psychological problems. I was in this disaster for five months. I was transferred to *Fürstenwalde*. At the moment I live in an apartment with another Chechen refugee. I am waiting and waiting for decision what is going to happen to me. I have sleepless nights full of nightmares.

Four tenths of DIASP interviewees were in detention and had been there for an average duration of 1.90 months. The longest duration of detention recorded was 10 months, experienced by a Pakistani refused asylum seeker who had been returned to Hungary. On average, 32% of returnees were detained compared with 45% of transferees. However returnees spent an average of 3.10 months in detention, approximately 1.5 more months than transferees.

**Table 2 – Country breakdown of detained DIASP interviewees**

| | *Country and percentage detained within* | |
|---|---|---|
| **Transferees** | Belgium | 49% |
| | Germany | 24% |
| | Hungary, Poland & Sweden | 9% |
| **Returnees** | Hungary | 36% |
| | Romania | 30% |
| | Poland | 18% |

# 2. Personal ‘Dublin stories’

Every person we interviewed was first asked to describe their ‘Dublin story’. People’s interactions with the Dublin system are never as linear or hierarchical as the text of the actual Dublin Regulation. This is why we felt it important to capture people’s stories at the beginning of the interview: to come face-to-face with the complexity of people’s experiences, and to help us to better understand the comprehensive impact the Dublin system has on their lives. More importantly, this permitted people to fully reveal the complete arc of their journey without pretext or hesitation. For many it was the first time they could tell their story in such an unencumbered way.

Everyone’s ‘Dublin story’ is unique and thus difficult to compare. However, from each of the 257 stories we received we were able to distinguish four ways in which people primarily described their journeys: by talking about the country of first

entry, the number of times they travelled between EU countries, the times they were detained and the occasions when they applied for asylum. Each category is exemplified below by migrant testimonies.

### *2.1. Country of first entry*

> I came to Sweden in 2009. Since then I have trying to get asylum, as I heard that it was easiest in Sweden. I have relatives in Germany, but they told me better to try Sweden. Now, I also have an aunt in Finland. After I received no – I went through all legal instances, including the European Court of Human rights – I took the ferry from Stockholm to Turku in Finland, because my aunt has lived there for some time with her daughter. Finland was okay, but unfortunately I was caught by Finnish Police. I travelled without a ticket on the train, and the train controllers reported me to the police. I did not have an ID. Then, a few weeks ago I was returned to Sweden. I know I might have to go back to Iraq. Sweden is planning deportation. But I think I better cooperate with the authorities, so I can then maybe try again to ask for asylum either to Finland or to Germany. I have friends in Erbil, in northern Iraq. I think it is safer there.
>
> *27-year-old man from Iraq, interviewed in Sweden*

> On April 2011, I arrived in Spain. When I was there … the Spanish authorities and their welcome … I don't agree. I made a decision to back to my country in Congo. I stayed two months and a half in Spain. I arrived in Melilla; I stayed for one month and a half. I was in Red Cross camp. I was fingerprinted there, they forced me to be fingerprinted, I did not want to. I did not apply for asylum. I was told that I could not stay more than three months. The policemen kept me locked for three days and sent me to Murcia. I was in jail for 26 days, because I entered Spain illegally. There were lots of illegal people. I was without my children. They set me free. I made my decision: I went back to my country. I stayed three months in Congo. I arrived in July and I left Congo in September. I came to Brazzaville. Someone told me, 'I can help you to go to France.' He told me that there it was too dangerous. I just gave him my money. He gave me a fake passport and I boarded a plane to France. I arrived in Paris. Some people told me there was no place for me to sleep there. I did not go to the Prefecture. They advised me to go to Lyon. In Lyon, I met an African brother and I asked him where the Prefecture was. They took my fingerprints. Then, a lady told me I crossed another European country. She told me that they go to ask Spain. But I did not apply for asylum there.
>
> *26-year-old woman from Democratic Republic of Congo, interviewed in France*

In general, asylum seekers report having difficulty coming to terms with the fact that the Dublin system is based on the rule that people must have their applications assessed in the first EU country they arrived to. People aspire to submit their asylum applications elsewhere in Europe no matter how many times they are returned to the 'first country of entry'. For many, the return to the first EU country is a necessary part of their journey to seek protection in an EU country of their own choosing. For others, it simply does not make sense that they should be sent to the first EU country of arrival if they never had any intention of settling there or applying for asylum.

### *2.2. Travels between EU countries*

On average people made four to five trips between EU countries prior to their interviews for the DIASP project. For the most part, migrants are acting outside of the expectations that the Dublin system expects them to follow. If people are not where they want to be, then they tend not to stay in the EU country that either already gave them protection status or is responsible for assessing their asylum application. Instead they continue travelling to a variety of EU countries based on where they think they can get the best protection or where they think the best reception conditions are. They might travel to an EU country where they have a relative, even if it is a distant relative they have not seen or spoken to in a long time. Yet because of the rules of the Dublin system people are constantly sent back to their country of first entry in what amounts to a game of human Ping-Pong with severely negative impacts: people are frequently detained, their asylum applications are interrupted and families remain separated.

I came to Malta in 2007. I applied for asylum, but I was rejected. After this rejection, I travelled to Norway in 2010. I went to Italy by boat, then to Germany by train, after that I went to Sweden by train, and then to Norway by train. I lived in Norway for one year and six months. When I arrived in Norway I first asked the authorities for Asylum. I told the authorities that I have a wife living in Norway, so I got a permission to live with her in a flat. After one year and six months the Dublin Regulation 'sent' me back to Malta. When I was back in Malta I spent four months in detention [he is referring to time he spent in prison after he was sentenced for leaving the country without the requisite documents]. After they released me I went to back Sweden. I crossed Holland and Denmark, where I spent 11 months in detention. I asked for asylum and the Dublin Regulation sent me back to Malta. I came back to Malta 2012. I was in detention for two months. Now I live in the Hal Far Hangar.

*31-year-old man from Eritrea, married, and interviewed in Malta*

I left Somalia in 2005. I went to Kenya, Ethiopia, Uganda, Sudan and finally to Libya. In Libya I spent one year in prison. From there I went in Italy by boat in 2008. I arrived in Sicily where I sought asylum and I got a permit for subsidiary protection. After six months, without having a job, I decided to go to Sweden where I spent eight months. When the police discovered me without a specific authorisation for working they sent me back to Italy. I stayed in Rome for two months, and then I went to Finland for one month. I came back to Italy for two months and then I went away again. I chose to go to Holland where I spent one year. I found a job but when the police controlled my document they sent me back to Italy on the basis of the Dublin Regulation. I came back to Italy (now 2009), I stayed for two months and then I went to Switzerland for four months. The police sent me back to Italy again in December 2011.

*29-year-old man from Somalia and interviewed in Italy*

### *2.3. Number of times detained*

Detention is a fact-of-life for asylum seekers and migrants in the Dublin system. Most EU countries detain people who are to be transferred to another member state. Under the Dublin Regulation there are no common rules regulating how detention should be used, leaving migrants within a grey zone in EU law,[11] but also permitting divergent member state practices. The soon-to-be-adopted Dublin 'III' Regulation, by contrast, does contain a few legal articles on detention, namely obliging member states to refer to the detention rules in the recast Reception Conditions Directive. In Dublin III there is also an article requiring governments to use less coercive alternatives to detention first. Though while some progress has been achieved on paper, in reality there is still much to be done. For migrants, the threat of detention is an ever-present part of the Dublin system.

A 23-year-old Afghan man, single, arrives to the EU in 2009. He first arrives through Greece, then goes to Macedonia, Serbia and then to Hungary. This journey took one year, so now it's 2010. In Hungary, he was detained and his asylum claim rejected. He left for Germany, where he was jailed and returned to Hungary. Then he went to Austria and was detained for 2 months; upon release, he fled to Switzerland. From there he was deported back to Hungary. He went to Germany again, and stayed for three months in jail before being deported back to Hungary. He again went to Austria but was sent again back to Hungary. He went back to Switzerland and spent another 3 months in detention. He tried several more journeys to Germany, always failing. Basically his entire time in Europe was spent in detention. During one of his last times in Switzerland he tried to hang himself, but was saved at the last moment by detention centre staff.

*Testimony from a 23-year-old man from Afghanistan, interviewed in Hungary*

[11] The 'Returns' Directive is the only EU law that lists guidelines for the detention, in this case irregular migrants in return procedures. EU asylum laws, namely the Reception Conditions Directive and Asylum Procedures Directive, do not have such guidelines; the latter is an exception as it states, "Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum" (art. 18.1). However the new recast Reception Conditions Directive, and recast Dublin Regulation, will have more guidelines on detention.

### *2.4. Number of times applied for asylum*

The main purpose of the Dublin system is to ensure that one EU country is responsible for assessing one person's asylum application. On paper this is a neat system but in reality it is anything but. Whether they know the rules or not, people apply for asylum in a country of their choice even if they have already applied – and received a decision – in another EU member state. We spoke with people who submitted multiple applications and were thus transferred multiple times back to their first country of origin. In Malta and Italy, many of our interviewees had again applied for asylum in northern European countries despite already having subsidiary protection status. For these persons, *refugee protection* is what they seek and subsidiary protection is somehow perceived as insufficient. Nevertheless, they are eventually intercepted and transferred back, from where they embark upon another journey to yet another EU country. And for other people, the concept of 'one application, one decision' is not understood.

> In 2009 I came to Malta and spent two months and thirteen days in detention. During this time I obtained subsidiary protection. After detention they sent me to Hal Far tent village where I lived in a tent with 14 women. After seven months I decided to leave Malta. I went straight to Denmark, by plane, and from Denmark I took the train straight to Sweden. I lived in Sweden for one year and two months. In Sweden I had work. There I applied immediately for asylum and the government sent me to a camp. They told me, that because I have fingerprints in Malta they'll send me back there because of the Dublin II Regulation. They also said that if the Maltese government doesn't want to take me one more time, I could stay in Sweden. After one year and two months, they sent me back to Malta.
>
> *24-year-old Somali woman interviewed in Malta*

> In 2008 I came from Sri Lanka to Norway, applied for asylum there and was rejected three times. I had to leave the territory, but I didn't want to because of problems in Sri Lanka. In 2010 I went back to Sri Lanka, where I stayed for one year and a half, but again I had problems. In 2011, I left Sri Lanka for an African country where I stayed for two months. From there I went to France and then to Belgium by car. In February 2012, I arrived to Belgium and applied for asylum. That day they told me I should come back some days later for my first interview. But in March I was arrested and detained. A few days later they brought me to the airport but I refused to get in the plane because I was still waiting for an answer from my lawyer. Tomorrow they will bring me to the airport for a second time.
>
> *Testimony from a 25-year-old man from Sri Lanka, interviewed in Belgium*

### *2.5. Impact of Dublin transfers on asylum applications*

The vast majority of people we interviewed, 93%, felt that the transfer process itself negatively impacted the chance their asylum application would be accepted. Underlying these sentiments is that ultimately the Dublin Regulation, and especially the transfer process, drastically restricts the level of personal agency that one can exercise. People cannot choose where to apply for asylum or even how to organise their own lives.

Taking a closer look at people's responses, 54% felt that the transfer process left them with little to no choice in terms of where they could lodge an asylum application and where they could seek the best protection in their point-of-view. Nearly one sixth felt that the Dublin transfer left them with no choice with meeting their daily needs pertaining to reception conditions, accommodation, medical care, or simply to continue their life in a European country of their choice. Another 15% expressed that the Dublin transfer process has wasted their time, that the procedures have gone on for far too long. These reasons, along with the possibility of detention and poor conditions in the country of return, are the basis for why people feel that the Dublin Regulation negatively impacts the chances their asylum applications would be accepted.

- "Psychologically, it is a very difficult and tiring. To return to your own country is not an option because there is no future there. Once you're used to living in one country, you get a negative decision for your asylum application and then you have to move on to the next country." *30-year-old Georgian man interviewed in Belgium*

- "If I go back to Hungary, then I will be deported to Syria, where I risk to be imprisoned for one year. I have no money, no social help; there is no democracy, there are political problems. I keep on being sent back to Hungary, where I have a negative decision for asylum. They will deport me. I don't have any chance." *37-year-old Syrian man interviewed in Belgium*

- "Everyone tells us to do as we liked, decisions were taken but no one explained to us the procedure. In Holland nobody interviewed me concerning my asylum application. In the three countries where I applied for asylum, I have never been interviewed." *29-year-old Mongolian man interview in France*

- "In Greece the conditions were very bad. Then Austria wanted to send me back to Greece, then Sweden sent me back to Greece and now in Hungary I was waiting for positive answers from Sweden or Austria, but they don't want to take me back. In Hungary I received a negative decision in admissibility procedure and I will be transferred back to Serbia, which is a considered as a safe country for Hungary. I therefore did not have any chance to have my asylum claim examined on the merits in EU." *41-year-old Iranian man interviewed in Hungary*

- "Easy to explain: I think I do not have a fair chance to get an asylum in Malta. I think it is impossible there. Anyway, I never wanted to come to Malta, I wanted to ask for asylum on the European mainland, Germany, Sweden, Norway, France." *26-year-old Syrian man interviewed in Sweden*

- "In Italy I was sacked out of the camp together with my wife. No job, no money, no house. Why stay there? There is nothing for us. So we want to apply for asylum here. But we will be sent back to Italy probably and so we can't." *32-year-old Ghanaian man interviewed in Germany*

- "I'm not able to focus on my plans. I want to live a secure life in Germany. I want to work, pay taxes and support my family in Pakistan or to bring them here. But with the Dublin procedure my plans are disturbed." *19-year-old Afghani man interviewed in Germany*

- "The Dublin made worse my asylum procedure because after more than one year out of my country I don't have yet a stay permit." *33-year-old Turkish man interviewed in Italy*

# 3. Knowledge of Dublin procedures

### *Main findings*

- People are likely to know more about the Dublin system if they have already made multiple journeys between EU countries.
- 55% know little or nothing about Dublin procedures.
- Information is more likely to be understood if people are given thorough oral explanations, than if they are *only* given written information.
- Lawyers help people understand specific and technical information about Dublin; NGOs help people understand the bigger picture.

The Dublin Regulation is an inherently complicated EU law even by the standards of seasoned practitioners and lawyers, not to mention migrants and asylum seekers. Thus we asked our interviewees to tell us about their knowledge of the Dublin system, who informed them and how they received this information. Although the Dublin III Regulation contains

specific legal provisions that require member states to inform asylum seekers – such as a new "right to information"[12] – the Dublin II Regulation contains nothing of the sort. This means that the way people are informed about the Dublin system can greatly vary from country to country, and even with one country.

### *3.1. What do people know about Dublin?*

The first question we put to people was: what do you know about the Dublin Regulation? To this, 20% of interviewees expressed having what we labelled as 'advanced knowledge' of Dublin procedures, meaning that they knew two or more aspects about it. Someone with this level of knowledge would be able to describe, for example, the EURODAC system and the first country of entry rule, and that people could only seek asylum in one EU country. A 29-year-old Côte d'Ivoirian man we interviewed in Italy explained the Dublin Regulation in this way: "I know that if your fingerprints are taken in one EU country, then you cannot move from there to another EU country and you have to stay there and seek asylum in the first country you entered."

Having advanced knowledge of Dublin procedures is strongly related with having been to the country before (see table 4). Conversely, people who had not previously been to the EU country where we interviewed them are not likely to have advanced knowledge about Dublin.

**Table 3 Knowledge of Dublin based on previous visits**

| | *People who have not previously been to the EU country where they were interviewed for DIASP (62% of sample)* | *People who have previously been to the EU country where they were interviewed for DIASP (39% of sample)* |
|---|---|---|
| **Advanced knowledge** | 15% | 29% |
| **Only fingerprinting** | 11% | 19% |
| **Only the transfer process** | 17% | 10% |
| **Only the 'responsible country' aspect** | 57% | 43% |

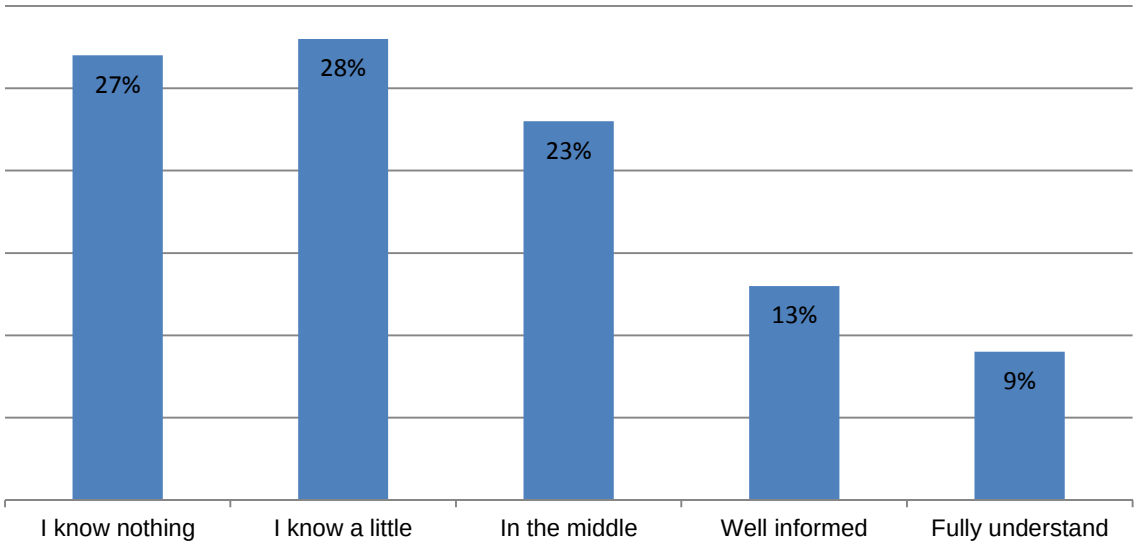
Yet for the most part the people we interviewed tend to know only one aspect of Dublin transfers. And in our general sample, 51% expressed knowing only about the 'responsible country' element of Dublin. "I know that one country is responsible for one's case", said a 19-year-old Serbian man interviewed in Germany. A person we met in Italy said, "It's a European law that foresees that the first European country you enter is the place where you have to seek asylum; it is compulsory, you cannot choose." A Somali man interviewed in Sweden explained it this way: "I understand that we are only allowed to ask for asylum in one EU country. I cannot travel around and ask for asylum anywhere. Can I not challenge my decision?"

Another 14% of persons in our sample expressed only the fingerprinting aspect of Dublin; another 14% only described the transfer process. "If there is a fingerprint in one country and I go to another one and ask for asylum there, I get deported back to where I had my fingerprint", is how a Pakistani man in Hungary described it. Another person said, "I know very little. I know I can be sent back to Italy, but I don't understand why. I didn't ask for asylum in Italy."

After first asking people, 'what do you know?' we then asked 'how well informed are you about Dublin procedures?' In general, the people we interviewed say they are poorly informed about Dublin procedures (see chart 1).

[12] Found in article 4 of the recast Dublin "III" Regulation as adopted by the Council of the EU in their 'first reading' position, 14 December 2012, see: http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf

**Chart 1 How well informed are you about Dublin procedures?**




The picture becomes more nuanced as we break the sample apart. Approximately one-third of returnees claim to "know nothing" about Dublin procedures, which is more than transferees and the general sample. At first glance this seems to contradict our earlier finding that returnees have more 'advanced knowledge' about Dublin than transferees. But a closer look at the data says otherwise: when we disaggregate the group of returnees into a) those who had previously been to the DIASP country of interview, and b) those who have not, the latter proves to be far less knowledgeable. Of returnees who had not previously been to the DIASP country of interview, 41% claimed to know nothing about Dublin, compared with 28% of returnees who have made multiple Dublin journeys. The same is true for transferees: of those who had not previously been to the DIASP country of interview, 26% claim to know nothing, compared with 14% of transferees who had. All of this adds to our finding that people seem to know more about the Dublin system by practice – the more they travel, the more they learn.

### *3.2. Who informs people about Dublin, and how?*

Most people are informed about Dublin procedures by EU member state administrative authorities, followed by local NGOs and then lawyers. Information is generally given to migrants orally, with only 19% of persons in our total sample saying they received information both orally and in writing.

We found a strong relationship between feeling knowledgeable and having received information from the administrative authorities: 31% of people who said they had been informed by the authorities fell well informed about Dublin, compared with just 17% of people who said they had not gotten information about Dublin from the authorities.

People understand Dublin procedures primarily if the information is given to them in the right language, and to a lesser but not insignificant extent if people are given a thorough explanation. People who claimed not to understand the information given to them said it was because it was given to them in a language they did not understand, or because the information was too complicated. Many people who understood the information given to them had an interpreter.

When determining how well people are informed about the Dublin system, an important aspect to consider is whether people can acquire further information from member state authorities. To this, 34% told us that they do receive information from state authorities when they ask for it; 17% said this is not the case, while 49% claimed that they had never asked the state for more information.

People's knowledge about Dublin is very much affected by who tells them about it. Individuals who are informed by lawyers tend to have more 'advanced knowledge' – knowing two or more aspects about Dublin – than those informed by administrative authorities. If one gets their information from an administrative authority, then they are likely to know more about the 'responsible country' aspect of Dublin than anything else; the same can be said for people who get their

information from NGOs. Interestingly, however, is that the most 'fully informed' people are those who received information from NGOs, followed closely by administrative authorities. Although lawyers may provide people with more advanced information about Dublin, they do not seem to be helping people to fully understand the entire Dublin system.

But there is a contradiction: although interviewees who receive information from NGOs claim to be more 'fully informed' than people who get information from other sources, when we later asked interviewees if they *understood* the information given to them by the providers that they mentioned, just over one quarter of persons who were informed by NGOs said no.

A potential reason for this contradiction is that our findings show a strong relationship between *how* one is informed about Dublin procedures, and whether or not they understand the information. More specifically, people who are informed orally are more likely to understand the information they get than if they are only given information in writing. Interviewees say that NGOs provide them with more information in writing than orally when compared to administrative authorities and lawyers, which explains why fewer of our interviewees claim to understand the information given to them by NGOs. Since lawyers provide more information orally, this relationship also explains why our interviewees understand what lawyers tell them compared with NGOs and administrative authorities.

These findings mean that while it is good to provide written documentation about Dublin, it would be even better to accompany that with thorough oral explanations. By discussing the information, migrants can ask questions about particularly technical aspects of Dublin, or they can have information explained to them in different ways. This holds true for any type of information provider.

# 4. Appeals

### *Main findings*

- 47% did not know how to appeal a Dublin transfer; for returnees, 50%.
- 60% have never actually tried to challenge a transfer.
- People are more likely to appeal a transfer only if they have been informed about it, especially by a lawyer.
- 64% did not know about the discretionary clauses.
- People who are informed about the discretionary clauses through verbal and written explanations are more likely to challenge their transfer than people who are informed by *only* a verbal or *only* a written, explanation.

The ability to challenge a Dublin procedure, such as a transfer to a responsible member state, is one of the most important safeguards available to asylum seekers. Appealing a Dublin decision is the only way for an asylum seeker to exert their choice in a regulation that otherwise ignores their personal preferences. During interviews with asylum seekers we asked them if they are informed about appeals, and if so who informs them and how. We also asked them whether they have actually tried to appeal a procedure, and if they have been in contact with a lawyer. When considering the appeals process it is especially important to investigate asylum seekers' knowledge of the Dublin Regulation's discretionary clauses, known as the *humanitarian* and *sovereignty* clauses[13]. Both clauses permit member states to assume responsibility for an asylum applicant for humanitarian reasons, such as family reunification, or if they conclude that the member state they would send a person to would be unable to properly assess their asylum claim. These two clauses are very important for the asylum

[13] Articles 15 and 3, respectively, of the Dublin Regulation (Council Regulation (EC) 343/2003). In the recast Dublin "III" Regulation, these articles are to be incorporated under heading of "discretionary clauses"; see article 17 of the Council's first reading of the recast regulation, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf

seeker, but existing research suggests that it is hardly used.[14] This is why we asked them directly in our interviews if they know about the discretionary clauses, who tells them and how, and if they ever had the chance to use them.

### *4.1. How are people informed about appealing?*

First we asked people if anyone had informed them on how to appeal a transfer. To this, 53% said yes and 47% said no. For transferees specifically, only a few more people admitted having been informed about appealing a transfer; however exactly 50% of returnees said they had not been. The telling conclusion from this basic description of the data findings is that, in general, approximately half of the people we interviewed claimed not to be informed by anyone on how they might appeal their transfer.

Secondly, we asked people to tell us who informed them. Nearly a third said they had received this information from the member state administrative authorities. Lawyers and NGOs are rated slightly higher as being information sources. However there are stark differences when comparing transferees to returnees. Most people are informed about appeals orally, with only 13% in our general sample saying that they had received written information about appeals.

Sixty per cent of people in our sample had never tried to appeal their transfer. When we asked why, 42% said it was because they lacked information on how to appeal. Alarmingly, 64% of returnees said this was their reason for not appealing.

We found that there is a very strong relationship between whether one is informed about how to appeal a transfer and the reasons they choose not to do it. People who say they are not informed about appealing are very likely to say that they did not try to appeal because they lacked information. Though this finding may be obvious to many – that one can only act upon something one knows about – it does show that in the case of the Dublin Regulation, many people do not enforce their right to challenge a Dublin decision simply because they are uninformed about how to do it. The finding is simple, but its implications are troubling.

**Table 4 Differences between persons who appealed a transfer, and those who did not.**

| | | *Persons who appealed (40% of the entire sample)* | *Persons who did not appeal (60% of the entire sample)* |
|---|---|---|---|
| **Did anyone inform you how to appeal a transfer?** | Yes | 91% | 34% |
| | No | 9% | 66% |
| **Who informed you?** | NGOs | 32% | 44% |
| | Lawyers | 42% | 22% |
| | Administrative authorities | 29% | 28% |

There are important contrasts to highlight when looking at people who did not appeal a transfer and those who did. As the basic findings show in table 7, many more people who are not informed about appeals have not tried to actually challenge their transfer decision. Interestingly, those who did appeal their transfer pointed to lawyers as a source of their information much more than people who did not appeal. This too is a strong relationship: people who are informed about appealing a transfer by a lawyer are much more likely to actually go through with it than people who are not. The link between information and action, and taking action when informed by a lawyer, also exists when specifically examining transferees in our sample, as shown in table 8.

[14] See ECRE/Forum réfugíes-Cosi (2013), *Lives on Hold*, pp. 45-49.

**Table 5 Differences among *transferees* who appealed their transfer decision and those who did not**

| | | *Transferees who appealed (21% of entire sample)* | *Transferees who did not appeal (36% of entire sample)* |
|---|---|---|---|
| **Did anyone inform you how to appeal a transfer?** | Yes | 89% | 38% |
| | No | 11% | 62% |
| **Who informed you?** | NGOs | 46% | 56% |
| | Lawyers | 33% | 22% |
| | Administrative authorities | 35% | 19% |

### *4.2. Contacts with lawyers*

Sixty five per cent of all persons we interviewed told us they had had contact with a lawyer. Yet given the complexity of the Dublin Regulation it is concerning that not more people have had access to a lawyer: just over a third in our general sample said they had not met with a lawyer, while 42% of transferees specifically said they had not taken contact with a lawyer. We found that there is a strong relationship between having contact with a lawyer and appealing a transfer, which demonstrates their critical importance in a person's Dublin case.

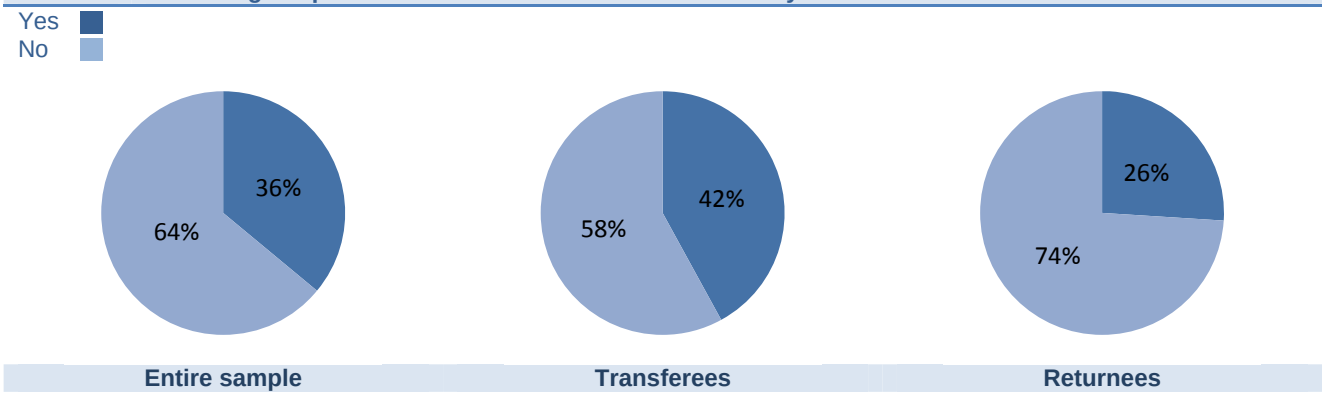
We asked people to tell us which kind of lawyer they had contact with. About half of the persons in our sample said the lawyer was appointed by the state; 26% said they had met with an NGO lawyer and 21% with a private lawyer.

Six tenths of interviewees believed their lawyer had taken good care of their case; a third felt their lawyer had not, and 7% did not have any perception about the quality of their lawyer. There are contrasts when we break the sample down. Nearly half of returnees said their lawyer had not taken good care of their case; within this group, 39% said it was because they thought their lawyer did not put enough effort into their case. Conversely, 66% of transferees felt their lawyer was taking good care of their case, with 55% attributing it to the high level of effort their lawyer was putting in. Evidently, people who are eventually returned may feel more negatively about their lawyer's performance than people who still have a Dublin decision pending.

### *4.3. Discretionary clauses*

Worryingly, many of the people we interviewed claimed not to know about the humanitarian and sovereignty clauses[15] in the Dublin Regulation.

**Chart 2 Percentage of persons who know about the discretionary clause**




[15] Throughout this report we use the term "discretionary clauses" to describe articles 3 and 15 of the Dublin II Regulation: the 'sovereignty' and 'humanitarian' clause, respectively. "Discretionary clauses" is the term to be used in the new Dublin III Regulation when it is adopted in June 2013, and this term will replace the ones used in Dublin II. We find that the term "discretionary" still fits even when writing within the context of Dublin II, because the 'humanitarian' and 'sovereignty' clauses are indeed used at member states' discretion.

Among those who are informed about the discretionary clause, NGOs rank highest as their source of information, followed by member state authorities and lawyers. Most of our interviewees are informed about the clauses via oral explanation. About 30% of interviewees claimed they had gotten this information too late, i.e. after a decision had been taken on their case.

To people who said they had been informed about the discretionary clauses, we asked if they had actually tried to argue for its implementation in their case. To this, 46% said yes, they had tried to argue for it, and mostly for health reasons. Within this group, a slight majority felt like their request to have the discretionary clause applied in their case was listened to by the state authorities. However few persons had experienced any success, i.e. in terms of not being transferred. Most were either refused to have the discretionary clause apply in their case, or they were still waiting to receive a decision but felt pessimistic about their chances. Looking specifically at returnees, only a third told us they had a chance to argue for the discretionary clauses in their cases, and within this group much fewer felt that they were being listened to by the authorities.

Our findings point to a strong relationship between knowing about the discretionary clauses and taking action to appeal a transfer. People who know about the discretionary clauses are more likely to actually appeal their transfer, in comparison to people who do not know about them. This is especially true in the case for transferees who tried to appeal their transfer and those who did not: within the former, 57% knew about the discretionary clause, whereas only 36% of the latter did.

*How* people are informed about discretionary clauses also impact the likelihood that they may appeal their transfer. Interestingly, our data indicates that transferees who are informed about the discretionary clause via oral and written means are more likely to challenge their transfer than people who are only informed orally, or only through written documentation. Thus it seems critically important for people to be informed about the discretionary clauses as thoroughly as possible, with written information and oral explanations, so they can actually enforce their right to an appeal.

# 5. Asylum case

### *Main findings*

- 48% of asylum seekers knew little or nothing about their asylum case.
- People are likely to be well informed about their asylum case if they are in touch with a lawyer.
- 47% of transferees did not know how to apply for asylum in the country they were being transferred to.

The main purpose of the Dublin system is to ensure that every person who wants to apply for refugee protection has their asylum application assessed by one EU member state. It was never meant to be a 'burden-sharing' instrument that distributes asylum seekers equitably among member states. However, in reality, this is how it has turned out to be. And it has redistributed asylum seekers to countries at the EU's periphery who also are known to have weak asylum systems. To investigate this further, we asked interviewees to tell us how much they know about their asylum claims and what kind of information they received. We also asked them if the information they received about a country's asylum system matches the actual reality they experience, and if this has resulted in any difficulties with lodging their asylum claim. Most of these questions pertain specifically to returnees, because these are persons who have been returned to the responsible EU member state and in theory should be in an asylum procedure. But we also ask transferees to tell us about what plans they have after they have been transferred, and if they know how to apply for asylum in the country they are being transferred to.

### *5.1. Accessing asylum in the EU member state of return*

We asked returnees to estimate how much they know about their asylum case. Here, 42% expressed knowing little or nothing; 27% felt uncertain about how much they knew; and 32% felt either well informed or fully informed about their asylum case.

It is important to keep in mind that in our sample 'returnees' consist of many groups: asylum seekers in the procedure, refused asylum seekers, recognised refugees, subsidiary protection holders and irregular migrants. Therefore some have obviously gone through an asylum procedure and have been given either a positive or negative decision. Taking this into account, we also looked specifically at asylum seekers in the procedure within the larger group of returnees. After doing so we found that 48% of asylum seekers know little or nothing about what is happening in their case; only 19% felt well informed.

Taking again the entire group of returnees into account, we found a relationship between how much a person knows about his or her asylum case and whether or not he or she had taken contact with a lawyer. Specifically, returnees who have met with a lawyer are more likely to have been well informed about what has happened – or *is* happening in the case of applicants in the procedure – to their asylum case.

We asked returnees whether they had received information about the asylum system of the country where we interviewed them, *before* they were transferred there. To this, only 39% of returnees said they had been given such information in advance. Those who are informed are told many different things, sometimes by other migrants and sometimes by state officials. In some cases the information received seemed to be complete, telling asylum seekers why they were being transferred and that the authorities in that country would examine their asylum application. In other cases people seem to have received incomplete information.

> In Belgium they told me that Hungary is more or less a paradise. They did not tell me that I can be detained for up to 12 months.
> *34-year-old Tunisian returned to Hungary*

> I got some information about money and asylum. But I don't remember very well.
> *19-year-old Serbian returned to Germany*

> I couldn't read it because it was in German. Nobody helped me to translate it.
> *36-year-old Russian returned to Poland*

> When the Migration Service of Sweden explained to me that I would be transferred to Poland on the grounds of the Dublin regulation they also explained that my application for asylum could be examined in that country. They gave me also leaflets with information on Poland and on Warsaw.
> *34-year-old Tunisian returned to Hungary*

For the most part, returnees – and specifically asylum seekers within the group of returnees – felt that the information they received prior to their transfer matches the reality they face in the responsible EU member state. Few people told our interviewers that they information they received was incorrect. But half of the returnees we spoke to still had questions about their asylum case that they felt were unresolved. Most of these questions are specifically about asylum procedures or simply what might happen to them. In some of these responses there are clear signs of anger and fear because there are so many unknowns.

- "Why does nobody care about our problems?" demanded a 19-year-old Serbian man whom we interviewed in Germany. "What can I do? Why isn't anybody interested in our situation?"

- A Russian woman interviewed in Poland, married with four children, asked what would become of her: "What will happen when I receive the negative decision in the refugee procedure?"

- A 28-year-old married Saudi Arabian man interviewed in Hungary wondered why the Dublin rules were not being applied in his case. “Why am I not transferred to Greece if I have asked for this and Greece was the first country of entry into the EU? Why do I have to stay in detention in Hungary for so long?”

- A Georgian woman interviewed in Poland asked a simple enough question whose answer runs directly against the core of the Dublin system. “I would like to know if there is any possibility to transfer my procedure to another country. I think that some countries are more willing to grant a refugee status.”

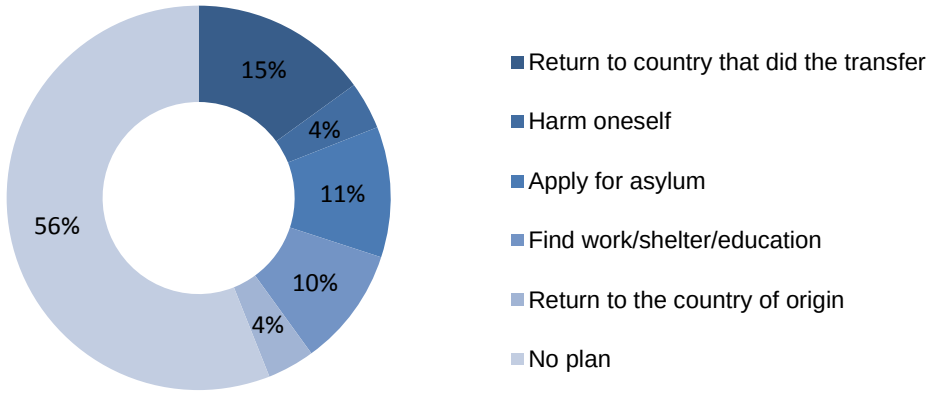
Despite having such questions, very few returnees reported experiencing any difficulties with applying for asylum in the responsible country. Those who felt otherwise reported problems relating to being in detention, or not understanding the language of the administrative authorities. For example, an Iranian man interviewed in Italy said, “The police at the immigration office don’t speak my language, and there wasn’t a translator.” An Eritrean man interviewed in Malta worried that procedural delays in the asylum system would keep him from supporting his family. “The asylum procedure takes so long, so that I am not able to be responsible to my family in my country of origin, for example by sending money back or telephoning them.”

### *5.2. Knowing about asylum procedures prior to transfer, and post-transfer plans*

Just under half of transferees, or 47%, told us that they did not know how to apply for asylum in the country they were to be transferred to. Among all the possible sources of information, NGOs, administrative authorities and other migrants ranked highest. Sometimes transferees were given one kind of information from officials and another from migrants. For example, a Ghanaian man interviewed in Germany said: “The border guards and the detention centre staff told me about it [applying for asylum in the responsible country]. Migrants told me about their cases and about the procedures.” Lawyers did not feature highly as a source of information about another country’s asylum system, except in cases in which the lawyers were working for an NGO, such as in Malta.

To get a sense of their intentions, we asked transferees to tell us what plans they have for themselves after they are transferred to the responsible member state. As shown below in chart 5, the majority of transferees have no plan at all. A 33-year-old woman interviewed in Belgium, for example, knew not what she would do, but only how she wanted to be treated: “I want to live here like the others are living, because now I am abandoned. I want to find my place in the society.”

**Chart 3 What will you do after you are transferred?**




An Afghani man interviewed in Germany had no plan for himself because he still did not know how his case would be resolved. “I do not think about it. First of all I am waiting for a decision from the German authorities. This is like a closed bag: you do not know what is in it, what the decision will be.” And while a Guinean man interviewed Belgium had no plan for himself, he knew what would happen to him so long as he was not in control of his destiny. “It is better to send me

straight to my country, where I will be killed. I don't have any options, because in Spain [where he is to be transferred to] I will only suffer in detention."

The people we interviewed were the most forthcoming when we asked them to give their opinions on their personal situation, and not on specific procedures. A basic question – 'what will you do?' – unleashes a wave of emotion-filled responses from people who have clearly had no control over their lives and their quest for protection in Europe. Below are several examples of what interviewees told to our researchers.

- "If I will be transferred to Italy again, I will return to Belgium. I cannot return to Italy. There, my situation is not better than in Afghanistan." *21-year-old Afghan male interviewed in Belgium*

- "I don't think that Italy can protect me. I'm pretty sure that Italy would transfer me back to Armenia and so there my life will end. I don't know any people who have been able to stay in Italy. So, I'll be deported and for me the only solution would be to go to France again." *61-year-old Armenian man interviewed in France*

- "My husband said that he would commit suicide. We know that we will be transferred directly from Norway to Chechnya. The application for asylum of our neighbours was rejected in Belgium and they had to return to Chechnya." *36-year-old married woman from Ingushetia interviewed in Germany*

- "I will not go. I do know the Baltic countries very well; they can send me anywhere else. Maybe I would kill myself. If I do kill myself in front of them, who will be responsible?" *45-year-old Armenian man interviewed in France*

- "My plan is to marry my girlfriend. She is from Sweden. Afterwards I want to apply for asylum in Sweden." *22-year-old Somali man interviewed in Germany*

- "A new procedure and maybe no new chance, no matter what. I know that I will end up on the street and find no place to live; it is difficult, just like in Belgium and anywhere else. I have bad experiences, no hope. You manage to get in, but not to get out. You're stuck, like a mouse." *31-year-old Iranian man interviewed in Belgium*

- "I want to live in peace in Europe, I want to find a job and have a normal life." *35-year-old Nigerian man interviewed in Poland*

- "I will go back to Iraq. Ten years without seeing my country is long enough. I think today it is secure enough in the part where I come from. And I'm tired of the procedure in Sweden and Europe. I live here so long, I work, I pay my taxes and I never committed a crime. But still I'm not accepted and don't get papers. Now I'm even arrested. I'm tired of being a second class human. But in the long run I want to return to Sweden with good papers. I still have hope. But now I'm tired." *31-year-old Iraqi man interviewed in Germany*

# 6. Personal well being

## *Main findings*

- Basic medical care is the most widely accessed reception condition.
- The availability of basic services (i.e. public transportation, food and clothing, subsistence payments), and sharing the same language, are key reasons why one might feel more 'connected' to a country than not.
- 38% said that Dublin has negatively impacted their family situation.
- 40% of all interviewees were in detention.
- Detainees are much less informed about Dublin procedures, and less likely to speak a second language, than non-detained persons.
- 70% of all interviewees have never absconded from the authorities.
- 73% of detainees have never absconded, putting into question why they are there in the first place.
- The lack of basic services and reception conditions in an EU country is a main reason why some people abscond.

The Dublin Regulation is not just about organising people's asylum applications in the EU. More often than not it has a direct impact on people's personal well-being because it exposes them to the variety of reception conditions found within each member state. Whereas in one country an asylum seeker may have access to basic housing in the community, in another country they would be detained or left homeless. To assess the impact of the Dublin system on people's personal well-being we asked them to rate several reception conditions based on their experience as transferees and returnees. We also asked interviewees to describe any differences between the reception conditions of EU countries. We also felt it important to ask people about the impact of the Dublin system on their families. Special connections to particular EU countries were explored, as this is an important indicator of well-being and where a person would prefer to be in the EU.[16] Finally we asked interviewees to tell us about their life plans prior to encountering the Dublin system, whether their plans have been affected and if they have ever absconded from the authorities in order to fulfil their own plans.

### *6.1. Assessment of reception conditions*

Interviewees were asked to rate their experiences with several reception conditions that are closely connected to their well-being. These including access to housing, work, education and medical care; food and clothing, basic services such as public transportation assistance, and access to a lawyer. Most of these conditions can be had in a detention centre. But for the purposes of this research, we do not specifically consider 'housing' as fulfilled when it is provided within the context of a detention centre, where liberty is deprived. Rather we would consider 'housing' to be fulfilled when it is provided in the community in a non-secure facility, or in one with as minimal restrictions as possible. As with any reception condition the quality of housing even within the community varies, which we explore in the following paragraphs.

A majority of persons in our sample, 72%, say that basic medical care is provided and even in some cases provided well. Access to basic medical care ranks the highest out of all other reception conditions in terms of availability and positive feedback. But there are differences between groups: while 80% of transferees felt very positive about their access to

[16] In our research questionnaire we asked people, "Do you have a special connection to the country you are in right now?" and to elaborate on the type of connection by choosing from a list of reception conditions, e.g. clothing, medical care, housing, food, transportation, work, education, recreational activities. Thus we operationally define 'connection' as factors of association or preference that a person has with a particularly EU country, e.g. a person is connected to a country because her family lives there, or because she experienced fair asylum procedures there.

medical care, only 60% of returnees felt the same way. Most of these returnees were interviewed in Malta, Poland, Hungary and Italy. They describe their access to medical care in terms of its differences to the EU country that transferred them. Usually the care they receive elsewhere is much better, in their estimation, than in the country of return. A 23-year-old Chechen man interviewed in Poland gave interviewers a detailed criticism:

> The treatment of asylum seekers with traumatic experiences and contagious diseases is particularly poor in Poland. Also psychological assistance does not meet existent needs in Poland. In Belgium, for example, asylum seekers staying at reception centres qualify for free specialised healthcare almost every day and hospitalisation in case of emergency.

A 30-year-old Afghani man interviewed in Hungary also felt medical care was better elsewhere. “In France it was very good. Here in Hungary we don’t know when the doctor will arrive to the shelter. He stays maximum one hour and there is no fixed hour. If no one is waiting in front of his office, he would leave and would not even stay for one hour.”

Conversely, transferees who felt the most positive about their access to basic medical care were interviewed in Belgium, Germany and France, respectively. A 19-year-old Afghani man interviewed in Germany offers his own comparison of medical care between EU countries: “The medical treatment and the access to medicine are much better than in Hungary. There I had no access to medicine even though I’m sick and need proper medication. Here [in Germany] it is better than in Hungary.” A 38-year-old Congolese man interviewed in France said, “I have got a CMU[17] (universal medical care) since one month and a half. I saw a doctor and I’ve got another appointment with a cardiologist. I have breathing problems [because] I suffer from pneumonia.”

It is important to emphasise that in the contexts of the interviewees, and save for a few exceptions, ‘medical care’ actually means care at its most basic level, for acute conditions and pain relief. Meeting with a nurse to obtain treatment for a brief bout of illness would be considered as ‘medical care’. Most people did not have access to medical care for chronic ailments.

Aside from medical care, other reception conditions that are rated highly across the board are access to food and clothing, and basic services such as public transportation assistance and toiletries. The exception to this last condition differed for returnees, who felt more negatively about it. For example, a 32-year-old Eritrean man interviewed in Malta said:

> In Switzerland, if you wanted to wash your clothes there was a washing machine in the camp. You just have to collect your clothes and they wash them and iron them and put them in a shelf for you. They also give you 21 Swiss francs in the weekend for transportation. I was in a camp before I was transferred to the open centre. In the camps and open centres there were cleaners. They reduce 10 Swiss francs every month for detergents; even if you are willing to clean there they pay you 10 francs each day. Then you receive an allowance of 190 francs instead of 120 francs per week. In Malta, I got an allowance while in the open centre but no cleaners or anything of the sort. You just had to make do with the money given. In detention they gave me a blade to shave and toothpaste and detergent to wash clothes.

Access to housing is another reception condition that people feel very differently about. Only 37% in our sample say that housing is provided in the country where we interviewed them, and 65% of persons said that housing was either poorly provided or not provided at all.

When it comes to housing, clear differences emerge in people’s perceptions between EU member states. People interviewed in France often describe living on the streets or taking advantage of any charity that is offered to them. In Hungary and Belgium most were living in a detention centre, which we do not consider to be appropriate housing. In Germany, though a high percentage of interviewees were detained, we also met with interviewees who were not detained and living in state-sponsored accommodation. Persons interviewed in Italy were either staying in CARA reception centres (*Centro Accoglienza Richiedenti Asilo*), or when that was not provided with friends, in abandoned buildings or as in France

[17] The *Couverture maladie universelle* is offered to asylum seekers if they have been in France for three months or more, and provided that they can prove their residence and asylum seeking status. See, http://www.immigration.interieur.gouv.fr/Asile/L-accueil-des-demandeurs-d-asile/Les-droits-sociaux-des-demandeurs-d-asile.

in the streets. A 27-year-old Nigerian man interviewed in Italy told of his despair, “Italy is the only country where I had to sleep on the streets because I could not find an accommodation place. In other EU countries I have always found a place to sleep.” In Sweden, many of the people we interviewed said they were sleeping at friends’ houses, or living in an apartment with people they do not know.

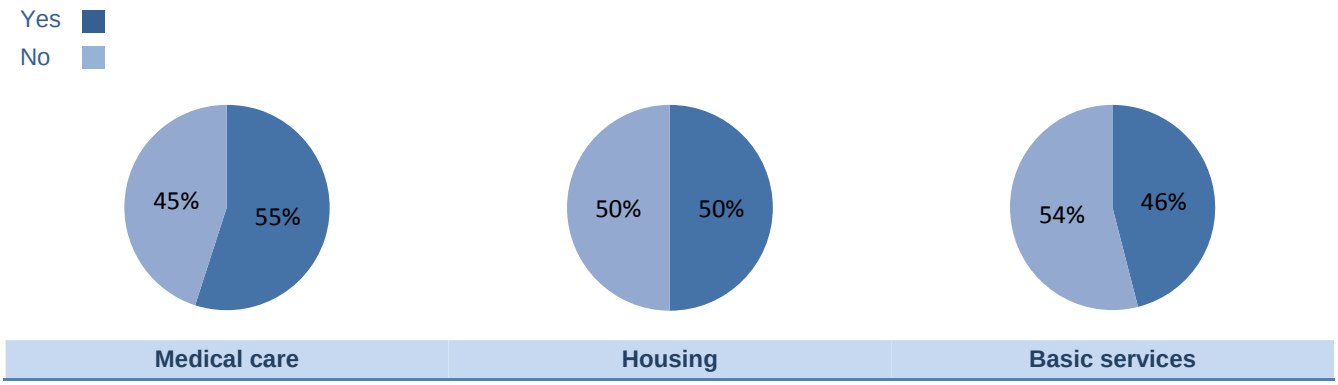
Approximately 45% of people in the entire sample say they have access to some sort of education. For the most part this consists of language courses paid by the state. A few individuals with children whom we interviewed in Belgium and Poland, for example, said that their children could attend local schools. People interviewed in Malta and Romania frequently told our interviewers that even basic educational courses were not provided. For some people education is not just a means to bide their time, but a valuable way to integrate into local society. A 31-year-old Ethiopian man interviewed in Malta had this to say: “I was offered courses about the people, society, culture, communication and language while I was in The Netherlands. However I wasn’t offered any sort of education in Malta.”

As regards access to lawyers, for the most part people feel positive. Largely this was due to a heavy presence of NGO lawyers in the open reception and detention centres where we interviewed people. In this respect countries of return, such as Poland and Malta, sometimes fared better than countries of transfer. A 27-year-old Chechen man interviewed in Poland, for example, felt access to lawyers was better than in France. “In France, I didn’t have a lawyer. Nobody helped me. In Poland there are lawyers from an NGO who come to the centre and provide information and advice for free.”

### *6.2. Differences in reception conditions between EU countries of transfer and return*

We specifically asked returnees to tell us if they perceived any differences in reception conditions between the EU countries that transferred them and the countries of return. Within this group, 91% felt there were major differences, the biggest of which were: access to medical care, housing, and basic services which includes food and clothing, as well as assistance with public transportation costs and daily living needs.

**Chart 4 Is there a difference in reception conditions between the country of transfer and return?**




“In Austria ... the health care was much better; we did not receive only pain killers. We could even visit the dentist”, said a 23-year-old Pakistani man interviewed in Hungary. A 25-year-old Somali man interviewed in Italy was very clear about the differences in reception conditions that he experienced. “The most important differences are the following: the access to accommodation, in fact in Sweden the situation is very better, the possibility to find a job (in Italy it’s almost impossible now) and the access to courses for learning the local language.”

A 28-year-old married Eritrean man interviewed in Malta felt that his inability to be where he wanted to be, and thus enjoy the reception conditions he thought best for his life, impeded his future plans. “In Malta there is no future for me. It is just work, sleep, work, sleep – every day the same. In Norway I could build a life. I have my wife and child there and we have a family together. There is more social assistance in Norway then in Malta.”

As exemplified by these testimonies, people understand very clearly that reception conditions are not one in the same in the EU. Countries in western and northern Europe, such as Belgium, Germany, Norway, Switzerland and Sweden tend to fulfil their humanitarian obligations towards asylum seekers better than countries at the EU periphery such as Poland,

Romania, Italy and Malta. The experience of feeling neglected by the responsible state can be a factor that strongly interferes with migrants' sense of dignity.

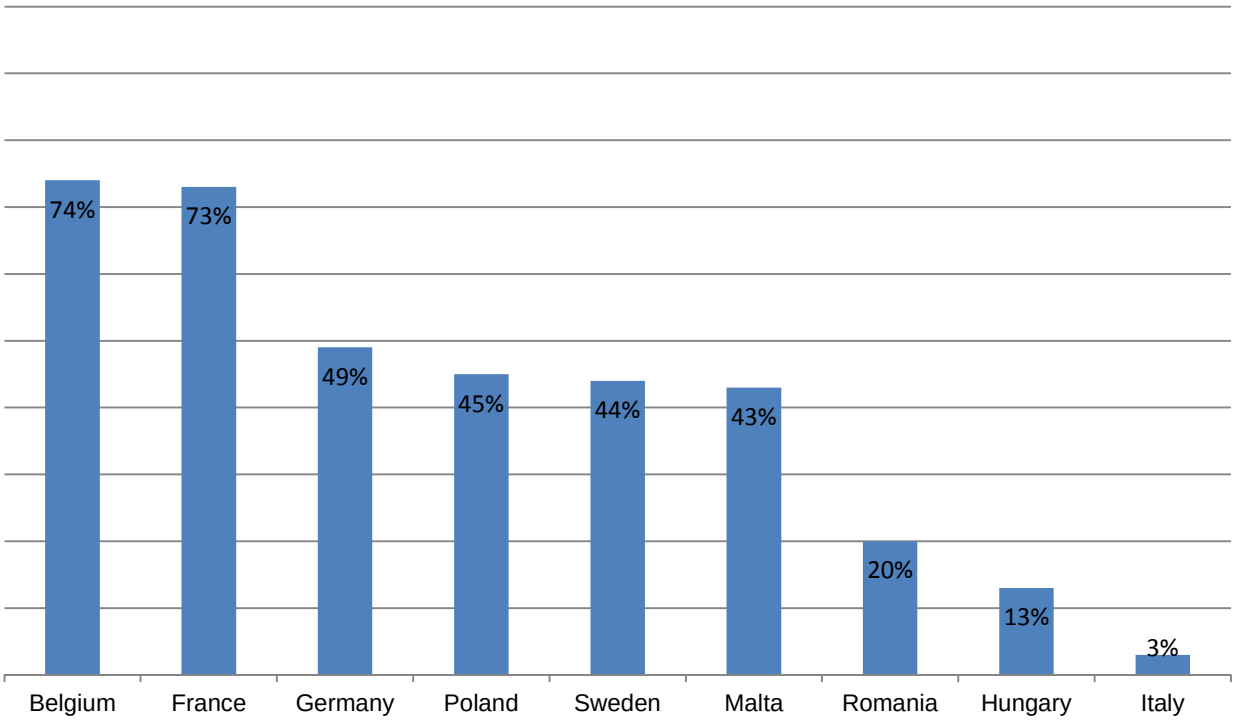
### *6.3. Special connections to EU countries*

A significant minority of persons in our sample, 42%, said they had a special connection to the country where we interviewed them. Within this group, 28% attributed the special connection to the presence of family, and 22% said it was because they spoke the same language of the particular EU country. The presence of compatriots was also rated highly. Employment and educational opportunities were rated low as special connections.

Among people who felt they had a special connection to the EU currently they were currently in, 71% were transferees and 29% returnees; these persons were mostly interviewed in Belgium, France and Germany. By comparison, among those who did not feel to have a special connection were 49% returnees and 51% transferees, most of who were interviewed Italy and Hungary.

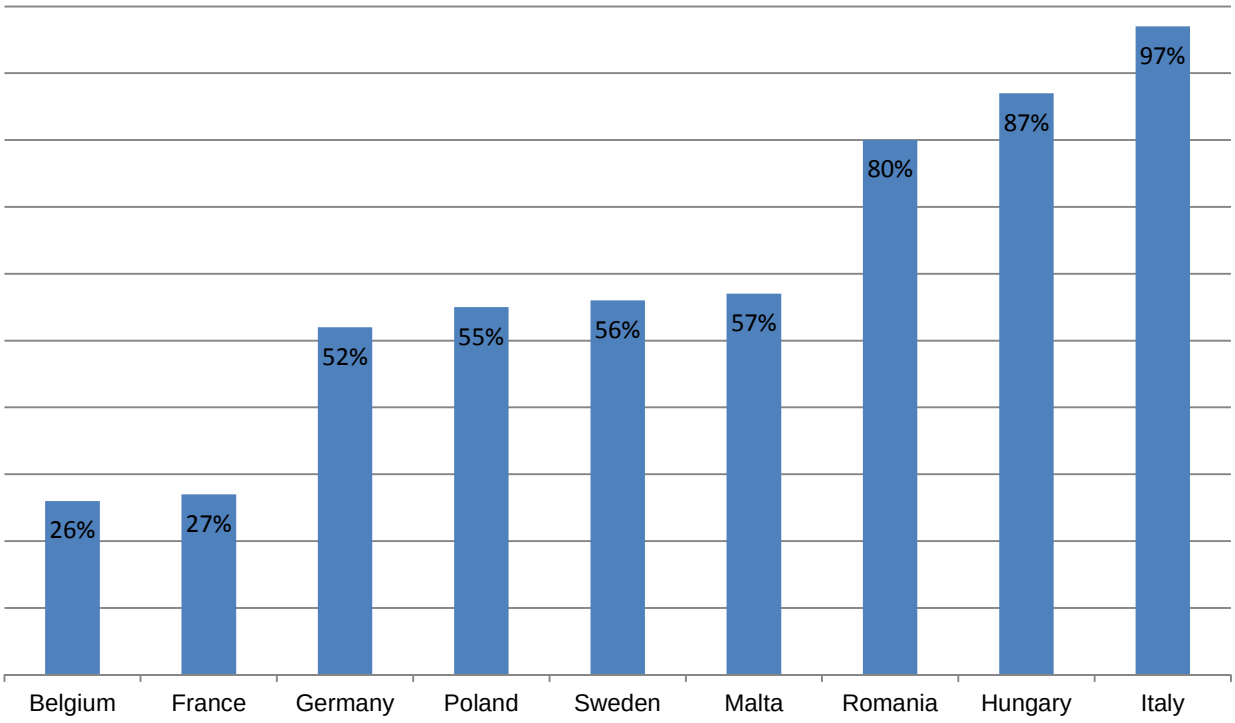
There is a strong relationship between which particular EU country a person is in and whether they feel to have a special connection to that country, shown in charts 7 and 8.

**Chart 5** **Percentage of people who claim to have a special connection to the EU country where they were interviewed for the DIASP project**




People who feel a special connection to an EU country are much more likely to have been in Belgium and France than anywhere else. These countries, located in the heart of Western Europe, are also where our interviewees tended to feel more positively about reception conditions (*access to housing* being the exception). Oppositely, people who do not feel such kind of connection are very likely to have been in Italy, Hungary or Romania. Located at the southern and eastern borders of the EU, interviewees in these three countries typically felt very negatively about the reception conditions. The data also shows that there is a correlation showing that people are not likely to have a special connection to an EU country that in their perception provides poor basic services or none at all.

**Chart 6** **Percentage of people who do not have a special connection to the EU country where they were interviewed for the DIASP project**




In addition to this important finding, a basic telling of the data shows it is clear that the transferees in our sample express having a closer connection to the EU country where they were interviewed than returnees do. And upon closer inspection we found a correlation between being a transferee and having a special connection to the particular EU country one is in. Conversely, returnees are significantly less likely to feel connected to the EU country where they are. As it happens, when looking at charts 7 and 8, we see that the countries in which people feel the most closely connected to are those which have the highest concentrations of transferees in our data sample.

Other interesting findings are revealed when investigating people who express having a special connection and those who do not. Those in the former category are significantly more likely to be female, married and have family somewhere in the EU. A significant minority, or 46%, of those who express having a special connection to an EU country also claim to speak additional languages.

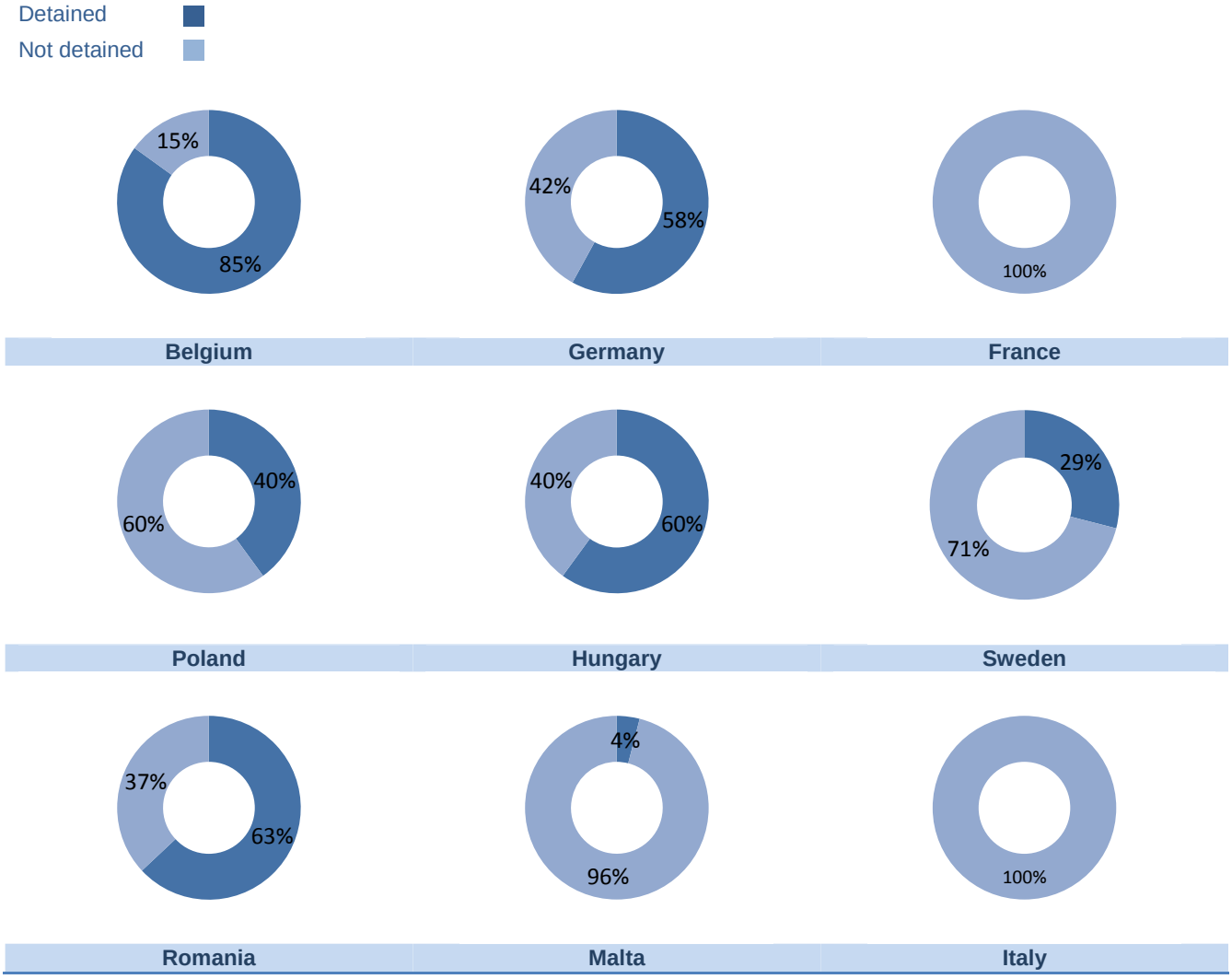
People were asked to tell us if they felt the countries they were being transferred to have any special advantages for them. For the most part, most transferees did not feel that this was the case: only two tenths said they had family in the countries they would be transferred to. Returnees, on the other hand, were asked if they felt the countries they were transferred from held any special advantage for them. Here too returnees felt that the presence of their families in the countries that transferred them is a special advantage, as is work opportunities they perceived to have had, most of which are in the informal labour market as legal employment tends not to be an option.

### *6.4. Detention*

Four tenths of the people we interviewed were in detention. Within this group, 33% were interviewed in Belgium, 18% in Germany and in Hungary, 12% in Poland, 10% in Romania, 8% in Sweden and 1% in Malta (see chart 9 for a country breakdown).

Belgium and Germany are where we most frequently interviewed detained persons, and both countries are where we mostly interviewed transferees. Objectively, both countries in general frequently detain Dublin asylum seekers.[18] In Malta and Italy we interviewed mostly returnees, and objectively such persons are not usually detained in either country. These figures reflect a strong relationship between one's Dublin status and detention: transferees are more likely to be detained than returnees. Of transferees who were detained, 53% had received a transfer order and were awaiting its implementation, while 40% were still waiting to know whether or not they would be transferred.

**Chart 7 In which EU country were DIASP interviewees detained?**




We did not investigate why particular individuals were detained while others were not. This discrepancy can be objectively attributed to typical EU member state practices, as already noted in the preceding paragraph. Malta automatically detains all asylum seekers and irregular migrants who arrive, but the reason why this is not reflected in our sample is that we interviewed people who had been returned by the Dublin system, and usually these people had already experienced lengthy detention.[19]

A notable characteristic we found among detained persons we interviewed is that they are much less likely to claim to speak a second language than non-detained persons. Upon further investigation we did an interesting relationship between detention, language and information that was worth exploring.

[18] The number of detainees interviewed for DIASP is not intended to be statistically representative of the Dublin detainee population of any investigated country. In Belgium and Germany, our typical work is in the detention centres giving us greater access to this population than non-detained Dublin detainees.
[19] Returnees to Malta can be detained if they had left the country by escaping from detention, or by using false documents.

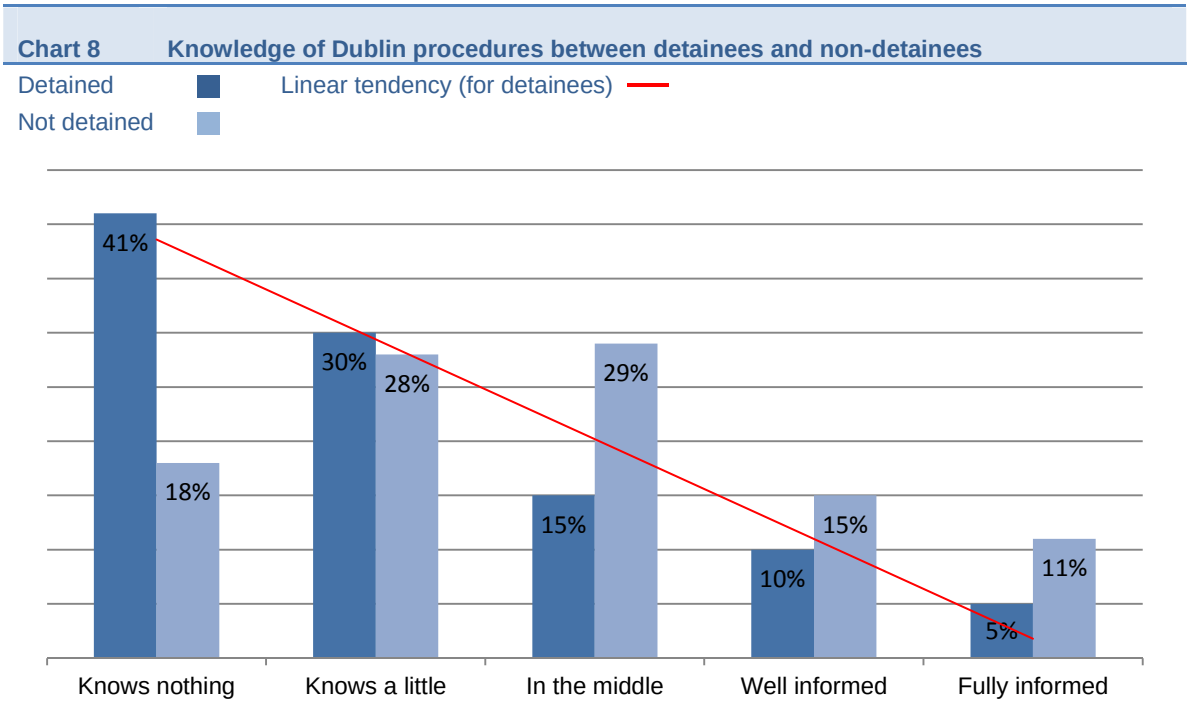
A significant majority, or 62%, of interviewees who claimed to 'know nothing' about Dublin procedures were in detention; 44% who claimed to know 'only a little but not to understand much' were also in detention. By way of comparison, 76% of persons who said that they 'fully understand' Dublin procedures were not detained.

A minority, or 41%, of people who said they knew nothing about Dublin procedures also said they did not speak a second language. There is a correlation between not knowing a second language and knowing little or nothing about Dublin procedures. There is also a correlation between being in detention and being poorly informed about Dublin.

Therefore the people who we interviewed in detention are poorly informed about Dublin (see chart 10) and they are not likely to speak a second language, meaning that language barriers very possibly make it difficult for them to comprehend and challenge the decisions that are taken in their cases. For instance, 55% of people we interviewed in detention said they understood information about Dublin procedures because it was given to them in the right language; for non-detained persons, this numbers is 69%.

Getting information in an understandable language is important, but repeated explanations are as well. Among those detained, 40% said they understood information given to them because it was thoroughly explained. In a detention centre, accurate information is often mixed with rumour. Information one receives from a government authority may be contradicted by other detainees, for example. This is why one explanation is never enough in a detention centre.

**Chart 8 Knowledge of Dublin procedures between detainees and non-detainees**

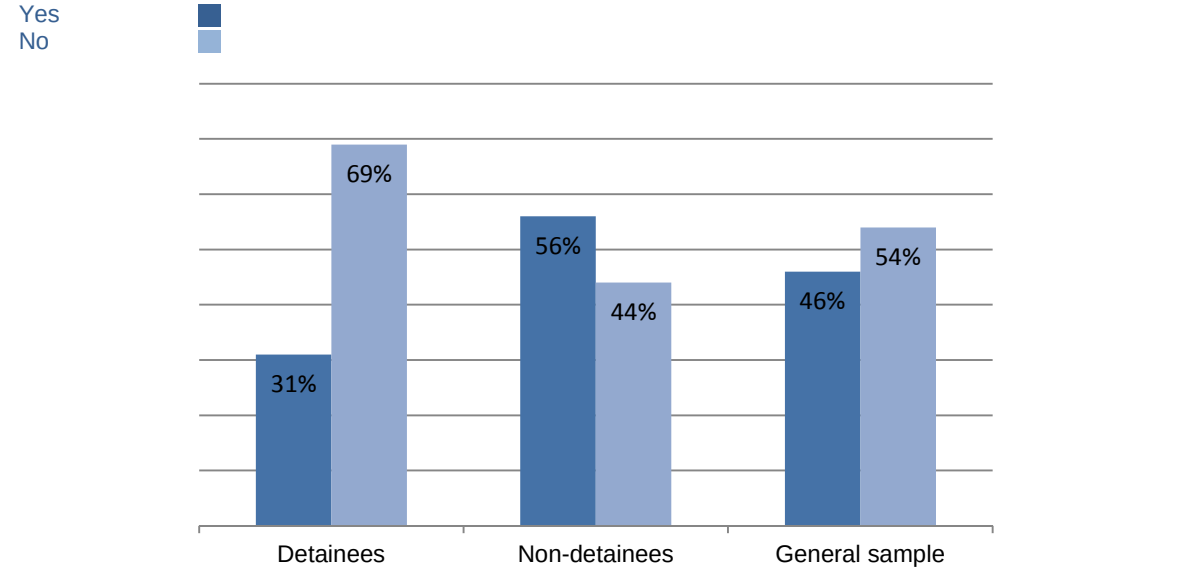



Although detainees are not well informed about Dublin procedures, for the most part they know just as much about *appealing* a Dublin transfer as non-detainees, and the general sample, do. But there are differences when it comes to action: 45% of non-detained persons, compared with 32% of detainees, said they had tried to appeal their transfer. Having access to a lawyer helps: 51% of people who had contacted a lawyer had also tried to appeal their transfer, while 83% of people who had not met with a lawyer did not try to appeal their transfer. As it turns out, more non-detainees have met with a lawyer than detainees, and the data demonstrates a strong correlation between having a lawyer and actually appealing a transfer.

As regards knowledge about the discretionary clauses, detainees are likely to know about this as much as non-detainees are. A key difference is that detainees are more likely to feel that they learned about the discretionary clauses too late, for example, after they had received a transfer order or were actually transferred. Importantly, non-detainees are much more likely to have actually argued for the discretionary clause to be implemented in their case than detainees (see chart 11). Slightly more non-detainees feel like their request to have the discretionary clause implemented was listened to, and even

a small number of persons told us they received a positive decision; detainees generally felt that such calls go unheard and thus no positive decision comes.

**Chart 9 Have you had a chance to argue for the discretionary clause?**




Generally detainees did not report any difficulties with accessing asylum procedures. However, looking specifically at returnees, 42% of non-detainees said they had received information about the country they were transferred to, compared to just 29% of detained returnees. That non-detained persons have greater access to information than detainees is consistent with several of our other findings.

The impact of detention on people within the Dublin system tends to be even more negative than it is for others, such as those who are detained for removal. For instance our 2010 study, *Becoming Vulnerable in* Detention,[20] showed that Dublin asylum seekers report higher frequencies of severe anxiety and depression when compared to other detainees. In the sample for this study, our interviewees described the negative impacts of detention either in terms of poor mental health or in an unspecific, varied, manner. What is clear is that every detained person we interviewed felt that detention specifically worsened their situation.

Interviewees detained in Hungary described particularly alarming situations. “Detention in Hungary is a terrifying experience”, said a 34-year-old Tunisian. “There is a beating cell from which we hear screaming almost every day. We are terrorized by the security guards and we are afraid to make a complaint.” A 41-year-old Iranian man said: “It [detention] has affected my brain. The security guards are very violent. I was beaten hardly by them. When I was lying on the floor, they were kicking and boxing me and I was screaming, but no one came to help me. Certain guards are clearly racists.” The security guards “are always beating people”, concurred a 25-year-old Guinean man. “I am traumatised and shocked by the treatment of the security guards”, said a 29-year-old Algerian man to our researchers. According to one 28-year-old Afghan man, homelessness would be a more preferable situation: “In France, I slept in the park, but that is much better than being detained here.”

> I’m tired of being in a detention centre. I feel very bad in this place. I cannot freely decide what I should be doing, what I would eat, I cannot work. I cannot continue the search for my brother.
> *35-year-old Nigerian man interviewed in Poland*

[20] JRS Europe (2010). *Becoming Vulnerable in Detention*, available at: http://www.jrseurope.org/AdvocacyPages/Detention/DETENTIONcampaign.htm

### *6.5. Impact of Dublin on the family*

Nearly two fifths, or 38%, of interviewees in our sample said that the Dublin Regulation negatively impacted their family. Out of this group, 52% said the impact came in the form of separation from their family, and 12% said they were not able to care for their families. Interviewees who said that their family is present somewhere in the EU are more likely to experience negative impacts than those who do not have family in Europe.

Even though Articles 7, 8 and 14 of the Dublin Regulation aim to preserve the principle of family unity,[21] based on the statements of those we interviewed it is clear that there is still a disconcerting number of people who are kept separated from their families. Couples, whether married or not, are separated even if the woman is pregnant. Mothers are kept apart from their children. Even if a family unit is kept in one country, the father may be detained while the mother and children are left in the community. Worse still, are the cases of recognised refugees who – for reasons that went unreported during our interviews – cannot join their family in non-EU countries such as Norway.

As with any issue that affects people at such a deeply personal level, the best way to communicate it is simply to let their own words describe the impact. Below are several examples of what interviewees had told our researchers.

- "My wife has been recognised as a refugee in Norway and we have two children, but I'm not authorised to go there and live with them because I have been recognised as a refugee in Italy, and I need a specific authorisation." *25-year-old Somali man interviewed in Italy*

- "My son is in Luxembourg, we are in Belgium. This is not good for families, to be separated." *50-year-old married Macedonian man interviewed in Belgium*

- "My wife and I are separated. She is pregnant. How can you impact more a family situation?" *32-year-old Ghanaian man interviewed in Germany*

- "My wife is also in Eisenhüttenstadt but she lives in a house for asylum seekers. She also waits for a decision from Poland. I can't stay in the same room with my wife who is pregnant. There are no facilities for couples." *25-year-old Georgian man interviewed in Germany*

- "My family in Somalia has been affected. They hoped I could get asylum in Europe and quickly a job in order to support them. My mother often phones me, she cries. All this has been a failure. I am a failure." *25-year-old Somali man interviewed in Sweden*

- "My wife and children live in Norway, I am in Sweden. We all have to go back to Italy where we, in 2008, only stayed very briefly. We are shipped around like packages." *28-year-old married Somali man interviewed in Sweden*

Of those we interviewed who have family in the EU, 56% say they have tried to argue for the use of the discretionary clauses, which is 10% more than the average for the entire sample. Unfortunately most people in this group either received a negative decision or were still waiting, though with a low probability that they would actually be successful. Among those who do not have family in the EU, only 37% argued for the humanitarian clause in their case.

[21] Article 7, "Where the asylum seeker has a family member … who has been allowed to reside as a refugee in a Member State, that Member State shall be responsible … provided that the persons concerned so desire"; article 8, "If the asylum seeker has a family member in a Member State who application has not yet been the subject of a first decision regarding the substance, that Member State shall be responsible…"; article 14, "Where several members of a family submit applications for asylum in the Member State simultaneously … and where the application of the criteria set out in this Regulation would lead to them being separated, the Member State shall be determined on the basis of the following provisions: a) responsibility … shall lie with the Member State which the criteria indicate is responsible for taking charge of the largest number of family members; b) failing this, responsibility shall lie with the Member State which the criteria indicate is responsible for examining the application of the oldest of them." The humanitarian clause, in article 15, is also there to bring family members together.

### *6.6. Personal planning*

We asked people to tell us about their personal plans prior to encountering the Dublin system, to which 56% said they were trying to find safety for themselves and also for their family. “To get away from war torn Chechnya and find safe haven”, said a woman interviewed in Germany. “I didn’t have a plan. I just wanted to go to a safe country”, said another man interviewed in Italy. An Iranian man interviewed in Belgium described the tough decisions he had to make: “I had a good life and a job in Iran. Because of my problems, I came to Europe. I didn’t want to, but there was no other option”. An Algerian man told our researchers that he came to Europe for a specific reason. “I wanted to get away from all of the problems in Algeria,” he said, “start something new, somewhere else, where human rights are respected.”

Though most people simply wanted to find protection in Europe, others had more specific plans. Just over two tenths told us that they had wanted to find employment in Europe, to settle down, learn the language and integrate. A 38-year-old married Congolese man told our researcher in France, “I wanted to work like everybody else.” A Chechen man interviewed in Poland declared, “I wanted to legalise my stay in the European Union, to work there and to integrate with the society. I wanted a peaceful life for my family without the fear for our safety.”

> I just wanted to escape from my country. I did not have specific plans and I did not care about the place to go. I wanted to save my life.
> *24-year-old Côte d’Ivoirian man interviewed in Italy*

Aside from an interest to work, 13% also said they had specific plans to reunite with their family in Europe or simply to start a new life with their family. In some cases, single parents with children told of ambitions to go to an EU country to settle down and find a partner to be with. For example, a woman with children told our researcher in Sweden, “I wanted to stay in Sweden and maybe find a good husband who likes my two children and is taking care of them.” Another said: “To live in Sweden with my relatives, marry a nice man and have kids.” Yet others had even more pressing reasons to be with their family prior to encountering the Dublin Regulation, such as a 28-year-old married Eritrean man who reasoned that by moving to Norway he might better support his family:

> My plan was to learn some kind of course so that I could find work. When I then met my future wife this became more important to me especially since she was pregnant. So I needed a job to support my family. I had learnt about Norway from a group of friends in Malta and they had told me that the situation in Norway is better especially in terms of getting an education.

A majority of the people we interviewed, or 83%, said that their personal plans were disrupted as a direct consequence of the Dublin Regulation. Nearly half said that the transfer process was the most intrusive and disturbing element of the Dublin system. “I travelled to Europe not knowing where my family was,” said an 18-year-old Afghani man interviewed in Germany, “I landed in Austria and there I received the message that my family is in Germany. But because of the rule [the Dublin system] I had to stay in Austria.” An Algerian man interviewed in Romania said if it were not for the transfer process, “I could go where I wanted to”. A Nigerian man told our researcher, “I cannot leave Italy to find better conditions because I am not allowed to travel across EU countries”. In general people see the transfer process as a waste of their time. “I lost a lot of time in going to Germany. Really what a waste!” exclaimed an Iraqi man returned to Sweden.

Two tenths of the people we interviewed added that the Dublin Regulation impeded their search for safety in Europe. “I was in three EU countries so far and I cannot get protection”, proclaimed a 30-year-old Algerian man interviewed in Hungary. “All of my plans that I was thinking failed, because I could not live where I planned”, lamented an Eritrean man interviewed in Malta.

When we asked people if they had new plans for themselves, 41% said yes. Just over one quarter want to continue their search for safety in Europe. Twenty two per cent told us that they want to continue finding employment. Interestingly, 23% told us they had plans to go to another EU country. For example, a Côte d’Ivoirian man interviewed in Hungary said he would wait until his Slovakian re-entry ban expires, and then he would return to Slovakia where he had a job waiting for him. A 21-year-old Afghani man waiting for a transfer decision in Belgium told our researcher: “If I will be transferred to Italy, I will come back [to Belgium], even ten times.”

Smaller numbers of other people told us that they intended to keep trying to reunite with their family, or to get an education for themselves. A small group, 7%, said they would go back to their country of origin. An Iraqi man interviewed in Germany said, “I want to go back to Iraq. Almost ten years without seeing my country is enough. And I hope and guess that by now it is more secure there. From there I want to try to go to Sweden legally again.”

> I feel safer in Afghanistan than in Italy. I would like France to help me in rebuilding my life. I feel safe in France. If they transfer me to Italy, I’d rather go back to Afghanistan. There, I was not hungry, I was not poor. I came to France only to feel safe.
>
> *26-year-old Afghani man waiting for a decision to be transferred from France*

Interestingly, only 30% of transferees said they have new plans for themselves, compared to 56% of returnees. In this context it is important to understand that the vast majority of transferees we interviewed are newcomers to the Dublin system. Fewer had previously been to the DIASP country of interview as returnees have; as pointed out at the beginning of this report (see page 2), only 14% of transferees have previously been to the country where we interviewed them, compared to 74% of returnees. It is probable that many of these persons have not made new plans for themselves yet because they are only at the beginning stages of what will likely be a long ‘Dublin journey’ in Europe. They are still waiting for a transfer decision, or waiting for a transfer to be actually carried out, so for them it remains to be seen what they will do in the future.

### *6.7. Absconding*

A majority of our interviewees, or 70%, said they had never absconded from the authorities. For the 30% who admitted to doing so, just over one quarter said they had absconded because they were unsatisfied with the outcome of their case; another 21% said they fearful of the national authorities. Smaller numbers of people said they had absconded because of family or medical reasons.

Compared to the entire sample, transferees report to have less experience with absconding: only 25% admitted to have done so, whereas 38% of returnees said they had absconded at one point. More transferees abscond because they are fearful of the national authorities (and the potential decisions taken for their case), while returnees abscond more because they are unsatisfied with the outcome of their case.

A 41-year-old Iranian man interviewed in Hungary said, “I absconded from Greece because I wanted to join my brother in Austria, and because the conditions in Greece were very bad.” The decision to abscond weighed very heavily on the mind of a 23-year-old married Georgian woman we interviewed in France. “We knew it would be hard but if we are taking this risk it is to have a better life. We are ready to take the risk and anyway, we have nowhere to go and we have no other choice”, she said.

Everyone who admitted to having absconded and divulged their reasons for doing so were in a situation in which they felt to have had no other choice. “I escaped from the detention centre because my application for asylum was refused twice”, explained a young man interviewed in Malta.

It is very evident in our interviews that many are very committed to their search for safety. In these cases, a negative decision on an asylum application, or a decision to be transferred elsewhere, did not deter these persons from their search for safety. In every sense, the decision to abscond is very much based on a personal sense of survival. It is not about exploiting loopholes in the system, but rather about making sure oneself is protected. A closer look at the data reveals additional interesting details.

The data shows that people who admitted to absconding tend to be returnees who had previously been to the DIASP country of interview at least twice. Slightly more people who were still awaiting a transfer decision admitted to absconding than people who had already received a transfer order and were waiting for its implementation; these persons were more likely to have been interviewed in Hungary, Romania and Poland than in Belgium and France. The longer Dublin procedures wear on, the more likely people are to have absconded. Four tenths of people who told us they knew nothing about the Dublin system also admitted to absconding; and the more people claim to know about Dublin, the less likely they would have absconded. Just over one third, or 35%, of people who did not know about the discretionary clauses also admitted to absconding. More people abscond when they feel that the basic services provided by the country they are in are insufficient.

"Leaving a country where I have to sleep on the street is not absconding."
*The response of a 32-year-old married Ghanaian man interviewed in Germany, when asked to explain why he had never absconded from the authorities. Below is his 'Dublin story'.*

In 2006 I had a lot of problems and trouble in Ghana. So I went by car to Nigeria. There I stayed a little more than two years. In this time I met my future wife and married her. But her family didn't like me because they had in mind another man and because I am from another country. So we went to Libya in 2009. There we stayed until the war. When the war came they forced us to leave the country by boat across the Mediterranean Sea. I still remember the date: it was 13th May 2011. By boat we arrived to Italy, and we were put in a camp. By December I got a job. I received €360 for working. But I couldn't keep it all because the 'lord' in the camp wanted half. I refused to give it to him. So he beat me. I protested but was thrown out of the camp with my wife. So we had to live on the street. After some time on the street we decided that we can't go on living like that. That's why we went through Austria by train to Germany where we got arrested.

The data does not reveal any relationship between absconding and detention. People who have never absconded are just as likely to be detained as people who have. Actually, 73% of persons we interviewed in detention had never absconded. In our sample, fewer people who had experience with absconding were detained than people who had never done so. These findings raise very serious questions about EU member states' use of detention and how people's so-called 'risk of absconding' is assessed.

For the most part people do not abscond from the authorities during Dublin procedures. Three quarters of transferees – people who may be in a situation that presents a risk of absconding[22] – told our researchers that they did not abscond. Within our entire sample people provided two clear reasons for not absconding: 40% knew that it was not allowed and is illegal; 34% said they simply had no personal motivation to take this risk. A higher percentage of returnees, 58%, said that they did not abscond because they knew it to be against the rules of the Dublin system.

"I don't want to live in illegality because it makes no sense", said a 30-year-old Georgian man interviewed in Belgium. "I thought that if I always follow the rules, then everything will be fine. I trusted the authorities and that is why I gave them all of my documents." When asked why they have never tried to abscond, many people responded with 'why would I' and 'what for'. Another said: "Escaping from a closed centre, I would not know how to do it." A young Chechen father interviewed in Poland explained, "I didn't want to come into collision with the law. I am in Europe with my family. I have two little daughters, and I am responsible for them."

Many of the people we spoke to responded with incredulity when asked why they would not abscond. By their own statements, most people are intent on following the rules of the system and do not want to create additional problems for themselves. Others are responsible for their families and do not want to jeopardise their well-being. Many admitted that they would not know where else to go nor anyone else to meet with in Europe. In other words, deciding not to abscond is based just as much on personal survival as choosing to abscond. These difficult decisions form a part of an individual's strategy to seek protection in Europe. As evidenced by the data, most people choose to wait and see how they fare in the

[22] Inferred from the finding in our research that people are often transferred to countries where they do not want to be, and from the correlation between people awaiting a transfer order and having likely absconded. However it is important to keep in mind that, overall, the number of people who admitted to absconding in our sample is low. Furthermore we did not run a formal assessment of 'absconding risk', but merely relied on interviewees' responses.

Dublin system; a minority of others, especially those who have already had negative experiences with Dublin, choose to pursue their own means of survival.

# 7. Personal opinions about the Dublin system

*Main findings*

- 84% feel the Dublin system is unfair and unjust, mostly because it restricts the EU asylum country of choice.
- Detention, the inability to work and the lack of stability are the three biggest problems people experience in the Dublin system.
- People interviewed in Hungary, Italy, Malta and Romania feel more negatively about the Dublin system than people interviewed in Belgium and Germany.

Asylum seekers who go through the Dublin system are asked many things. When they arrived to Europe, and which country they arrived to first; have they applied for asylum in another country; whether they already have protection somewhere else. All of these questions are procedural, asked by EU member state authorities to ascertain which country is responsible for assessing an asylum seeker's application. But hardly ever are asylum seekers asked about their personal opinions of the Dublin system. Thus we asked interviewees a series of simple questions: what they think about Dublin, and why they feel that way; would there be anything they wished they had known before coming to Europe; if they had advice for other asylum seekers and migrants coming to Europe. Though the answers to these questions are entirely subjective they are no less important than any other question. If we are to have a system that is truly based on the principles of human dignity, then such questions are among the most important.

The vast majority of our interviewees, 84%, feel that the Dublin Regulation is unfair and unjust. Within this group, 44% feel this way because the Dublin system restricts people's EU asylum country of choice. The rest feel antagonistic towards Dublin for a variety of different reasons: because of its use of detention, or because of the long duration of procedures and the impact on one's family. Only 8% feel that as the Dublin Regulation is a law it should be accepted.

People feel this way regardless if they are transferees or returnees, despite whichever legal status they have or at which stage they are in Dublin procedures. People are upset about the Dublin system in every country where we interviewed them. However people interviewed in Hungary, Italy, Malta and Romania and more likely to feel Dublin is 'unfair' or 'unjust' than people interviewed in Belgium and Germany.

Many of the people we interviewed have difficulty accepting the core logic of the Dublin system and its method for distributing asylum seekers in Europe. "The Dublin procedure is not fair for the foreigners seeking protection in EU", argued a Georgian man we interviewed in Poland, "I don't understand why I couldn't wait for asylum in Italy where my mother lives. I consider that the EU should allow foreigners to choose the country where they want to stay." A 19-year-old Afghani man interviewed in Germany sums up the opinions of so many others. "The Dublin Regulation is difficult to understand and dangerous for refugees like me. The regulation is not good for us. Its procedure disturbs our plans to live a normal life in peace and safety. Instead of working I find myself in camps or in detention. Through Dublin I feel and I'm criminalised. But I haven't done anything."

A 26-year-old Somali man who had been returned to Italy could barely hold back his frustration when responding to our question:

> It's very negative for migrants' life. It has destroyed my hopes and my life because when I was in Sweden my life was easier than in Italy. I had friends and I could also find a job thanks to one a friend. But because of the Dublin Regulation I had to go back in Italy and renounce everything.

A 35-year-old Iranian man told our researchers in Germany, "The Dublin Regulation is an advantage for the government and the countries, but it is detrimental for refugees." Another man we interviewed in Malta proposed a very specific way to adjust the Dublin system so that it better favours refugees:

> When you arrive in one European state and you abide by the Dublin Regulation, the country should fulfil your rights and necessities. Otherwise after two years they should erase your fingerprints and allow movement.

We also asked people to tell us if they had any advice for other migrants. A minority, or 28%, said they had no advice to give. Nearly one quarter advises migrants to carefully choose the EU country they arrive to. For example, many people advise others not to arrive to a particular country first, such as Italy. They tell prospective migrants to research beforehand which EU country they would like to go and to travel their directly. Sadly, several people advise would-be migrants to not even come to Europe in the first place. They warn migrants that Europe is not an easy place to find work, and that the conditions in many countries are poor. However, if someone has a particular reason to flee, if their life is in danger, then even these persons admit that they should still try to come to Europe.

> This law has to be more flexible and it should consider the individual situations, to decide case-by-case ... If people arrive to one country it is to have a better life.
> *23-year-old Georgian man interviewed in France*

Nearly 40% of persons we spoke to said they wished they had learnt more about the Dublin Regulation prior to their arrival in Europe. Having information about the "basic asylum laws of Europe", as one person said, maybe would not have altered his decision to come but would have left him better prepared for his quest to seek protection. One sixth of people said they wished they had previously known about the hardships that they have since come to experience in the EU. "I wish I had known about detention", explained an Eritrean man we interviewed in Malta, "Although the situation is very hard in Eritrea so maybe I would have left anyway. But I still did not expect it."

Throughout their interviews people listed the range of problems they are faced with in the Dublin system. Three problems stand out in particular: the use of detention, the inability to work and have access to decent housing, and the lack of stability caused by the Dublin system as a whole. The blow to people's stability is a problem articulated by nearly everyone we spoke to, though other problems were mentioned as well. Transferees are particularly fearful of being transferred to their first EU country of entry. Returnees are deeply concerned about being separated from their family.

We ended every interview by asking people to finish this sentence: *the best solution for me would be to ...* Three tenths said it would be to stay in the country where they currently were, 24% said it would be to get a refugee or legal status. Another 18% expressed that they would simply like to have a normal life, and 19% just wanted to be free. Several more examples of how they completed this sentence can be read in the below.

- "To get out of here so that I can live my life. No matter where." *22-year-old Libyan man interviewed in Belgium*
- "To get documents, go to school, learn Italian and study Economic business in the University." *27-year-old Nigerian man interviewed in Italy*
- "To be in freedom." *26-year-old Indian man interviewed in Romania*
- "Stay in Sweden, get a job and earn some money, and maybe find a new husband." *27-year-old Somali woman interviewed in Sweden*
- "To live without fear and board a plane without anxiety." *35-year-old Iranian man interviewed in Germany*

- "To be able to stay here in Germany with my wife. That she can give birth to our child here and we can live here a normal life." *32-year-old Ghanaian man interviewed in Germany*

- "To receive a chance to have a life in Europe. To integrate with the society, find a job, a place to live. I pray for this every day." *27-year-old Chechen man interviewed in Poland*

- "I would like to go to school and continue my studies." *19-year-old Guinean woman interviewed in Belgium*

- "I want to live like the others and find my place in the society, that they give me a chance to live. They destroyed me already in Africa." *33-year-old Congolese woman interviewed in Belgium*

# 8. Research conclusions

### *8.1. Information is key factor for fundamental rights*

One of the most concerning themes to emerge from our research is that most people are not well informed about Dublin procedures. It is a complex and multi-faceted system in which people typically understand only one aspect: that they must be transferred to the 'responsible' EU member state. This is the part of the Dublin system that asylum seekers and other migrants most frequently encounter. That only 20% of the persons we interviewed could express an advanced understanding of Dublin is indicative of a system that is difficult for many to grasp. The inability to seek asylum in a country of one's own choosing is a conceptual barrier to which many have difficulty accepting.

Ironically, it seems that people can better comprehend the Dublin system if they undertake multiple journeys throughout Europe. Within our sample, 29% of persons who had previously been to the DIASP country of interview also claim to have advanced knowledge of Dublin, which we defined as knowing two or more aspects about it. These two variables – having previously been to the interview country and having an advanced understanding – are strongly related to each other. It is as if asylum seekers and migrants learn best about the Dublin system by practice. But clearly this is not a sustainable way for individuals to learn about the Dublin system since it was established to halt secondary asylum movements in the first place.

One of the most negative implications of being poorly informed about the Dublin Regulation is that a person's ability to access their fundamental rights becomes severely limited. In our sample, 47% of persons were not informed on how to appeal a transfer and 64% were not informed about the discretionary clauses. Thus quite a sizable number of people did not know how to access an effective remedy, a fundamental right enshrined in Article 47 of the EU Charter of Fundamental Rights and Article 13 of the European Convention on Human Rights. The consequence is that these persons were not aware of the two aspects in the Dublin system – appeals and the discretionary clauses – that may have positively impacted their cases; at the least, they might have had an opportunity to express their wishes and personal choices. And as in every other situation, knowledge is indeed power: we found strong correlations between being informed about appeals and/or the discretionary clauses, and actually taking action on them. The alarming conclusion is that so many people are unable to enforce their right to challenge a Dublin decision simply because they are uninformed about it.

The manner in which people are informed is just as important. Language is a key means for people to understand information that is given to them. Among our interviewees who claimed to speak multiple languages, 24% said were well or fully informed about Dublin procedures, compared to 11% of people who could not speak more than one language. Knowing multiple languages is correlated with being well informed about the Dublin system. Interviewees who told us that they understood the information they received said it was because the information was given to them in the right language.

Aside from providing information in an understandable language, our data show that it is important for people to receive multiple explanations that are thorough and presented orally and in writing. Our findings show that a person is more likely to understand Dublin procedures, as well as the appeals process and the discretionary clauses, if they are given both written documentation and repeated verbal explanations. The inherent complexity of the Dublin system attracts a range of

explanations from people who are experts, such as lawyers and NGOs, to people who know about it through experience and by word-of-mouth, such as other migrants. A person in a Dublin procedure is thus likely to receive input from many different sources and they may not know what information is accurate. This is why it is important for official sources, such as governments, to ensure a consistent flow of information that is clear, understandable and presented in regularly in a variety of formats.

### *8.2. Access to lawyers and legal assistance is important*

From our data we see people who express having advanced knowledge of the Dublin system are more likely to have received information from a lawyer than from an NGO or the administrative authorities. Lawyers do well to inform people about the technical aspects of the Dublin Regulation, such as appealing a transfer or understanding the discretionary clauses. Indeed, people who are in contact with and informed by a lawyer – whether or not they are detained – are much more likely to actually challenge a transfer or demand that the discretionary clauses be applied in their case, than people who are not in touch with a lawyer: 85% of people who have met with a lawyer have tried appealing their transfer. Also, returnees who have met with a lawyer are more likely to be well informed about their asylum case than returnees who have not. Therefore it seems critically important that lawyers play an important role with safeguarding the fundamental rights of people in the Dublin system, especially when it comes to actually challenging Dublin decisions before a court or an administrative body, and being informed about Dublin and asylum procedures.

### *8.3. 'Protection' also means decent reception conditions*

People assess their safety not only in terms of their ability to apply for asylum, but also on the quality of reception conditions in a particular country. Access to basic services such as housing, public transportation assistance, food and clothing, medical care, welfare support and other assistance that helps people with their daily needs are perceived as highly important by nearly everyone we interviewed.

Poor reception conditions are a major factor for people's negative attitudes towards the Dublin system in general. Half of the people who felt that the Dublin system is 'unfair and unjust' also said they were not provided with basic services in the country where we interviewed them. Negative attitudes about the Dublin Regulation are correlated with a perceived lack of social services. Moreover, 62% of people who expressed having a special connection to the country where we interviewed them also felt positively about the basic services that were being provided to them. Therefore the existence of basic services is not only related with negative attitudes about the Dublin system, but also with how positively one feels about a particular EU country.

How one feels about the quality of basic services and reception conditions in an EU country goes beyond one's subjective viewpoint. These opinions especially affect how one interacts with the Dublin system. A majority of people who admitted to having absconded from the authorities at one point, or 68%, also felt very negatively about the quality of basic services in the countries where we interviewed them. By comparison, 58% of people who have never absconded felt more positively about the level of basic services where they were. Whether one has absconded is significantly correlated with one's perception of how good basic services are. The same correlation exists, albeit a weaker one, between absconding and one's perception of the quality of medical services.

Our interviewees' opinions about the Dublin system is largely based on how well reception conditions of a particular EU country uphold their sense of dignity. Homelessness or inadequate housing and a lack of basic services run counter to people's sense of dignity. And the concept of dignity is important because it is equated with protection. People feel better protected not only when they can access an asylum procedure, but especially when they can have access to decent housing, assistance with their daily lives, opportunities to engage in educational activities and to work in the formal labour market, for example. People who are in countries with poor receptions may likely decide that, despite the risk, they will pursue their search for safety in another country. Thus reception conditions are not a trivial part of the Dublin Regulation – reception conditions are rather the fulcrum for the entire system and how well or not it functions.

### *8.4. Detention is still a very negative measure*

From our interviews it is clear that detention is one of the most negative measures of the Dublin system. From the point of view of the asylum seeker or migrant, detention achieves no other purpose than to increase people's frustration.

Though detention and the Dublin Regulation often go hand-in-hand, it is important to emphasise that a sizable number of our interviewees were not in detention: 60% of the entire sample and 55% of transferees specifically. And as we have already noted, transferees especially are more likely to find themselves in detention than returnees (see page 42). That such a sizable number of transferees were not detained begs two important questions: why are some people detained and others not? If not everyone is detained, then is it necessary to detain anyone in the Dublin system in the first place? From the data we see that people are detained for very unclear reasons.

The variance in the number of people who are detained seems to have more to do with incidental EU member state practices than with any systematic needs or risk assessment of an individual's case. None of the people we interviewed in France were detained, which broadly reflects that country's general practice of not automatically detaining asylum seekers. The same can be said for Sweden, where asylum seekers are permitted to live in their own accommodation or that which is paid by the state. Conversely, although Dublin asylum seekers in Belgium are not automatically detained under law, in practice many usually are. Aside from member state practices, the varying number of detainees in our sample also has much to do with how we collected interviews. For example, Malta automatically detains asylum seekers and irregular migrants, but the persons we interviewed there were all returnees who have already experienced lengthy periods of detention, and Dublin returnees to Malta are not usually detained. Our interview sample in Italy also mostly consisted of returnees, who are not usually detained in Italy; and even Dublin transferees in Italy are not frequently detained.

Aside from reasons owing to the way we arranged our sample and incidental member state practices, the fact remains that detention in the Dublin system is used rather inconsistently. It appears that whether a person is detained or not is based more on indeterminate circumstances than on any systematic assessment of a person's risk of absconding, vulnerability, needs, family situation or any other variable that would objectively determine whether detention is necessary or not.

The consequences of the arbitrary use of detention are startling. Detainees are poorly informed about Dublin procedures, and they are less likely to actually appeal a Dublin decision than non-detained persons are. The latter has much to do with the restrictive nature of detention: detainees have less access to lawyers, and our data confirms that people more likely to appeal a Dublin decision if they are aided by a lawyer. The non-detainees in our sample reported much greater access to lawyers, and as a result more of them have attempted to appeal their Dublin decisions than people in detention. Moreover, the closed nature of a detention centre means that detainees learn about the discretionary clauses much later than non-detained persons, which reduces their ability to challenge the reasons for their detention as well as which Dublin decision befalls them.

Though these details appear to be small, in reality they show that detention places people at a stark disadvantage when it comes to the realisation of their fundamental rights. The gravity of this consequence is compounded by the finding that the negative effects of being detained – high levels of stress, symptoms associated with anxiety and depression – remain all too common. And these negative effects are in line with research we did in 2010, which shows that Dublin detainees are at higher risk of becoming vulnerable to harm than non-Dublin detainees are.[23] Taking all of these elements together, it is difficult to reach any other conclusion than that detention in the Dublin system erodes people's access to fundamental rights at too great a cost to their human dignity.

### *8.5. Personal choice as a measure of dignity*

The Dublin Regulation in its current form is devoid of any element of personal choice. Asylum seekers and other migrants are told where to go based not on what they individually feel is best, but rather on elements that have little to do with what a person wants for him or herself in terms of protection and safety. But personal choice matters. A procedure that systematically removes personal choice from the calculus of asylum protection cannot be sustainable for very long.

The search for protection is a truly personal endeavour. Ultimately wherever a person decides to seek protection is just as unique and subjective as one's reasons for fleeing. This is strongly reflected in our dataset. People choose to travel to a particular EU country based on a variety of factors. One person may want to stay in a country because a family member is

[23] JRS Europe (2010). *Becoming Vulnerable in Detention*

also there; another person may choose a country because he or she feels there are good opportunities for employment. And yet other people decide to apply for protection in an EU country based on what other asylum seekers have told them.

Despite these many differences it is still possible to broadly stratify people's reasons for choosing a particular EU country to be in. First and foremost is how well a person feels he or she would be protected. From the data it is clear that one of the most disruptive aspects of the Dublin system is that it prevents people from choosing where they can apply for asylum. For many of the people we interviewed, their 'first EU country of entry' was not where they intended to go, but rather a stepping stone to help them get to another country where they really wanted to be. Thus while the Dublin system strives to systematically assign asylum seekers to particular EU member states, from the point of view of the asylum seeker their 'country of first entry' has much more to do with happenstance than with a systematic or well thought choice. The intended choice people make is usually the second or third EU country they arrive to, which is evident in the data because transferees are more likely to express a special connection to the country they are in than returnees.

People decide on an EU country to go based also on where they think they can ensure a livelihood for themselves and protect their well-being. Since asylum seekers in the EU generally cannot work, despite their eagerness to do so, they only way to sustain a livelihood is to be in an EU member state with decent reception conditions. This includes access to appropriate housing, medical care and basic services that assist with day-to-day needs. Many of our interviewees learned the hard way which EU countries have poor reception conditions: by having been transferred a few times they come to learn by practice. Yet others know this by what people tell them. Aside from reception conditions, people are keen to maintain their livelihood by being close to family, which is another reason why a person might choose a particular EU country to be in. Being in a country where one knows the language helps, too.

At the root of people's choices of where they want to seek protection is their desire to safeguard their dignity. It is a fundamental right conserved in Article 1 of the EU Charter of Fundamental Rights, which states, "Human dignity is inviolable. It must be respected and protected." People often manifest their sense of dignity through their freedom to choose: in this case, 'choice' is about where to people can protect themselves and their loved ones, where to live and how to maintain a livelihood. Against this standard, the Dublin Regulation continues to perform poorly because it suppresses nearly every element of individual choice.

### *8.6. A disruptive system*

The biggest effect of the Dublin system is the way that it severely disrupts people's lives. Asylum seekers and others who are seeking protection come to Europe with a definitive plan that is more often than not scattered to pieces because they are transferred to other EU countries not of their choosing. If every EU country had the same asylum and reception system, then this might not be a problem. But this clearly is not the case. Knowing that asylum and reception conditions differ throughout the EU and having analysed the data obtained for this study, we see that an important question begs to be asked: does the Dublin Regulation meaningfully contribute to people's fundamental right to seek protection, or does it just needlessly disrupt people's lives?

Many NGOs in the asylum sector in Europe have already expressed their agreement to the latter point. After analysing 257 individual interviews done in nine countries, we too cannot arrive to any other conclusion. Just as detention is harmful for nearly everyone who experiences, so too is the Dublin Regulation for nearly any asylum seeker or third country national who comes into contact with. So long as asylum and reception conditions differ between EU countries, it is difficult to see how the Dublin Regulation can do anything else other than to severely frustrate people's intentions to obtain protection in Europe.

The disruptive element of the Dublin system is evident in nearly every individual situation we examined through our interviews. There is no evidence that the Dublin Regulation makes it any easier, safer or more reliable for a person to access an asylum procedure somewhere in Europe. From the perspective of the asylum seeker, the regulation is an obstacle to their protection. It is an obstacle to integration: people that spend much of their time moving around Europe in search of genuine protection become excluded from our communities. It also takes them away from the EU country where they want to be, it splits families apart and it forces asylum seekers to eventually apply for protection in countries with inadequate asylum procedures and reception conditions. The latter point is not a direct intention of the regulation but a practical consequence of its application, as the 'first EU country of entry' for most of the people we interviewed is one that

is located at the EU periphery and where conditions are poor for asylum seekers. Neither is it an intention of the regulation to punish asylum seekers, but indeed this is how they experience it.

Aside from the difficulties posed by the regulation for asylum seekers, are those posed for EU member states. Dublin transfers are resource-intensive, and bring governments no closer towards fulfilling the original intentions of the system. Despite the regulation's intention to harmonise how EU member states share responsibility for assessing asylum seekers' applications, the actual consequence is that 'Dublin practices' have come to highly differ from one member state to the next. Some governments maintain practices that are reasonably efficient, while others do not. This has created an uneven terrain which has costly implications for the Dublin system as a whole. Court judgements that prohibit transfers of asylum seekers in particular cases – such as transfers to Greece based on the *M.S.S.* ruling, or transfers to countries with deficient reception conditions – lead to blockages in the system that force governments to expend resources even if Dublin transfers are not possible. Moreover, governments expend resources on detention and countering legal challenges brought forth by lawyers.

Alongside our conclusion that member state Dublin practices ineffectively people's protection needs, from our interviews with asylum seekers and other migrants we can also infer that the expenditure of state resources on the Dublin system appears to bring little or no added value to the *Common European Asylum System*. People are not accessing asylum procedures any more easily or effectively; research by others have even shown that most transfer decisions are not carried out.[24] If such a malfunctioning policy were to exist in any other sector, it would surely be scrapped.

Further evidence that the Dublin system needlessly disrupts lives can be found at the core of its very existence: in spite of the regulation's primary intention to prevent secondary asylum movements, people still move around Europe to an alarming degree. Asylum seekers and other migrants are still in orbit. On average, people in our sample had already made three to four trips between EU countries prior to our interview with them. The rigidity of the Dublin system, and its fixation on the 'first EU country of entry' as being responsible for examining a person's asylum claim, appears to motivate people to continually search for protection around Europe rather than to stay in one place. People circumvent the system to better protect themselves because they perceive the system to not protect them enough. Poor reception conditions in particular EU countries, which force people into homelessness and destitution, are a major reason for people's secondary or tertiary movements. But it also has to do with the desire to reunite with one's family, or to submit an asylum application in a country where one shares the language, or in a country where someone can feel confident that they will be appropriately sheltered and have their basic needs looked after. However, circumventing the Dublin system comes with a high degree of personal risk: interception by the authorities, detention and transfer to another member state, separation from family and so forth. That so many people feel they must take this great personal risk to protect themselves is perhaps the biggest indictment of the Dublin Regulation as a system that needlessly disrupts people's lives and interrupts their search for protection.

[24] ECRE, Forum réfugiés-Cosi (2012). *Dublin II Regulation: Lives on Hold*, pg. 12

# *Summary of EU member state practices*

- **Provision of information**
- **Linguistic assistance**
- **Legal assistance, access and quality**
- **Level of transparency of Dublin procedures**
- **Use of the discretionary clauses**
- **Use of appeals and judicial remedies**
- **Reception conditions**
- **Asylum procedures**
- **Detention**
- **Implementation of Dublin decisions**

Each DIASP partner researched the 'Dublin practices' used by their EU country's government. This was done to better understand the context within which asylum seekers and other migrants answered our questions, and to balance the subjectivity of their responses with the objectivity that comes with identifying procedure and practices as they are implemented by EU governments. This chapter contains a summary of such practices; for more information on what a particular country does please refer to the respective country report. At the end of each sub-section we highlight particular practices that we find to be *good* or *bad*, based on the extent to which they respect people's fundamental rights.

## I. Provision of information

### a. How information is given to asylum seekers

### b. The type of information given

### c. Frequency of the information provided

In **Sweden**, information is given to all asylum seekers as they apply for asylum and when they are interviewed. However the authorities do not take measures to ensure that the information is understood. As the individual applies for asylum, the authorities provided written information in 12 languages; if the person does not understand any of these languages, then an interpreter is provided. Information is given at all stages of the process. If the authorities deem that an asylum seeker has come from another EU member state, then a second set of information is given both in written and oral form, in a language the person understands. Information regarding the Dublin decision is given in Swedish, but translated for the asylum seeker. Information is provided throughout the person's Dublin procedure.

Asylum seekers in **France** can be provided with information during regular appointments scheduled with the local prefecture, which take place about every 15 days, though this varies among prefectures. A leaflet is provided that includes information about the asylum application but very limited information on Dublin procedures. Though through regular appointments with the prefecture, the asylum seeker may learn how his Dublin procedure is progressing. The level of completeness of the information provided varies from one prefecture to another. In Lyon, for example, the leaflet is available in five different languages; in Paris, asylum seekers receive information about the Dublin transfer decision only by post. By means of the Dublin 'notice' document, the French prefecture informs applicants about what a 'take charge' or 'take back' procedure has been initiated. But asylum seekers are not necessarily informed about when the request to the responsible EU country was made, and nor the date of that country's response; sometimes even the information about the name of the country of transfer is missing.

When a person registers his asylum application in **Belgium**, he receives an information brochure available in 23 languages. At this first stage only written information is given. At a later point, the asylum seeker receives a more detailed oral explanation during his 'Dublin interview' with the Examination Unit at the Alien's Office. The applicant does not receive a transcript of the interview, but his lawyer will have access to it upon request. The applicant is informed via oral and written means about any decision that is made. If the applicant is to be transferred to another EU state, then he will be informed of the possibility to return voluntarily, and the risk of detention should he not voluntarily cooperate. Information is provided on three occasions: during registration at the Alien's Office, during the 'Dublin interview' and when a final decision is made.

Asylum seekers in **Hungary** receive leaflets at the police station and at the Office of Immigration and Nationality (OIN) prior to his first interview. The police leaflet informs the applicant on his rights and obligations as a foreigner, but does not contain information on the asylum procedure. The OIN leaflet provides information about asylum and Dublin procedures in his own language or one he can understand. The written decision suspending the admissibility procedure and opening the Dublin procedure is explained orally to the asylum seeker in a suitable language. The procedure is the same for informing the applicant of his transfer, including the time limit for carrying out the transfer. The applicant is notified of the exact day and time of the transfer just a few days before it is carried out. Information is provided at three points: at the police station, during the OIN interview and when opening and final decisions are taken.

Information on Dublin procedures is not systematically provided to applicants in **Italy**. The Dublin Unit is not accessible to asylum seekers and the local competent authorities, the *Questura*, is not prepared to give asylum seekers complete and

clear information. There is no legal obligation to inform asylum seekers of transfer decisions. Instead, local civil society groups play an important role mediating between asylum seekers, the police and the Dublin Unit.

In **Poland**, asylum applicants receive oral and written information by border guard officers and employees of the reception centres in which they live. This information typically concerns the applicant's rights and obligations, as well as general information about Dublin procedures. Two information forms containing more detailed information about Dublin and EURODAC are provided in a language the applicant can understand. Dublin asylum seekers in detention are also informed in the same way, with additional information concerning the rules of the detention centre. It is possible for asylum seekers to contact by letter or telephone the Office for Foreigners or the headquarters of the border guard service. Asylum seekers are provided with information on their Dublin procedure throughout their stay in Poland.

In **Germany**, the Federal Asylum Agency (*Bundesamt für Migration und Flüchtlinge*, or BAMF) is supposed to inform applicants about the initiation of the Dublin procedure and some of the applicable deadlines, but not necessarily about its steps and possible legal remedies. Should the person apply for asylum in Germany, the BAMF will then hand him a leaflet with information on core aspects of the Dublin procedure. This form is not always available in a language the applicant can understand, and it contains only limited information on the Dublin responsibility criteria, leaving out any information on the humanitarian clause (art. 15) of the regulation.

The **Romanian** authorities inform people in Dublin procedures that their personal data may be exchanged with other member states, and that their fingerprints are stored in the EURODAC database. This information is provided in multiple languages. Detailed information about Dublin procedures is provided by oral and/or written documentation.

Upon arrival in **Malta**, the immigration authorities provide detained Dublin asylum seekers with a leaflet entitled – *"Your entitlements, responsibilities and obligations while in detention"*– which makes reference to the possibility that the asylum application will be processed in another Member State upon the fulfilling of certain criteria.[25] This leaflet is however only available in English, Arabic and French. Subsequently, members of the Office of the Refugee Commissioner (RefCom) approach detained asylum seekers to provide information about the asylum procedure in Malta and on the rights and obligations of asylum seekers within the asylum procedure. This information is provided with the help of cultural mediators and through audio-visual and written material available in eleven languages. RefCom staff is available to answer questions. At this point, people who express a desire to apply fill in a 'Dublin Questionnare' where they are asked about the presence of family in other EU countries.

**GOOD PRACTICES**

- **In Belgium, asylum seekers receive information about Dublin and are able to fully express their story in a 'Dublin interview' with the Examination Unit of the Alien's Office.**

  *DIASP research basis*: Dublin asylum seekers rarely get the chance to explain their stories and journeys in a free-form manner. By doing so, applicants can express particular needs and vulnerabilities that may go unidentified in official assessments, and which can aid the authorities in deciding whether the discretionary clauses apply or not. The ability to fully express oneself is a critical element of personal choice and dignity, which when granted may leave applicants better assured that they have been listened to and that the procedure is fair.

- **Written and oral information is provided in several languages to ensure that the asylum seeker can understand procedures in a language he or she understands, as done in Sweden, Belgium, France, Poland and Hungary.**

  *DIASP research basis*: People are more likely to understand the information provided to them if it is given in a language they understand.

- **In Malta, information on the asylum procedure from the Office of the Refugee Commissioner is given with the help of cultural mediators and through audio-visual and written material.**

  *DIASP research basis*: Our findings show that people tend to understand information when it is given to them in multiple formats, i.e. thorough oral explanations, detailed written documentation, multiple languages. As the Dublin system can be difficult to understand, especially for people who are traumatised from long and dangerous journeys, it is a good practice to present information in a variety of formats and in a way that accounts for cultural differences.

[25] Available at: http://www.cpt.coe.int/documents/mlt/2007-38-inf-eng.htm

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| **BAD PRACTICES** | • **Asylum seekers in Italy encounter great difficulty in getting information about their Dublin case from the authorities. There are no opportunities for the applicant to take direct contact with the Dublin Unit, as there is no legal obligation for the authorities to do so.**<br><br>*DIASP research basis*: 30% of people who are given information by the authorities also feel that they are informed about Dublin procedures, compared with 17% of people who were not given information by the authorities. Receiving information from the national authorities is significantly related to one's feeling of being informed. |

## II. Linguistic assistance

### a. Availability of interpreters and translation services
### b. Stages in which linguistic services are provided, and in which languages
### c. Types of documents and procedures that are interpreted and/or translated

At all stages of the Dublin procedure in **Sweden**, information is provided to the asylum seeker in a language he can understand. Interpreters can be present in person during an applicant's meetings with the authorities, or via telephone. Decisions are given in Swedish but are translated. General information that is already translated into 12 languages can be explained by an interpreter should the asylum seeker not understand any of the available languages. Documents that the asylum seeker provides are translated into Swedish. All costs related to interpretation are borne by the Dublin Unit.

The level of linguistic assistance offered in **France** varies from one prefecture to another. Interpreters are sporadically available; in many cases migrants assist each other. Interviews with the authorities are often conducted in French, and the questionnaire on which the interview is based is only translated into English and responses must be written in French. In Lyon, the Dublin 'notice' is translated into most of the languages usually spoken by migrants and asylum seekers in that prefecture, or in a language they can understand, typically in English. Transfer decisions are not always translated but they must be interpreted by the prefecture in person or by telephone.

The **Belgian** authorities provide written information in 23 languages. Official written decisions, however, are given only in French or Dutch. Interpreters are routinely provided and paid for by the state. They are assigned taking into account the particular sensitivities pertaining to the asylum seeker, e.g. sex, ethnicity and so on. Interpreters have an independent status and are at the disposal of the Alien's Office. Asylum seekers have access to them upon first registration and at the 'Dublin interview', and on other occasions if possible. Interpreters are not always available during the pronouncement of the decision. The interpreter provides on-the-spot oral translation of key documents provided by the asylum seeker, e.g. identity papers, travel and medical documentation, and can provide a written translation after the interview is completed.

In **Hungary**, the asylum seeker has a right to an interpreter for the entire asylum procedure, provided by the OIN. An applicant can choose the sex of the interpreter and request to change for serious reasons. The initial information leaflet is provided in the applicant's mother tongue or in a language he can understand. All decisions are made in Hungarian, with asylum seekers receiving an orally translated summary by an interpreter; sometimes this is done over the internet.

The **Italian** authorities only translate the transfer order, and into English. In the *Questura* of Rome, official interpreters are available to translate a decision.

The Office for Foreigners in **Poland** provides interpreters when required during the asylum and Dublin procedure. When an applicant is detained it is the Border Guard who provides interpreters. An interpreter is present during the filing of the asylum application and during all other interviews. All information used during these proceedings is translated, including any medical documentation provided by the applicant. Interpreters may also be used during the reception of Dublin returnees. Initial information leaflets are available in 21 languages and translated to others if necessary. Regarding Dublin decisions, only the legal basis used and available judicial remedies are translated into an understandable language, and not the motivation for the decision.

Asylum seekers in **Romania** have a right to an interpreter in principle, but in practice they are used only during the preliminary interview and status determination interview. If an asylum procedure is suspended because of a Dublin procedure, there are no interpreters to communicate this to asylum seekers. Documents that an asylum seeker provides to the authorities must be translated into Romanian at her own cost.

Interpreters are provided throughout the Dublin process in the **United Kingdom**. The UK Border Agency (UKBA) employs freelance interpreters who must have particular qualifications and certifications.

A leaflet given by the **Maltese** immigration authorities which references Dublin procedures is available only in English, Arabic and French. This information makes reference to the fact that the asylum seeker might be transferred to another Member State, with no description of the procedure to be followed. The written information provided by the Office of the Refugee Commissioner is available in eleven languages, yet this information focuses on the asylum procedure and not on Dublin procedures. During the interview with the Immigration Police, another detainee or fellow migrant might be asked to accompany the asylum seeker to provide interpretation services. Documentation provided by asylum seekers are not translated but are sent directly to the potentially responsible member states.

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| **GOOD PRACTICES** | • **Interpreters are made available by the state as much as possible throughout the Dublin procedure, as in Belgium, Sweden and Poland.**<br>• **Written and oral information is provided in several languages to ensure that the asylum seeker can understand procedures in a language he or she understands, as done in Sweden, Belgium, France, Poland and Hungary.**<br><br>*DIASP research basis*: 26% of interviewees who can speak multiple languages also felt well or fully informed about Dublin procedures, compared with 11% of those who did not admit to being multi-lingual. Of interviewees who claim to understand the information given to them by the state authorities, 65% said it was due to it being in the right language. Comprehension of information is significantly linked with language. |
| **BAD PRACTICES** | • **According to our partner, the quality of the interpretation in Sweden varies too greatly. Not all interpreters are approved by an official body. Migrants complain that sometimes the interpreter does not understand their language. Similarly, many interpreters in Hungary are not qualified to translate administrative asylum procedures.**<br>• **Information, documentation and proceedings related to Dublin are not interpreted into languages most migrants can understand, as in Italy, Malta, France and Romania, or not during crucial points in the process such as when decisions are made, as in Belgium; in Malta, other migrants are used for interpretation services.** |

## III. Legal assistance, access and quality

- a. Access to lawyers and legal assistance providers, and who assumes associated costs
- b. Stages during which lawyers can be present during the Dublin process
- c. Level of competency in Dublin procedures of state-provided lawyers

No legal assistance is provided for asylum seekers in the Dublin procedure in **Sweden**. The migration court of appeal considers the Dublin procedure to be only a formal, and not a substantive, process, and as such does not require legal assistance. There are some exceptions: up until 2011 legal assistance was provided for special cases of vulnerability in detention, and new guidelines permit it for minors and for other persons in detention for more than three days. The costs of legal assistance for these exceptional cases are borne by the Swedish Migration Board (*Migrationsverket*). A lawyer may be present during the asylum seeker's interview with the migration authorities, and can assist him with challenging a decision, but this must be paid by the asylum seeker. In the rare instances when legal assistance is provided and paid for by the Migration Board, it is done by competent lawyers experienced in migration and Dublin procedures.

In **France**, people with a low income can apply for a state-paid 'jurisdictional allowance' that covers the costs of legal assistance. But access to this allowance is more difficult for asylum seekers who fall under the Dublin Regulation, because of their particular administrative status – non-admitted to residence. However, this allowance can usually be granted in the case of emergency 'urgent' legal procedures (*référé*). Lawyers that assist asylum seekers are usually specialised in foreigner's rights and sometimes on the Dublin Regulation.

Any asylum seeker in **Belgium** has the right to be assisted by a lawyer designated by, and paid for, by the state (a *pro deo* lawyer) through the local Office for Legal Assistance (*Bureau d'Aide Juridique*, *BAJ; Bureau voor Juridische Bijstand, BJB*). The asylum seeker can also directly contact a lawyer who then asks the BAJ to designate himself as a *pro deo* lawyer. Lawyers cannot be present during the 'Dublin interview', but at a later point he would have access to the official file. The *pro deo* lawyers designated by the BAJ/BJB are not always specialised in foreigner's law.

Asylum seekers in **Hungary** are automatically eligible for free legal aid unless it is proven that they have enough financial resources to obtain such aid.[1] The HHC has ensured professional legal assistance and representation of asylum seekers for more than 15 years. The UNHCR Regional Representation for Central Europe is funding this work in 2013. Since February 2013, the Judicial Affairs Service of the Ministry of Public Administration and Justice is also providing legal assistance and representation of asylum seekers, funded mainly by the European Refugee Fund National Actions Scheme. The lawyers working under this scheme received two days training. Since this is a very recent development, the HHC cannot yet judge the quality of their work.

In **Italy**, the asylum seeker has the right to free legal assistance paid for by the state, but it is up to the applicant to find his own lawyer. Civil society organisations assist the applicant in this search. When a lawyer is found and assigned to an asylum seeker, he can assist the applicant during court proceedings and in meetings with the authorities. Lawyers suggested by NGOs and other associations are usually competent in the Dublin Regulation and in asylum and immigration law.

**Poland** does not have a state-sponsored system of free legal assistance for asylum seekers. This service is provided by NGOs. Nonetheless, during court proceedings – including the judicial review before the Regional Administrative Court – asylum seekers may apply for a free state-appointed lawyer to represent them. Rarely are these lawyers adequately specialised in asylum and immigration law. Otherwise, NGO lawyers may be present during the applicant's meetings with the authorities.

**Germany** does not have a system of state-sponsored lawyers, so Dublin asylum seekers must rely on private lawyers. Public legal aid is available but difficult to obtain due to low compensation rates which deter specialised lawyers, and the requirement that lawyers first prove the case has a prospect of success, which courts frequently deny.

In **Romania** lawyers can assist asylum seekers but at their own expense. Before a judicial court access to a lawyer can be requested from the court itself, and these costs are borne by the Ministry of Justice. Many NGOs provided legal assistance with support from EU funding. A lawyer can be present when the authorities meet with the asylum seeker to assess a potential transfer, but only if the lawyer is appointed directly by the asylum seeker or by a supporting NGO.

**Maltese** national law does not provide for free legal assistance for migrants in Dublin procedures. This is rather provided by independent lawyers or by lawyers working with NGOs. Lawyers working with JRS Malta are actively engaged in providing legal assistance to a large number of detained asylum seekers during their Dublin procedure.

On paper, people in Dublin procedures in the **United Kingdom** can access a lawyer through Legal Aid, a scheme managed by the Legal Services Commission. Once detained, whether in a police station or in an immigration removal centre (IRC), asylum seekers have the right to a diagnostic advice session with a legal advisor. If the case requires further legal action, the advisor is obliged to take it on. This is standard practice and is regularly followed, though often with delays in IRCs. However, the quality of legal advice, as well as the will to pursue challenges to removal, may vary. In 2010 the UKBA introduced a new system of establishing exclusive legal aid contracts with a small number of law firms within the detention estate. Problems have arisen due to the large numbers of potential clients versus fewer lawyers. Such unequal ratios have had serious consequences for the client group whose access to legal representation has been compromised, especially those in the fast-track system, which includes asylum seekers under the Dublin Regulation.

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| **GOOD PRACTICES** | • **State-paid lawyers are available to all asylum seekers via a central office that administers this service, as in Belgium.**<br><br>*DIASP research basis*: Lawyers serve a very important role in the Dublin system, namely by informing asylum seekers about the regulation's technical aspects and legal remedies. Interviewees who had met with a lawyer, for example, were significantly more likely to have challenged their Dublin decision than those who had not. Asylum seekers are also more likely to feel informed about their asylum case if there is a lawyer to advise them. |
| **BAD PRACTICES** | • **State-sponsored reimbursement schemes for legal assistance are too low, discouraging lawyers from taking part and leaving asylum seekers without legal assistance, as in Germany; or such schemes restrict the numbers of lawyers available for assistance, as in the United Kingdom.**<br><br>• **The cost of legal assistance is not always borne by the state, and even when it is, lawyers are not sufficiently specialised in asylum and immigration law and Dublin procedures, as in Belgium and Poland.**<br><br>• **State-sponsored legal assistance is not automatically provided at all stages of the Dublin procedure and instead only in exceptional circumstances, as in Sweden, France and Poland.**<br><br>*DIASP research basis*: 42% of interviewees who felt they were informed about the discretionary clauses too late also said they had not met with a lawyer, compared with just 17% who said they had gotten this information early enough. As lawyers help people understand the technical aspects of Dublin, it is important that they are available at every stage of the process, especially early on, so people can understand what is at stake for them in their Dublin procedure. |

## IV. Transparency of Dublin procedures

### a. Level of public availability and access to Dublin data, e.g. statistics, numbers, practices.

The **Swedish** Migration Board publishes on its website[26] quarterly data on asylum decisions and Dublin decisions. This information is available in Swedish and in English. For instance, one learns that in the first four months of 2013, the Swedish authorities identified 3,408 Dublin cases, which is approximately 22% of all asylum decisions made within this time period.

Dublin data is not published by the **French** authorities, but information may be delivered on request. Some information on the flows of Dublin Regulation transfers (incoming/outgoing) with other member states is available in the report[27] to parliament of the secretariat general of the immigration control committee.

Statistics on Dublin procedures are published by the **Belgian** Immigration Office in their annual reports, which are publicly available on their website.[28] More statistical data and information on Dublin practices are provided by the authorities in monthly meetings with local NGOs and the Belgian Refugee Council. Looking at the Alien's Office annual report of 2011, one sees that Belgium made 2,394 transfer requests to other EU countries of which 1,638, or 68%, were accepted.

The **Hungarian** Office of Immigration and Nationality (OIN) publish a limited number of statistics on its website, though mostly in Hungarian.[29] The authorities distribute such information upon request.

The **Italian** Ministry of Interior publishes annual statistics on their website, though only a small part of it contains data on asylum.[30] For instance, between August 2011 and July 2012, the Ministry recorded 21,568 persons who were refused

[26] Statistics, http://www.migrationsverket.se/info/790_en.html, website of the Swedish Migration Board; accessed on 16 May 2013.
[27] French Ministry of the Interior, *Les chiffres de la politique de l'immigration et de l'intégration – Rapport au Parlement,* http://www.immigration.interieur.gouv.fr/Info-ressources/Actualites/L-actu-immigration/Les-chiffres-de-la-politique-de-l-immigration-et-de-l-integration-Rapport-au-Parlement; accessed on 17/05/2013.
[28] Publications, https://dofi.ibz.be/sites/dvzoe/FR/Pages/Publications.aspx, Belgian Immigration Office; accessed on 16 May 2013.
[29] Hungarian Office of Immigration and Nationality, http://www.bmbah.hu/index.html; click on "statisztika"; accessed on 16 May 2013.
[30] Dossier, http://www.bmbah.hu/index.html, Italian Ministry of the Interior; accessed on 16 May 2013.

protection or received another kind of decision, among which include Dublin decisions.[31] More detailed statistics are not publicly available.

In **Poland**, the Office for Foreigners publishes asylum statistics on its website including data on the Dublin Regulation.[32]

**Romania** does not make publicly available statistics and data on their use of the Dublin Regulation. This can only be provided on request.

The **German** Federal Agency for Migration and Refugees (BAMF) publishes monthly data on asylum statistics including Dublin procedures. Additional material has been made available by the federal government through parliamentary requests by opposition parties. For instance, during April 2013 Germany made 1,766 transfer requests to other member states; by contrast, 373 Dublin requests from other member states to Germany were made in the same month.[33]

In Malta, there are no publicly available statistics or data regarding the use of the Dublin Regulation. It may be provided on request.

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| **GOOD PRACTICES** | • **Data on national Dublin practices, procedures and decisions are published by the state on the internet, as in Sweden, Germany and Belgium. In France, this data may be delivered on request.**<br><br>*DIASP research basis*: Having access to reliable data is absolutely necessary for the analysis of policies and their impacts on people. The DIASP project itself has benefitted from the openness of member state authorities who granted entry to researchers and providing information about their practices. Having this information enables us and other organisations to propose recommendations to improve policies for all stakeholders concerned. |
| **BAD PRACTICES** | • **Data on Dublin transfers and decisions are not automatically made publicly available by the *state*, as in Romania, Malta and France. Even when Dublin data is made available by the state on the internet it is not detailed enough, as in Italy.** |

## V. Use of the discretionary clauses (Articles 3, i.e. the sovereignty clause, and 15, i.e. the humanitarian clause, of the Dublin Regulation)

a. **Frequency of implementation**
b. **Guidelines and criteria used by the authorities for its implementation**
c. **Possibility for asylum seekers to request its usage**
d. **Availability of statistics on how often it is implemented**

In **Sweden**, article 15 is almost never applied. Article 3, however, is more frequently used for medical or family reasons, or systematically when Greece is deemed to be the first country of entry into the EU. Sweden does not use Article 3 strictly as a 'sovereignty' clause, but implements it in line with other EU member states' practices. When considering the usage of these clauses, the Dublin Unit receives guidance from the chief juridical officer of the Migration Board. An asylum seeker himself can request that the discretionary clauses be considered in his case, though this does not often happen and it would not have any special effect. Statistics on the usage of the discretionary clauses are not available.

Articles 3 and 15 are scarcely and unevenly applied in **France**. When the authorities do consider its usage, it is usually to reunite families or for medical reasons. Article 3 is used to temporarily suspend transfers to Greece. Asylum seekers may, with the assistance of an NGO or a lawyer, directly contact the prefecture to draw attention to particular elements of their

[31] Italian Ministry of the Interior, *Dal Viminale: Un anno di attività del Ministero dell'Interno*, http://www.interno.gov.it/mininterno/export/sites/default/it/assets/files/24/2012_08_15_report_Viminale_Ferragosto.pdf, see page 15; accessed on 16 May 2013.
[32] Poland Office for Foreigners, http://www.udsc.gov.pl/Zestawienie,tygodniowe,231.html. Statistics on Dublin located in section 3 of the document that appears on this page; accessed on 16 May 2013.
[33] BAMF, *Aktuelle Zahlen zu Asyl*, p. 7; available at http://www.bamf.de/SharedDocs/Anlagen/DE/Downloads/Infothek/Statistik/statistik-anlage-teil-4-aktuelle-zahlen-zu-asyl.html?nn=1694460, and accessed on 17/05/2013.

case for which the discretionary clauses may be applied. Statistics on the usage of articles 3 and 15 are not publicly available.

The **Belgian** authorities sporadically implement the discretionary clauses on a case-by-case basis. Usually the criteria used are for family unity and medical reasons; article 3 is sometimes applied for vulnerable persons. Asylum seekers may argue for the use of the humanitarian clause[34] during their hearing at the Alien's Office – the form used contains a specific question on this – or in written form at any other moment. Statistics on usage are not publicly available.

The implementation of the discretionary clauses is rarely done in **Hungary**. Formal criteria are not applied, and cases are examined individually. Transfers to Greece are suspended on the basis of the sovereignty clause. Asylum seekers or people supporting them may request usage of the clauses, but such motions are usually unsuccessful. Statistics about the discretionary clauses' implementation are not publicly available, but are available upon request.

It is difficult to know for certain how often the discretionary clauses are applied in **Italy**, but our partner suggests that it has been applied less frequently in recent years. The Dublin Unit acknowledges that the clauses are used on a case-by-case basis in situations concerning family unity, vulnerability, victims of torture and persons with serious medical illness. When a lawyer appeals to the administrative tribunal against a transfer decision, he can ask the Dublin Unit to reconsider the decision on the basis of the discretionary clause. Statistics are not publicly available.

The **Polish** authorities apply article 3 in cases concerning vulnerable foreigners, which in general are pregnant women or persons with serious medical illness; this article is also used to suspend transfers to Greece. Article 15 is rarely applied. All cases are decided individually based on the person's particular situation and issues related to their family and health. Asylum seekers or their supporters may file motions asking for the application of article 15 and participate in the proceedings. Statistics are not available.

In **Germany**, the BAMF uses a checklist of criteria for the responsibility criteria of another EU country, but also for Germany itself. The criteria also include issues that would justify the use of the discretionary clauses. In practice, the BAMF hardly makes use of these clauses. It is not always assured that the facts relevant for the application of the discretionary clauses reached the Dublin Unit in time. If such facts emerge during someone's asylum interview with the respective BAMF branch (with some branches this is conducted prior to the Dublin procedure), it may take months before the minutes of the taped interview are sent to the Dublin Unit.

The **Romanian** Dublin Unit uses the sovereignty clause to suspend transfers to Greece. The humanitarian clause is applied only if the asylum seeker can prove existing family connections. The **United Kingdom** rarely makes use of the discretionary clauses.

**GOOD PRACTICES**

- **In Sweden, the application of the discretionary clauses is based on guidelines from the chief juridical officer of the Swedish Migration Board.**

  *DIASP research basis*: One reason for which member states so rarely apply the discretionary clauses is because there is no standard tool to assess whether it fits a person's particular case.
- **Dublin interviews are specifically structured to assess whether the humanitarian clause can be applied in an individual's case, as in Belgium.**

  *DIASP research basis*: 'Dublin interviews' are an opportunity for asylum seekers to express their story as freely as possible, which gives the authorities a chance to obtain information that may be relevant for the usage of the discretionary clauses. Furthermore, as 64% of interviewees in our sample did not know about the discretionary clauses, it would thus be important for state authorities to insert checks into their Dublin procedures to ensure that they are brought up.

[34] Article 15 of Council Regulation (EC) No 343/2003, the "Dublin II Regulation".

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| **BAD PRACTICES** | • **In every country the discretionary clauses are scantly used.**<br><br>*DIASP research basis*: Nor are people duly informed about their existence. The discretionary clauses are the one facet of the Dublin system that enables asylum seekers to express at least a modicum of personal choice based on particular factors. Interviewees who were not informed of these clauses were likely to not have appealed their Dublin decisions. People cannot uphold their fundamental rights if they are not informed of the procedures that would allow them to do so, nor if they are left without the agency to actually take action. |

## VI. Appeals and judicial remedies

### a. Ability of asylum seekers to challenge transfers before a court; availability of suspensive effect

### b. Ability of detained Dublin asylum seekers to challenge their detention

In **Sweden**, asylum seekers can challenge their transfer before a court within 21 days after the decision has been made. This challenge does not come with a suspensive effect. Persons in detention do not have access to a special appeal procedure to challenge their detention.

When an asylum seeker is formally informed that he is in the Dublin procedure in **France**, he can send his comments to the prefecture within 15 days. However, as a Dublin "notice" is not binding, it cannot be challenged before the administrative court. A transfer decision may be challenged before the administrative court within two months from its notification. This appeal does not carry a suspensive effect. In addition, an appeal for interim measures in order to suspend an administrative decision (*référé suspension*) (L.521-1 of the code of administrative justice) enables the suspension of a transfer order in the event of an emergency and where there is serious doubt about the legality of the decision. According to French case law, a situation of emergency is generally granted when the claimant is detained in an administrative detention centre. Although processed relatively rapidly, appeals for interim measures do not have a suspensive effect during the examination of the claim and it is usually difficult for a detained asylum seeker to make timely contact with a lawyer in order to introduce a '*référé*'.

Against a transfer decision in **Belgium**, an asylum seeker can introduce an appeal to the *Conseil du contentieux des étrangers* (CCE), or *Raad voor Vreemdelingenbetwistingen* (RVV), within 30 days (or 15 days if the person is detained). This appeal has no suspensive effect. Nevertheless, if a transfer is imminent the asylum seeker can introduce an appeal 'in extreme urgency' within five days, which does carry a suspensive effect. In these cases the CCE must make a decision within 72 hours. Detained persons can appeal against their detention using the same procedure as available for irregularly staying migrants in Belgium.

Any asylum seeker in **Hungary** has the right to start a judicial review before a regional court of a Dublin decision within three days of its issuance. This appeal does not have a suspensive effect. The asylum seeker may request the court to suspend the transfer decision, but this demand has no suspensive effect in itself; the court must decide on it. There is no appeal procedure against a detention order, but national legislation provides for an automatic review that occurs when the court considers a request to prolong the detention order.

In **Italy**, an asylum seeker may lodge an appeal against a transfer decision within 60 days of its issuance to the regional administrative court. This appeal does not come with an automatic suspensive effect, but this can be requested from the court, which can then authorise the asylum seeker to stay in Italy pending the final decision on the appeal. If an asylum seeker left Italy and during his absence received a negative decision, upon return the asylum seeker can appeal the decision within 30 days of its issuance. Returnees to Italy can appeal a negative asylum decision within 30 days of its issuance; in the case of persons living in asylum seeker accommodation (CARA centres), the appeal must be made within 15 days.

An asylum seeker can challenge his transfer decision in **Poland** within 14 days of its issuance to the Refugee Board. This appeal has a suspensive effect. Against the decision of the Refugee Board, the asylum seeker can request a judicial review to the Regional Administrative Court within 30 days without an automatic suspensive effect, though the applicant can file a motion to the court for a suspension of the transfer while the judicial review takes place. Dublin detainees have

the right to challenge their detention at any time to the Regional Administrative Court in the same way that any other detained foreigner can.

A Dublin decision in **Germany** can be challenged in an administrative court but with no suspensive effect. In non-Dublin asylum cases the law provides for the possibility to file an urgent action, which would allow the applicant to stay in the country until the appeal is decided on by the court. Yet the law excludes urgent actions for Dublin asylum seekers because transfers take place to "safe third countries", i.e. EU member states. However, following a series of decisions by the Federal Constitutional Court, administrative courts now tend to grant a transfer suspension if they find that there are systemic flaws in the asylum system of the state the person is going to be transferred to. At the time this report was written, a new law was under way to generally grant the possibility to apply for a temporary injunction against Dublin transfers.

Asylum seekers in **Romania** have a right to challenge a transfer decision within two days of its issuance. This is done in front of the asylum directorate or at the local court, which are not specialised on asylum or Dublin procedures. Appeals do not come with an automatic suspensive effect.

In **Malta**, the decision to transfer an asylum seeker to another member state may be appealed through the filing of an appeal to the Immigration Appeals Board. An appeal to the Board must be filed within three working days from the decision subject to appeal. National law does not make any provision regarding the procedure to be followed in the case of an appeal. There is no obligation to inform the asylum seeker, either orally or in writing, about the outcome of the Dublin request. Notwithstanding this, the law specifies the three-day time-period from date of the decision within which migrants are to appeal. In practice, migrants are not systematically informed of the outcome of the request, making it very difficult for them to appeal the decision within the stipulated time-period. According to the Immigration Police, if an appeal is filed, it has suspensive effect although this is not specified in law.

National legislation in the **United Kingdom** severely limits the applicant's opportunity to challenge or appeal a Dublin decision. However, there is a ground upon which an appeal to the Asylum and Immigration Tribunal is permitted, namely that removal to the other member state would be in breach of the UK's obligations under the ECHR, without considering the possibility of onward removal. Generally, appeals to removal under Dublin are non-suspensive, excepting those made on human rights grounds that are not certified as clearly unfounded by the Secretary of State. Asylum seekers are normally given three working days between notification of removal and the removal itself, which may often be insufficient time in which to apply for a judicial review.

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| **GOOD PRACTICES** | • **In Poland, appeals made on transfer decisions come with an automatic suspensive effect. Moreover, asylum seekers can request a judicial review of an appeal made to the administrative court; appeals to Dublin decisions in Malta also come with a suspensive effect (in practice, but not in law).**<br><br>*DIASP research basis*: As the transfer process is the most disruptive element of the Dublin system for asylum seekers, it behoves member states to suspend a transfer until all challenges and appeals are dealt with. This way an applicant will have a better opportunity to express all the particulars of his case without the pressure of an impending transfer.<br><br>• **In Germany, courts now take into account the asylum system of an EU member state where a person may be transferred to when considering a decision to suspend a transfer.**<br><br>*DIASP research basis*: A major problem within the Dublin system is the poorly functioning reception and asylum systems of other EU member states. It is a positive step to temporarily suspend a transfer in order to examine more closely whether a transfer to a particular country might pose harm for the concerned individual. |
| **BAD PRACTICES** | • **In Malta, appeal procedures are provided for in law but in practice are inaccessible and dysfunctional. As migrants are not informed of the outcome of their Dublin case, they cannot appeal the decision within the three-day time period they are given.** |

- **Excepting Poland, no other country provides for an automatic suspensive effect when a person challenges a Dublin transfer.**

  *DIASP research basis*: The vast majority of interviewees say that the transfer process is so disruptive because it deprives them of agency. People who feel that they have not had a fair procedure are likely to continue their search for safety by journeying across the EU more frequently, which undermines the Dublin system as it is set up. Fair procedures at every step of the Dublin process, especially at the appeals stage which ought to include a suspensive effect, are a minimum of what asylum seekers deserve on the basis of their dignity; fairer procedures would also ensure that member state authorities remain thorough and efficient.

## VII. Reception conditions

### a. Types of reception conditions that are available to asylum seekers in the Dublin system

### b. Availability of special provisions for vulnerable persons

In **Sweden**, Dublin cases are offered the same conditions as other asylum seekers receive: accommodation, daily allowance and health care. Vulnerable persons, including unaccompanied minors, are given special consideration. Local municipalities provided housing, paid for by the Migration Board, for migrants in need of special attention, medical care or for other special needs.

However in **France** asylum seekers are excluded from some of the reception benefits granted to other asylum seekers. They are not formally entitled to the temporary allowance of €11.01 per day, and only after three months are they eligible for state health care. While they wait, Dublin asylum seekers can find health care access points in the hospitals. Moreover, since March 2011 public health care was subject to an annual payment of €30, which proves difficult for Dublin asylum seekers to pay (this tax was revoked by parliament in July 2012). Aside from health care, Dublin asylum seekers are not entitled by law to accommodation in the national reception scheme of asylum seekers reception centres (CADA). Instead, prefectures should provide accommodation for them in emergency centres; in reality, many remain on the street. Sick persons and children can request to benefit immediately from state health care upon their arrival. Families and sick persons may also be accommodated in special asylum centres.

People in the Dublin procedure in **Belgium** can access the same reception conditions as other asylum seekers do, such as accommodation, food, daily allowance, health care and legal assistance. However Dublin asylum seekers may be detained. The authorities provide special attention to persons with vulnerabilities.

Similarly, Dublin asylum seekers in **Hungary** are entitled to the same reception conditions as other asylum seekers. Accommodation is provided in reception centres. In the recent past, many Dublin asylum seekers were detained in immigration jails. Asylum seekers who are returned to Hungary under Dublin procedures and submit a subsequent asylum claim are entitled to less favourable treatment than those lodging an initial application. Unaccompanied minors are placed in a children's home and provided with a guardian, and their case is made a priority. There are no other formal mechanisms to identify other vulnerabilities.

In **Italy**, Dublin cases are in principle treated as any other asylum seeker in terms of reception conditions: they are directed to the different types of asylum reception centres. But in practice there is a shortage of available beds.

The **Polish** authorities provide Dublin asylum seekers with the same reception conditions as other asylum seekers. Generally they are accommodated in one of the 11 reception centres. Family unity is maintained, and unaccompanied minors are housed in specialised homes. Education is provided to minors. Vulnerable persons are not detained.

Unless they are detained, Dublin asylum seekers in **Germany** are granted the same reception conditions as other asylum seekers. This means they receive accommodation, daily subsistence either in cash or in-kind, and health care. Access to the labour market is denied for at least one year.

Dublin asylum seekers in **Romania** have the right to accommodation in reception centres if they lack financial resources. There are six such centres in the country with a total accommodation capacity of 920 places. Conditions are of a decent standard, but problems remain with financial resources. This leads to difficulties with food provision, subsistence allowances and lack of supplementary resources for vulnerable persons. People with vulnerabilities are looked after in accommodation adapted to their needs, with access to medical care. However special facilities for pregnant women and children are lacking.

Detention is the main form of reception provided to asylum seekers who enter **Malta** irregularly and are classified as prohibited immigrants, who are by far in the majority. Asylum seekers falling within the Dublin framework experience the same form of reception as other asylum seekers with no distinction made between the services provided to asylum seekers awaiting a Dublin transfer and other asylum seekers. Following release from detention, all migrants are provided with accommodation in an Open Centre regardless of their legal status. The government provides a per diem allowance to those residing in the centre, to cover food and transport. The daily amount provided depends on legal status, with beneficiaries of subsidiary protection and asylum seekers receiving €4.66 per day and rejected asylum seekers €3.49 per day. Asylum seekers in the Open Centre are given a renewable work permit, valid for six months, if they find work. But the employment licence so issued is only valid for the particular job applied for. Should the asylum seeker find another job, another employment licence has to be obtained through the new employer.

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| **GOOD PRACTICES** | • **Persons in Dublin procedures are provided with reception conditions on par with other asylum seekers, as in Belgium, Poland, Germany and Sweden.**<br><br>*DIASP research basis*: Reception conditions are extremely important for asylum seekers and migrants in Dublin procedures. Decent conditions go a long way toward upholding people's elemental sense of dignity and building trust between them and the government authorities. |
| | • **Asylum seekers living in Malta are issued with a renewable work permit valid for six months.**<br><br>*DIASP research basis:* The ability to work is a fundamental element of human dignity and is sought by many of the people we interviewed. Being able to work contributes to feelings of self-sufficiency and even the level of fairness of procedures. |

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| **BAD PRACTICES** | • **Dublin asylum seekers in France are excluded in practice from vital reception conditions that other asylum seekers are entitled to, such as the daily allowance and accommodation in state-run reception centres; in Italy, though housing is available in principle, in practice there are severe shortages that leave people homeless.**<br><br>*DIASP research basis*: Reception conditions are one of the top three problems experienced by our interviewees. The lack of decent housing is a particular concern for most people, being one of the most important reception conditions a member state can make available. Having a temporary fixed address means everything: a place where a person can receive important documents by post, a place to sleep for the night, a space for privacy and a place to feel safe. Aside from accommodation, interviewees rate 'basic services' as another important condition. These include daily subsistence allowances, assistance with paying for public transport and even having a space to wash one's clothing. These two elements are at the minimum of a dignified reception system. Many of our interviewees' negative perceptions of Dublin rest on the poor reception conditions they have experienced around Europe. |

## VIII. Asylum procedures

### a. Differences/similarities between Dublin cases and people in the normal asylum procedure

### b. Level of access Dublin cases have to asylum procedures

For Dublin asylum seekers in **Sweden**, similarities with the 'normal' asylum procedure lie with the reception conditions and the right to interpretation. The two major differences are that the Dublin procedure is considered only as a formal, and not a substantive, process, and it does not provide for the right to legal assistance.

Dublin asylum seekers in **France** can access asylum procedures if they succeed in contesting the decision to have the Dublin Regulation applied in their case, or if they are not transferred to a responsible EU country within the prescribed timeline. These timelines are often extended by the French authorities to as much as 18 months, due to an extended interpretation of the notion of absconding. At the end of the extension, asylum seekers who finally can apply for asylum are often placed under the accelerated procedure in which the asylum claim has to be submitted within 15 days and the decision on its merit is in theory taken by OFPRA in 15 days.

In **Belgium** the examination of the Dublin aspects of an individual's case precedes the examination of the merits of his asylum claim. The merits of his claim are only examined if the Dublin Unit concludes that Belgium is the responsible member state. When a person is transferred to Belgium, if he had not applied for asylum in the country at an earlier point, he is invited by the Alien's Office for a first hearing concerning his claim. If he had already applied for asylum in Belgium and the procedure was not concluded, then it continues on.

Dublin procedures in **Italy** precede the normal asylum procedure and can last for many months. During this time, the asylum seeker can stay in a state-run reception centre, though available places are rare. Persons transferred to Italy from another EU country are treated according to their particular status. If the returnee's previous asylum claim was rejected, he receives a rejection notice that he can appeal within 30 days (15 days if he is living in a reception centre); if he was already granted protection by the Italian authorities, upon return the police simply take his fingerprints and release him into the community; if his previous asylum application had not finished, it is automatically reactivated upon his return and he receives a temporary stay permit and can benefit from access to basic health care and to accommodation, though places are hard to find.

If an asylum seeker leaves **Poland** prior to the conclusion of his asylum procedure, then it will be discontinued. If he is transferred back to Poland within two years, his previous claim may be reopened. But if he is transferred back after two years have passed he will have to introduce a new asylum application.

Dublin returnees to **Romania** can submit a subsequent asylum application under the same conditions as other asylum seekers. As regards potential transferees to other countries, their asylum procedure is suspended while Dublin procedures are on-going.

The treatment of Dublin returnees to **Malta** within the context of the asylum procedure is, to a large extent, dependent on the legal status they held prior to their departure from the country. Migrants who are beneficiaries of international protection are returned to Malta with no further action to be taken as they have already been through the procedure and their asylum application fully examined. In the case of asylum seekers, in respect of whom a decision had been issued at first-instance but who were pending the outcome of an appeal, return and continue awaiting the outcome of the appeal. However, if during their time away from Malta the Refugee Appeals Board attempted to contact the appellant and this was not possible due to the departure from Malta, then the appeal may be held to have been implicitly withdrawn with the Board declaring the appeal abandoned with no examination on the merits. If an asylum seeker leaves Malta either by escaping from detention or by leaving the country irregularly, the Refugee Commissioner will consider the application for asylum to have been implicitly withdrawn, without a decision being taken on the merits of the application. The decision to accept to examine a returnee's application may take several months to be taken. A number of individuals in this situation waited for months in detention pending an answer on their request prior to their case being reopened, after which they were recognised as refugees. It is pertinent to recall that during these months their legal status rendered them susceptible to removal. Also it is worth noting that at time the Refugee Commissioner unilaterally decides to interview people who are waiting for a decision on their Dublin case, with the end result being that they will then no longer be considered as asylum seekers. This means that the other EU state refuses to accept the person via a Dublin transfer, and consequentially the person must remain in Malta; for people who had hoped to join their families in another EU country, this is a tragic outcome.

Dublin cases in the **United Kingdom** are handled by the Third Country Unit (TCU) within the UKBA. Most are identified as such by matched fingerprints through the EURODAC database. Following confirmation that an applicant falls under the Dublin Regulation, she is given a screening interview where a decision is made to remove the applicant to another member state. Having been identified as a Dublin case, the applicant is referred to the Fast Track Intake Unit, which then decides whether his case is to be handled by the TCU. Such cases follow different procedures than regular asylum cases: third-country cases are not processed as asylum claims and do not have a comparable processing schedule.

## IX. Detention

### a. Situations in which Dublin asylum seekers may be detained, length of detention, safeguards

### b. Availability of alternatives to detention for persons in Dublin procedures

Dublin asylum seekers are not automatically detained in **Sweden**. They are normally offered the possibility to live with family or friends, or are otherwise provided state-paid accommodation. In exceptional circumstances people may be detained if this is decided by a court.

**France** neither automatically detains asylum seekers. Detention is only used when necessary to carry out a transfer. People in the Dublin procedure cannot be detained before a decision on their case is made. After the decision is notified, if the person does not voluntarily transfer himself to another EU member state, then he will be detained in order to be transferred under escort. This detention generally lasts no more than 3-5 days because the transfer will have been organised prior to his arrest. Alternatively, persons in these situations could be placed under house arrest, but this possibility has been hardly used until now.

A person in the Dublin procedure in **Belgium** can be detained for three months: 2 months during the determination of the responsible state (one month if the case is not complicated, but it can be prolonged by another month if the case is complicated; and by another month once the responsible state is known and the person awaits the implementation). If the person refuses a first transfer after three months, then she is brought back to detention and gets the same detention decision as an irregular migrant, which is two months. Each time he refuses a transfer, he is brought back to detention and gets a new detention decision of two months (the counter of the detention duration is put to zero after every attempt). Returnees to Belgium may be detained if it is established that they did not apply for asylum in another EU country. Alternatively, families with children in Dublin procedures are not detained, but are instead housed in community-based accommodation where they receive case management services.

From 2010 to the end of 2012, detention of Dublin asylum seekers was the rule rather than the exception in **Hungary**. Following legislative changes in January 2013, expulsion and deportation can no longer be imposed on asylum seekers during the asylum procedure. Asylum seekers therefore are not detained if they submit their first asylum application as soon as they are apprehended (in practice, before the end of their first interview with the police). Asylum seekers are transferred to the authority responsible for refugee status determination for a preliminary hearing and placed in an OIN open facility. Asylum seekers returned to Hungary under the Dublin Regulation are not to be detained either, unless they already have a closed case in Hungary (closed case means an in-merit negative decision or withdrawal of their application in writing). The “right to remain in the territory” has become the key concept of the current policy: those asylum seekers who have the right to remain are exempted from detention. In the second half of 2013, amendments to the Asylum Act will enter into force providing grounds for detaining asylum seekers.

Dublin asylum seekers are not detained in **Italy**. In **Poland**, Dublin returnees are generally not detained except if there is a risk of absconding. A decision on this is taken by a court and can be appealed within seven days. If detention is ordered, its initial duration is for a maximum of three months, extendable to one year. The detainee can appeal against any decision on prolongation and can repeatedly file motions to the court for his release.

**Germany** may detain Dublin asylum seekers for the entire duration of their Dublin procedure. In cases where the applicant is intercepted near a border and the Federal Police is responsible instead of the immigration office, detention is more or less mandatory. In most federal states, migrants are detained in prisons. Moreover, Dublin detainees may be expected to pay for the cost of their detainment, which can amount to €60-100 per day.

**Romania** does not automatically detain people in Dublin procedures. Detention is only possible to enforce a transfer decision and if there is a risk of absconding. Dublin returnees to Romania might be detained if they had previously asked for asylum in the country, and their procedure had ended. In this situation upon return they are considered as irregular migrants, and subject to detention for up to 30 days, extendable to a maximum of 18 months. Alternatives to detention can be applied to vulnerable persons. A ‘toleration status’ can be granted for people who are being assisted by an NGO.

Dublin asylum seekers in **Malta** are detained if they are apprehended for illegal entry or stay, prior to registering their desire to apply for asylum. Detained Dublin asylum seekers cannot be released from detention on account of their being granted international protection, as long as their asylum procedure is suspended pending an answer on the Dublin procedure. Detention would last until the transfer is made or until the lapse of twelve months in detention as an asylum seeker, whichever is the earliest, unless the Refugee Commissioner decides to process the application or to grant provisional protection to secure release pending a final determination of the application. No asylum seeker is detained or imprisoned simply because he is a Dublin returnee. Migrants who would have left Malta in breach of the Immigration Act, as in the case of those who travelled without the requisite travel documents, using false documents or using documents issued to someone else, are liable to being arraigned in court and imprisoned upon return.

It is common for Dublin asylum seekers to be detained in the **United Kingdom**. Immigration officers or officials acting on behalf of the Secretary of the State Department (SSHD) have the power to detain. They also have the power to grant temporary admission. The lawfulness of any detention may be challenged by way of *habeas corpus* at any time. The applicant may also apply for bail either to a chief immigration officer or an immigration judge after he has been in the UK for seven days. Only unaccompanied minors are not detained, although there are frequent instances of age-disputed cases where a lack of sufficient evidence to prove age results in detention.

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| **GOOD PRACTICES** | • **Dublin asylum seekers are not automatically detained, as in Sweden, France, Italy and Romania (though in Sweden and Romania detention is permissible if there is a risk of absconding, or to enforce a transfer); the Hungarian authorities have for now ceased the detention of asylum seekers and those in Dublin procedures, representing a major shift in a policy that until recently relied on automatic detention.**<br><br>*DIASP research basis*: As a rule, asylum seekers should never be detained, especially for the sole reason they are applying for asylum or that they are in the Dublin procedure. People who are not detained are likely to feel better informed about Dublin, and they are more likely to have opportunities to appeal decisions and seek help from supporters such as lawyers and NGOs.<br>• **In Belgium, families and children in Dublin procedures – who used to be subject to detention – are accommodated in community-based housing where they are linked with a case manager who provides comprehensive services.**<br><br>*Research basis*: Although such families were not interviewed for DIASP, research done recently by JRS[35] shows the positive impacts of this alternative to detention model which are based on the one-to-one comprehensive support provided and the provision of decent reception conditions in a non-restrictive environment. |
| **BAD PRACTICES** | • **People who receive a Dublin transfer decision are regularly detained, as in Belgium, Germany and United Kingdom; in Malta people who enter irregularly are detained, and many of these include people in the Dublin system.**<br><br>*DIASP research basis*: Detention is one of the three biggest problems cited by our interviewees. Past research by JRS shows that Dublin detainees are vulnerable to particularly severe symptoms of anxiety and depression due to the uncertainty of their situations, and the deprivation of their agency, i.e. the ability to choose where one can be and how one can seek protection. In the DIASP sample, many interviewees have been detained in multiple EU countries; in some cases people have experience two, three or four separate detainments prior to having their asylum claims assessed. |

## X. Implementation of Dublin transfers

### a. Methods for carrying out Dublin transfers, the use of force and the extent to which voluntary return is encouraged

### b. Presence of escorts during Dublin transfers and their influence on the transfer process

In **Sweden**, if the asylum seeker agrees to a voluntary transfer, then the logistics are planned with him and the transfer is executed without any force. Individuals are typically escorted to the departure point by staff of the Migration Board; there is

[35] JRS Europe (2011). *From Deprivation to Liberty: Alternatives to detention in Belgium, Germany and the United Kingdom*, available at http://www.jrseurope.org/JRSEuropeFromDeprivationToLiberty20122011.pdf

no physical force used in this escort. If a person refused to voluntarily leave, then they are left to the police who then organise the transfer. In any case, the person has little to no influence on the implementation of the transfer.

Asylum seekers that agree to a voluntary transfer from **France** receive assistance from the state in planning the transfer. If the person does not agree to a voluntary transfer, then he will be accompanied to the departure point by the state authorities. When necessary, asylum seekers may be escorted by the border police and handed over to the authorities of the receiving state.

Transfers in **Belgium** are carried out by the Deportation Unit of the Alien's Office. They book the flights and ensure that the transfer takes place. If the individual agrees to transfer voluntarily, she may remain in the reception centre until his departure, by which she is then accompanied either to the border or to the airport by the staff of the reception centre. If the person is detained, then she may refuse a first transfer attempt. For the second attempt, she is either accompanied to the border by staff of the detention centre or escorted by the federal police to the airplane.

Voluntary transfers in **Hungary** are not prioritised. But if a person chooses to voluntarily transfer, the logistics will be organised by the OIN in cooperation with the transferee; further assistance can be had from the International Organization for Migration. If the person does not choose to voluntarily leave, then the Dublin Unit organises the logistics and informs the person of the exact date and time only a few days prior to the actual transfer, which the police carry out. In cases of transfer by air, the police assist with the boarding of the asylum seeker onto the airplane and, if necessary, the individual travels under escort. In case of overland transfer, the police hand the person directly over to the authorities of the receiving state. Returnees to Hungary are met by staff from the OIN, as well as by police and or medical personnel when necessary.

In **Italy**, the police typically give the asylum seeker a transfer order and a written invitation to appear at the local Questura on a particular date. If the person shows up – which does not often happen – he is forcibly taken to the airport and transferred to the responsible EU country. Voluntary transfers are not foreseen by the authorities; neither is there information available on how forced Dublin transfers are carried out and whether escorts are used.

Transfers from **Poland** are always carried out on commercial flights. The individual is given a *laissez-passer*. Prior to each transfer the border guard check on the asylum seeker to see how he is feeling and whether he needs medical attention. Unaccompanied minors who are transferred are escorted by a guardian appointed by the court. Voluntary transfers are common. In these cases, the asylum seeker is consulted on a convenient date, receives assistance with purchasing the airplane ticket and is transported to the airport. Dublin returnees to Poland are met with the border guards and can be detained for up to 48 hours. When this time period expires the person can be released, they can travel to a reception centre (at their own cost) or they may be detained if requested by the Office for Foreigners. Vulnerable returnees are transferred to reception centres by the border guard.

If **Germany** finds that another EU country is responsible for asylum application, then the BAMF prepares the transfer of the applicant. In most federal states, asylum seekers facing a transfer are only informed about it and handed the Dublin decision on the actual day the transfer is scheduled. The immigration office or Federal Police will book the flight and if necessary escort the applicant to the airport or border for which the transfer has been arranged. Unlike decisions in other asylum procedures, Dublin asylum seekers are not given a period of time to voluntarily depart. Moreover, a transfer automatically leads to the imposition of a re-entry ban for an unlimited duration.

Voluntary transfers are frequently made in **Romania**. Escorts are provided if the migrant opposes the transfer. In this situation, officers of the immigration directorate accompany them.

When a member state accepts responsibility for an asylum seeker, transfer in **Malta** takes place as soon as possible or if the asylum seeker appeals, after the appeal is determined. The authorities note that the asylum seeker is informed in person about the transfer and the date when it will take place. If the asylum seeker assents to the transfer, this is carried out without the presence of police escorts. The transfer is only carried out under escort if the asylum seeker demonstrates an unwillingness to be transferred. In all cases, the asylum seeker is provided with a letter explaining that he is a transferee, which he is expected to present to the Immigration authorities upon arrival in the accepting Member State.

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| **GOOD PRACTICES** | • **Voluntary transfers are offered as a priority over forcible return and escort, as in Sweden, France, Malta, Belgium, Poland and Romania.**<br><br>*DIASP research basis*: According to interviewees, the transfer process deprives them of personal agency. Many view the entire system as working against their interests, an experience which is made worse when there is so little room for personal choice. This is why it is important for member state authorities to allow people who are given a transfer decision to dictate on their own the terms. Assistance from the state authorities is important, for arranging flights, providing information and assuring that needs are met. But if a person is required to transfer to another EU country, one way to assure a fairer procedure is to grant as much space for personal choice during the transfer's implementation.<br>• **Transferees from Poland are given special attention just before to the carrying out of their transfer; prior to this they are consulted with in order to arrive at a transfer date that is best for them.**<br><br>*DIASP research basis*: A Dublin transfer can be a particularly traumatic experience in and of itself, especially when applicants are uncertain of what awaits them in the other EU country, how they can stay in touch with family and so forth. Applicants should thus receive as much positive support as possible throughout the transfer process.<br>• **People in Dublin procedures in Hungary can be notified of their transfer up to one week before it is implemented.**<br>*DIASP research basis*: Advanced notification of a Dublin transfer can help people adequately prepare for what is an inherently stressful part of the Dublin process; also it can grant people with time to challenge a decision and also to seek support from lawyers and NGOs. |
| **BAD PRACTICES** | • **Individuals with a transfer order in Italy are forcibly transferred without any warning whatsoever.**<br><br>• **Though some federal states in Germany have ceased this practice, many other federal states notify Dublin applicants of their transfer only on the day that it is actually scheduled, a practice that has been sharply criticised by civil society groups.**<br><br>*DIASP research basis*: Interviewees singled out the transfer process as the most disruptive element of the Dublin system. Nearly half of interviewees did not even know they could appeal a Dublin decision. Transfer decisions that are not conveyed well in advance will leave applicants further unable to challenge because they simply will not have the time to fully understand its implications and to seek legal help. |

# DIASP conclusions and policy recommendations

***Lessons learned?***

The long awaited *Common European Asylum System* (CEAS) is finally at hand. The European Parliament and the Council of the EU reached a political agreement on the recast Dublin Regulation – first proposed by the European Commission four years ago – by the end of 2012. A formal adoption of the new "Dublin III Regulation" by the European Parliament is expected by June 2013; the Council will follow soon after. This new EU asylum law will join with the newly agreed directives on qualification for protection, reception conditions, asylum procedures and the EURODAC regulation, to establish a CEAS. According to Cecilia Malmström, EU Commissioner for Home Affairs, the political negotiations have been a "tough road".[36] The decision-making process has indeed been difficult and complex. And for asylum seekers who have experienced the full brunt of the Dublin Regulation during the last decade, the difficulties and complexities have been no less daunting.

Although the research for this project took place while the negotiations on the recast Dublin Regulation were on-going, its focus is exclusively on the application of the Dublin "II" Regulation, which as of this writing is still in force. This report cannot influence the EU political negotiations on Dublin III as they are since concluded. But its research findings and conclusions are very relevant for how Dublin III will be implemented in the member states, and monitored by the European Commission and Parliament as well as other EU institutions, intergovernmental and nongovernmental organisations.

The new Dublin III Regulation, as stipulated in the Council's 'first reading' position as of 14 December 2012,[37] contains several major changes that already address many of the issues highlighted in this report, such as:

- A *right to information* (art. 4) obliging member states to inform asylum seekers on elements such as the objectives of Dublin, the criteria for determining responsibility, the chance to conduct a "personal interview" (art. 5) enabling the applicant to bring forth further information and the ability to appeal Dublin decisions.
- The production of a *common leaflet* (art. 4.3) containing such information in a language the applicant understands "or is reasonably supposed to understand".
- *Guarantees for minors* (art. 6) which include the consideration of the minor's "well-being and social development".
- New guidelines on *detention* (art. 28) obliging member states to not "hold a person in detention for the sole reason that he or she is subject to the procedure established in this Regulation", and only insofar as "other less coercive alternative measures cannot be applied effectively."
- Guidelines on *judicial remedies* (art. 27) requiring that applicants have access to an effective remedy either as an appeal or a review, and have the option to suspend their transfer during an appeal of the transfer decision.
- Access to *legal assistance* and *linguistic assistance* (art. 27.5)
- The possibility to *suspend transfers to member states with "systemic flaws" in their asylum procedures and reception conditions* (art. 3.2), opening up the possibility that the determining member state becomes the responsible member state for a person's asylum application.

That these issues are to be addressed by Dublin III is a positive step; but it does not automatically resolve the variety of problems and protection gaps revealed in this report. Member states must now practically improve their Dublin procedures, and generally their asylum systems, in order to make the most out of the changes proposed by EU law. The Commission and Parliament must endeavour to closely monitor how Dublin III is implemented, too. In particular the Commission should stand ready to use the mechanisms available to it to decisively enforce Dublin III in a manner that protects the fundamental rights of asylum seekers.

[36] Statement by EU Commissioner Cecilia Malmström on the endorsement by Coreper of the Asylum Procedures Directive and the EURODAC regulation, http://europa.eu/rapid/press-release_MEMO-13-293_en.htm, accessed on 07/05/2013.

[37] Council of the European Union, position of the Council at first reading with a view to the adoption of 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). ASILE 129, CODEC 2520, OC 601, Inter-institutional file: 2008/0243(COD), Brussels, 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf; accessed on 07/05/2012.

### *Policy recommendations*

Below are a set of recommendations that are based on the three major components parts of this report: 1) the qualitative and quantitative interviews with 257 migrants, 2) the analysis of Dublin based on case law and international human rights standards and 3) the summary of member state 'Dublin practices'. They are proposed with the motivation of achieving the best possible practice standards under the new Dublin III Regulation, and maintaining the highest level of human dignity and fundamental rights for asylum seekers and other migrants who experience this regulation.

| **To the European Commission:** | |
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| **1.** | In view of creating a "common leaflet" of information about Dublin procedures:[38]<br>- It should have clearly worded and precise information on all aspects of the Dublin procedure and what the asylum seeker ought to expect, including all avenues for accessing legal aid, judicial remedies and stages in which the asylum seeker can express the personal factors associated with his situation.<br>- It should be available in a language that the asylum seeker can understand.<br>- Versions should be tested in advance with samples of asylum seekers and NGO practitioners to ensure that the leaflet is as accessible and relevant as possible. |
| **2.** | Closely monitor member states' implementation of the current Dublin Regulation and its recast, "Dublin III", to ensure that asylum seekers' fundamental rights are protected; if necessary, infringement procedures against member states should be taken. |
| **3.** | Produce qualitative and quantitative research based on indicators such as family unity, access to information, use of the discretionary clauses, access to legal aid and detention, to demonstrate the extent and frequency to which they are applied in the implementation of Dublin at the national level. |
| **4.** | Assist member states with the development of alternatives to detention in the Dublin system, by highlight existing practices and applying them together with member states, with the participation of civil society organisations and asylum seekers. |
| **5.** | Assist member states with the development of an assessment tool to aid states' decision-making on the usage of the discretionary clauses. Such an assessment tool should, for example, check for vulnerabilities, mental and physical illnesses and the person's family situation. |
| **6.** | Develop benchmarks to determine whether Dublin transfers to a member state should be temporarily suspended due to systemic flaws in their asylum procedures and reception system. Such benchmarks should include, for example, the availability of housing, the availability of medical care, the quality of asylum procedures and the use and conditions of detention. |

| **To the European Parliament:** | |
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| **6.** | Regularly request information from the Commission and the Council on the implementation of the Dublin III Regulation by member states, analyse existing and new protection gaps and request the Commission to make legislative proposals that would close these gaps. |
| **7.** | Regularly consult relevant actors, most notably civil society organisations that work with Dublin cases, in order to be updated on developments in member states' policies and practices. |
| **8.** | Urge the Commission to make proposals with a view of a further and real harmonisation of protection in the EU, taking into consideration that the Dublin system will never properly work as long as the differences across member states with regard to protection rates, refugee definition, asylum procedures and reception conditions continue to persist. |

[38] As foreseen in article 4.3 of the recast Dublin Regulation, Council first reading position of 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf (not yet formally adopted by the Parliament and Council), "The Commission shall, by means of implementing acts, draw up a common leaflet …"

| To the EU member states: | |
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| **9.** | Thoroughly inform asylum seekers about all aspects of Dublin procedures as early as possible. Information should be provided by way of frequent oral explanation and through the provision of written documentation, in a language the asylum seeker can understand. Such information should cover the entire range of Dublin procedures, including (but not limited to) judicial remedies, rights and obligations, the discretionary clauses, detention and chances to reunite with family; such information should also enable asylum seekers to learn about the asylum systems of EU countries they may be transferred to. Migrants must be regularly notified of the current stage of their Dublin procedure. |
| **10.** | End the automatic detention of asylum seekers in the Dublin system and implement instead a legal presumption against detention, and practical community-based alternatives, as a standard first step. |
| **11.** | Provide for reception conditions that are of an appropriate standard, including (but not limited to) decent housing in the community, a daily subsistence allowance, access to educational activities, medical care for acute and chronic illnesses and basic services to assist asylums seekers with meeting day-to-day needs. |
| **12.** | Provide asylum seekers with access to lawyers and legal aid free of charge; as much as possible ensure that assisting lawyers are competent in asylum and migration law. |
| **13.** | Grant a 'personal interview' to all Dublin asylum seekers at the earliest stage of the procedure, and incorporate into the interview a point when the asylum seeker can express personal factors that might impact his or her case and the Dublin decision. |
| **14.** | Implement the discretionary clauses on the basis of a detailed assessment tool that checks for vulnerabilities, physical and mental illness, family situation and other indicators, including which other EU member states the asylum seeker has travelled from and special connections the asylum seeker may have to a particular EU country; this tool should also take into account the asylum procedures and reception system of the potentially responsible EU member state, in order to suspend a transfer so as to avoid endangering an asylum seeker's fundamental rights and access to protection. |
| **15.** | Allow relevant NGOs and other civil society groups to meet with Dublin asylum seekers; such groups should also be able to join member state authorities in providing information to asylum seekers. |
| **16.** | Keep families together for the duration of Dublin procedures, and uphold the best interests of the child at all times. |
| **17.** | Inform asylum seekers of Dublin decisions well in advance of the actual date and time of its implementation, and thoroughly explain available remedies and how decisions are to be implemented. |

# *DIASP national reports*

- Belgium
- France
- Germany
- Hungary
- Italy
- Malta
- Poland
- Romania
- Sweden
- United Kingdom (Annex I)

# DIASP national report: BELGIUM

**Author: JRS Belgium, www.jrsbelgium.org**

## *INTRODUCTION*

Jesuit Refugee Service Belgium (JRS Belgium) interviewed a total of forty people in the Dublin procedure for this research. All the interviews were conducted by JRS Belgium staff members and volunteers between March and June 2012. Thirty-four interviews took place in five detention centres across Belgium: thirteen in a centre called 127bis, eight in the centre of Vottem (referred to as CIV), eight in centre 127[39], three in the centre of Merksplas (referred to as CIM) and two in the centre of Bruges (referred to as CIB). The 127bis, CIV, CIM and CIB centres mostly host migrants found to be staying irregularly in the country, however rejected asylum seekers and persons in the Dublin procedure are also detained there, while centre 127 (now called Caricole) usually hosts asylum seekers who were denied access to Belgian territory and whose asylum procedures are being processed in the centre itself. Only six interviews were conducted in the Red Cross open reception centre in Gembloux. The high number of interviews in detention centres is due to the fact that the daily work of JRS Belgium is mainly carried out in detention. Perhaps paradoxically, access to these facilities was thus easier and faster than trying to go to the open reception centres.

JRS Belgium thanks the Immigration Office and the Red Cross for granting access to their centres for the purposes of this project. Without this access, the research would have been nearly impossible. For the chapter on Dublin II practices in Belgium, a JRS Belgium staff member had the opportunity to meet the head of the Dublin Unit of the Immigration Office, Mrs Els Van Dorpe, twice. Mrs Van Dorpe willingly accepted to share her knowledge and expertise, for which JRS Belgium is very grateful. E-mails requesting additional information, sent to the Policy Support Unit of the Immigration Office, were answered promptly. For the same chapter, two social workers and an educator (in charge of the recreation and general education of detainees) of centre 127 met JRS Belgium to talk about their experiences on the implementation of Dublin II in Belgium. We thank them too for their time and dedication. JRS Belgium is also grateful for the answers to specific questions of FEDASIL, the Federal Agency for the Reception of Asylum Seekers. Finally, JRS Belgium owes special thanks to those people in the Dublin procedure who agreed to be interviewed about their personal experiences and views. Ultimately they are the ones who are most affected by this procedure and their views should be carefully taken into account in negotiations to amend the Regulation. This research aims to give them a voice.

## *MEMBER STATE PRACTICES*

### 1. Provision of information

1.1. How information is given

The head of the Dublin Unit, Els Van Dorpe, said information is given to asylum seekers **verbally, in written form or both, depending on the specific phase of the Dublin procedure** they are in: registration, the Dublin interview or announcement of the decision.

At the moment of *registration*, which is the first contact between the migrant and the Immigration Office, the asylum seeker receives a brochure about the asylum procedure, which also contains information about the Dublin procedure.

During the *Dublin interview*, the asylum seeker is informed verbally about the Dublin procedure and, if relevant, which country the Belgian Dublin Unit will contact in order to request his return there. This country is determined on the basis of hits in EURODAC (matching fingerprints), the asylum seeker's story and possibly also documents, such as passports or visas. Each story is reconstructed on the basis of a questionnaire. The asylum seeker does not receive a copy of the completed questionnaire but his lawyer may, upon request, gain access to parts of his administrative file at the Immigration Office, including the questionnaire.

[39] After the completion of the interviews, a new centre called Caricole was opened in May 2012, replacing centre 127.

When the Immigration Office announces a *decision*, the asylum seeker is informed both verbally and in written form.

1.2. Type of information

*Information provided by the Aliens' Office*

Upon registration, the asylum seeker receives an information brochure about the asylum procedure. This brochure contains information about asylum and the role of the different official asylum authorities, namely the Immigration Office (OE/DVZ), the Commissariat-General for Refugees and Stateless Persons (CGRA/CGVS), the Council for Foreigners' Disputes (CCE/RVV), the Council of State (CE/RvS), the Federal Agency for the Reception of Asylum Seekers (FEDASIL) and the International Organization for Migration (IOM).

One paragraph of the brochure is dedicated to the Dublin procedure, explaining that an interview will aim primarily to determine whether Belgium is responsible for processing an individual's asylum application and that, if not, the individual will have to go to the country deemed responsible. The brochure outlines the possibility to appeal this decision, preferably with legal support.

The administrative decision that the asylum application will be examined by another country is given to the asylum seeker in two documents, which are explained verbally. One document is called *annex 25 quater* (for those who apply for asylum at the border) or *annex 26 quater* (for those who apply for asylum on the territory), the other one is called *annex 10 bis,* which is a travel certificate. On the occasion of delivering this decision, the asylum seeker is informed that he may return to the other country voluntarily or he may be arrested and detained prior to deportation if the Immigration Office has decided that it was necessary to enforce the transfer. A number of persons are already detained at the moment when they obtain these annexes.

*The Dublin interview*

Two types of questionnaires are used during the Dublin interview, depending on whether it is a take-back hearing or a take-charge hearing. The first is used if the person has already applied for asylum in a country where the Dublin Regulation applies. The second is used when it is the first time the person applies for asylum. Based on the results of this questionnaire, Belgium will either declare itself responsible for the examination of the asylum application or send a take-back or take-charge request to the authorities of another European country in line with the Regulation in order to obtain an agreement and fix a date for the transfer.

The questionnaire is not filled by the asylum seeker but by a civil servant of the Immigration Office and is approved by the signatures of the asylum seeker, the civil servant and the translator. This implies agreement that Belgium will contact another country or countries to make a take-back or take-charge request regarding the asylum seeker, however this does not appear to be specifically stated in the document.

*Information provided by the asylum seeker*

The asylum seeker may present different types of information during the Dublin interview but not all information is checked systematically. In principle, the reasons why a person applies for asylum are not examined. Medical documents are difficult to verify for the Dublin Unit, because there exists a specific procedure for medical problems, which is called the 9ter request. This is a request which can be introduced by any person with health problems who is staying irregularly in the country in order to obtain a residence permit on medical basis. For persons who mention medical problems, but who don't introduce a 9ter request, the Dublin Unit asks sometimes the control doctors of the 9ter Service for advice. For checking other documents, such as tickets of trips or passports, the assistance of CEDOCA (the documentation and research service of the CGRA/CGVS) or the Federal Police is asked.

After the interview, any additional information has to be sent as soon as possible to the Immigration Office. Once the *annex 25 quater* or an *annex 26 quater* is delivered it is too late to give additional information.

1.3. Frequency of information provision

As mentioned above, information is provided to asylum seekers three times during the Dublin procedure: at registration, during the Dublin interview and when the decision is announced. Some practices are slightly different depending on whether the asylum seeker applies for asylum on the territory or at the border; or if he is detained.

For those who apply for asylum on the territory, ideally a first hearing takes place on the same day as the registration, when a registration form is filled and the fingerprints are taken. The registration form includes questions concerning the identity, previous asylum requests, the arrival date to and residence place in Belgium, family presence in Belgium, health, and the chosen language for the interview. Due to a backlog of Dublin cases over the last years, asylum seekers have sometimes gone to the Immigration Office six or seven times only to be given a new date for a first hearing. This backlog is now smaller than it used to be.

The first hearing is never the Dublin interview itself. Along the Dublin procedure the asylum seeker can be summoned repeatedly also for other reasons, for instance to inform him that there is still no answer from the other country. During the procedure, the asylum seeker is housed in a reception centre where he is assisted by a social worker who can help him getting legal assistance.

When a person applies for asylum at the border, the Immigration Police ask him why he wants to file an application; some also ask whether a translator is needed. The police record the asylum application and fill a form which mentions if the person has valid documents, the name of the carrier and the last country where he boarded; take fingerprints and usually send the individual to a detention centre. Asylum seekers who apply for asylum at the border are arrested almost systematically when they don't have the required documents to enter the territory or when the aim of their trip is not clear.

In the detention centre, the asylum seeker receives general information about asylum as well as a brochure from the Immigration Office (*Brochure d'information pour les résidents des centres fermés)*, which is available in about 20 languages and includes an explanation of the Dublin procedure.

Staff members from the Immigration Office then come to the detention centre to interview the asylum seeker or the asylum seeker is brought to the Aliens' Office for the hearing.

A social worker of the detention centre tells the applicant that he is a Dublin case (if this has already been established), what it means, what his rights are, what the procedure is, and what papers he will receive. If the applicant is not willing to leave Belgium, the social worker outlines the possibility to appeal in court, the necessity to have solid grounds to contest a decision and the high odds against a successful outcome. The social worker also encourages the asylum seeker to accept the future decision. He may do so by saying that the conditions are similar in all the countries where the Dublin Regulation is applied.

When it has been established that an asylum seeker is a Dublin case and he is detained in view of the determination of the responsible state, he receives a first official document letting him know that a request was sent to a country and that this country requested to take him back or in charge must answer within a month; when a positive reply or no reply at all is received, the individual is informed via a second official document of the date when a (silent) agreement was established. Another official document (*annex 25 quater* or *annex 26 quater*) sent some days later informs the asylum seeker that Belgium will not handle his application and that his transfer will be implemented as soon as possible. In all three instances, the social worker explains everything with the help of translation if necessary

Finally, the day before the transfer, the asylum seeker gets a copy of his *annex 10 bis*, the travel certificate, which indicates where and when at latest he has to present himself upon arrival.

## 2. Linguistic assistance

The head of the Dublin Unit said that asylum seekers may have access upon request to interpreters and that the state foots the bill. When interpreters are assigned, ethnic and cultural sensitivities are taken into account, for example, when an asylum seeker states that he prefers not to be assisted by a male or a female interpreter or one of a certain ethnicity. The interpreters are paid by the Immigration Office; the Dublin Unit does not have a separate pool of interpreters. Interpreters are said to be available for almost any language.

The information brochure about the asylum procedure is available in 23 languages. Documents belonging to the asylum seeker – if he does not have a translated version – are verbally translated by the interpreter on the spot. Official written decisions are always in French or Dutch, but not always verbally translated.

In detention, interpreters paid by the Immigration Office are available too. However, JRS Belgium has observed that language problems are frequent in detention centres and that its staff members often use co-detainees to help for translation or interpretation.

### 3. Legal assistance, access and quality

If the asylum seeker doesn't yet have a lawyer, he can have a *pro deo* lawyer, who is registered at the Office for Legal Assistance of the Bar (BAJ/BJB) and who receives back-payment from the state for his services.

In detention, the brochure given to detainees includes information about legal aid. For those in reception centres it appears that usually it is the social worker of the reception centre who makes sure the asylum seeker can get in touch with a *pro deo* lawyer. The asylum seeker can also get help from the Office for Legal Assistance of the region where he resides, provided he shows he is an asylum seeker. An asylum seeker can also contact any lawyer who can then request the BAJ/BJB to designate him as a *pro deo* lawyer. *Pro deo* lawyers are not necessarily specialised in this field.

Lawyers are not permitted to be present during the Dublin interview but they have access to part (not all) of their clients' files at the Immigration Office. This prohibition of the presence of a lawyer during a hearing at the Immigration Office was established by article 3 of the Royal Decree of 11 July 2003 about the procedure to be followed by the service of the Immigration Office responsible for the examination of asylum applications.

FEDASIL underlines this, saying that since the asylum seeker does not have the right to be assisted by a lawyer or a person of confidence during any hearing at the Immigration Office, he does not have the right neither to receive legal assistance during the Dublin interview.

### 4. Level of transparency

Information about Dublin practices can be found at the CGRA/CGVS and in the annual report of the Immigration Office. Additional questions can be put to the press service of the Immigration Office.
Public administration entities dealing with asylum seekers and migrants meet with civil society, including JRS Belgium, on a monthly basis. These meetings are organised by CBAR/BCHV, the Belgian committee for support to refugees. Statistical information and information about the Dublin procedure can be found in reports drawn up after these meetings.

Statistics that may be obtained include the number of persons with a *26 quater* (Dublin refusal on the territory with transfer decision) or *25 quater* (Dublin refusal at the border with transfer decision), how many people are in the Dublin procedure, including the number of those detained and the number of families with minor children accommodated in open housing units, which is an alternative to detention.

In the Immigration Office annual report also statistics about Dublin requests to Belgium or to other countries are available. In 2011 1454 Dublin requests were sent to Belgium of which 907 were accepted by Belgium, 422 refused by Belgium and 125 awaiting a decision by Belgium. As to Dublin requests sent by Belgium, 2394 were sent, of which 1638 were accepted by another country, 501 refused by another country and 255 awaiting a decision by another country.

As to the top five of files per nationality and per destination of requests and removals to another Dublin country, the highest figure were requests to Sweden concerning Iraqis.

When we asked for additional figures, such as the number of cases when the sovereignty or humanitarian clauses were applied, or the number of appeals filed by people in the Dublin procedure, we were referred to the Immigration Office annual report and the CCE/RVV or, if the requested figures were not published, we were asked to write to the Director General of the Immigration Office, which we did. Following our request, some additional figures were given, except those concerning the discretionary clauses.

## 5. Use of discretionary clauses (Articles 3 and 15 of the Dublin Regulation)

The head of the Dublin Unit did not give a clear answer when asked how often the discretionary clause is used but said it is mostly applied for family reasons. She added that since the Dublin Regulation only mentions the unity of families with minors, any other exception Belgium makes should be considered as a favour for humanitarian reasons. The discretionary clause is usually applied for family reasons only in cases when most family members of the applicant are already in Belgium.

FEDASIL said application of the clauses depended on the degree of family dependency or the medical condition of the person in question.

Asylum seekers may request that one of the clauses be applied during their hearing at the Immigration Office in order to avoid, for instance, a transfer to a country where they risk to undergo a bad treatment. After the MSS arrest[40], the Immigration Office adapted in December 2011 the questionnaire used during the Dublin interview. It now contains space for possible objections in case of return to a EU member state or a third country and another one about the reception conditions and bad treatment of the asylum seeker which could justify an opposition to a return to the responsible country[41].

## 6. Use of appeals, i.e. judicial remedies

During the phase of determination of the responsible member state, no challenge is possible, because no official decision has yet been taken. At that stage, only interventions by lawyers at the Immigration Office are possible. When a transfer decision has been taken, the asylum seeker can file a non-suspensive appeal at the CCE/RVV within 30 days of announcement of the decision (within 15 days if the person is detained). The appeal has a suspensive effect only if introduced in extreme urgency, which means if deportation is imminent – in practice, this means detention. The appeal should be filed within five days and the CCE/RVV should decide within 72 hours; until then, the asylum seeker cannot be deported.

Detainees can introduce an appeal against their detention at the chambers. This procedure is the same one for Dublin detainees as for persons who are staying illegally on the territory.

## 7. Reception conditions

Asylum seekers in the Dublin procedure have the right to accommodation until they learn the decision of which member state is responsible to assess their claim; as noted above, notice of this decision is nearly always accompanied by an order to leave the territory within seven days. This order can be prolonged if the asylum seeker says he wants to go to the other country voluntarily, in which case he may stay in the accommodation for longer. FEDASIL evicts those asylum seekers in the Dublin procedure who have not agreed to leave the country voluntarily and whose order to leave the territory expires.

Asylum seekers in the Dublin procedure are housed in the same reception centres as other asylum seekers and have the right to housing, food and a daily allowance (it has happened that asylum seekers in the Dublin procedure, like other asylum seekers, didn't find a place in an open centre and ended up on the street.)

However a difference emerges after four months, when those persons whose asylum application is being handled in Belgium may ask for housing in an individual reception centre, instead of staying in a collective reception centre. An asylum seeker in the Dublin procedure first has to be accepted in the Belgian asylum procedure before being eligible for a place in an individual reception structure. He might thus have to wait for longer than four months.

[40] Arrest of 21 January 2011. Condemnation of Belgium by the European court of Human Rights for submitting an afghan asylum seeker to inhuman and degrading treatment by transferring him to Greece within the framework of the Dublin regulation.
[41] From the research « La réception du droit européen de l'asile en droit belge: le Règlement Dublin et la Directive Qualification » (The reception of the European asylum law in Belgian law: the Dublin Regulation and the Qualification Directive), Sylvie Sarolea (dir.), Luc Leboeuf, Emmanuelle Néraudau, Louvain-la-Neuve, 2012, p. 136.

Another difference is that asylum seekers whose application was rejected may ask for an extension of material assistance, while those in the Dublin procedure may not. However, in special situations where human dignity is threatened, an exception may be made and an extension can be granted.

According to FEDASIL, Belgium has transposed the European Reception Conditions Directive almost entirely into Belgian legislation. However the Belgian reception law lacks some provisions of the EU Directive concerning the right to professional training and detention of asylum seekers. Concerning the latter, FEDASIL confirmed that the reception conditions directive is not applied in detention centres.
For the time being, asylum seekers have access to the labour market and to professional training organized by regional employment agencies only if the examination of their asylum application lasts for longer than six months. If the asylum procedure is still on-going after six months, then they get access. For persons in the Dublin procedure, the Immigration Office first has to decide which country is responsible for examining an asylum request. Until they haven't done so, the actual asylum procedure doesn't even start. So even if the Dublin procedure takes more than six months, the asylum seeker won't have access to the labour market for all that time.

In order to meet the specific needs of vulnerable asylum seekers, the agency or NGOs in charge of the reception of asylum seekers has agreements with specialized institutions or organizations. If the asylum seeker is housed in one of them, the agency or NGO will take care that administrative and social follow up are assured from there, as well as material assistance.

## 8. Asylum procedures

The asylum procedure is the same one for 'regular' asylum seekers as for persons who are accepted to the asylum procedure after having gone through the Dublin procedure.

The head of the Dublin Unit said asylum seekers in the Dublin procedure may have access to the Belgian asylum procedure. For example, during the phase of the determination of the responsible state, Belgium may agree to 'take charge' of the application if an individual has never applied for asylum before. Or if someone has applied for asylum in the past and has an on-going procedure in Belgium, for example, at the CCE, Belgium would take charge of his file, so that he may continue with the asylum process.

When Belgium decides to take back a person who went already through the procedure, which was closed with a negative decision, it depends if that person applied already for asylum in the other country or not. If so, he can end up in the asylum procedure if he presents himself at the Immigration Office with new elements for a new asylum application.
When a person is summoned to the Immigration Office in the context of the Dublin procedure, irrespective of whether it is for the first hearing, the Dublin interview or the decision, he has 15 days to turn up. If he does not do so, then his asylum procedure will be considered closed.

## 9. Detention

According to Mrs Van Dorpe, asylum seekers in the Dublin procedure are not automatically detained and most are offered the possibility to leave for the designated country on a voluntary basis but the percentage of those who actually do so is very low at 5%. However, if we see the figures of the Immigration Office for 2011, it appears that 1641 persons were delivered an *annex 26 quater* and 862 persons were detained with an *annex 26 quater.* Were all those detained with such an *annex* offered the possibility to leave on a voluntary basis and subsequently detained if they hadn't done so or have they not been offered this possibility at all? It is also not clear to which extend asylum seekers at the border are offered the possibility to leave for the designated country on a voluntary basis.

Detention is possible during two phases of the Dublin procedure: first when the responsible member state is being determined and then when this state is identified and there is a transfer agreement.

In the first case, the stipulated term is one month, which can be prolonged by a second month. Due to a lack of places in detention, not many – a monthly average of 15 – people are detained in this phase. This number used to be higher in the past. In the second case, again the stipulated term is one month and this time it cannot be prolonged.

Thus persons in the Dublin procedure can be detained for three months in all. However, if a person refuses the first transfer attempt, then his detention can be prolonged for two more months and he will be considered as staying illegally in Belgium.

Ninety-five per cent of the asylum seekers – mostly single men or women – who are detained are transferred. When there is a perceived risk that a person may abscond, if he does not have travel documents or makes it clear that he absolutely does not want to leave, there's a good chance he will be detained.

There is an alternative to the detention of families with minor children: housing units, which are mainly used for families arrested at the border. However not many families in the Dublin procedure have been housed there so far and some absconded. In 2011, nineteen families out of 137 who stayed in these units, were in the Dublin procedure. Ten families were transferred under the Dublin Regulation, while nine absconded.

**10. Implementation of Dublin transfers**

Transfers are carried out by the Service CR (Deportations Unit) of the Immigration Office. This service makes the necessary arrangements, issues a Dublin Travel Certificate (valid for two weeks) and ensures that the transfers take place.

If the asylum seeker is travelling overland, he will be picked up at the centre and brought to the border. If he leaves by plane, then his ticket will be available at the Federal Police at the airport and he will fly without accompaniment. An immigration officer puts him on the flight and gives the captain an envelope with his travel certificate, flight ticket and original ID-documents (provided they are genuine).
The first transfer attempt is without escort. In case of a refusal, the asylum seeker will be brought back to the detention centre until the next attempt. From the second attempt onwards, an escort is organized by the Federal Police in case of a transfer by plane but not for an overland transfer.

In case of a take-back or take-charge by Belgium, if the person applied for asylum in the other country, he will receive an *annex 26* (a document stating that he is an asylum seeker) upon arrival in Belgium, including an appointment at the Immigration Office. Belgium will examine his asylum application if he turns up at the Immigration Office. If he does not appear within 15 days after his arrival in Belgium, he will be considered as having renounced his asylum application and his case will be considered closed. If he did not apply for asylum in the other country, his file will be transferred to Service C ('Clandestines') and detention will be a possible consequence.

**11. Additional information**

No one is sent back to Greece any more. While migrants are returned to all other EU countries, exceptions are made if a person can prove he seriously suffered in the country he is facing return to – usually Malta, Cyprus, Hungary and sometimes also Italy. The Dublin Unit said that in such proven cases, Belgium takes responsibility for and examines the claim.

The CCE/RVV urges an individual assessment of the situation that would be faced by each migrant in the country Belgium wants to send him to. However, due to a lack of staff, the Dublin Unit says this is very difficult.

Mrs Van Dorpe mentions that initially, every half year the Dublin Units of the different EU member states met. During these meetings often concrete cases were discussed. This consultation was perceived very positively. Unfortunately no meetings have been organized anymore since the proposal in 2008 to recast the Dublin Regulation; so each country applies the Regulation now more and more on its own way.

Beyond written or verbal information, educators in centre 127 noticed how important free informal discussion is in some cultures. Consequently, they built in spaces for discussion, sharing of experiences and information, where rumours may be deflated and misleading interpretations of information quashed. In a group, it is possible to share frustrations or fears. The educators also noticed that appropriate information often allows for a better acceptation of one's situation. They have four workshops:

- Asylum and subsidiary protection;
- Asylum procedure in Belgium;
- Mission of the lawyer;
- Dublin Regulation.

These workshops are not planned at fixed intervals, but set up when the need appears.

## *DATA FINDINGS*

### 1. Basic information

All the interviewees were 'transferees', individuals who were either waiting for the determination of the state responsible for their asylum claim (40%) or for their transfer, once the state responsible has been determined (52.5%). Five per cent were challenging their transfer and one man did not know in which phase of the procedure he was. The amount of time interviewees had been in the current phase of the procedure was on average just over two weeks.

None of the interviewees were 'returnees', transferred under the Dublin II Regulation from another European country to Belgium. This does not reflect the reality because in 2011 other 'Dublin countries' accepted 1638 Dublin requests from Belgium while Belgium accepted 907 Dublin requests.[42] These figures show that in the Belgian context there are on average nearly two 'transferees' for one 'returnee'.

The reason why no 'returnees' were interviewed is because most interviews (85%) took place in detention centres where mainly 'transferees' are detained. Returnees are not usually detained so JRS Belgium members did not come across any. The 'transferees' interviewed had been detained for an average of three and a half weeks. Three had been in detention for two months, which is the longest period reported.

The vast majority of the interviewees were single men aged 28 years on average and coming from sub-Saharan Africa (57.5%), usually (8 persons) from Democratic Republic of Congo (DRC). Only one-fifth had been in Belgium before and nearly half had family members in one of the EU member states, mostly Belgium, France or the Netherlands. Three interviewees had partners in Belgium: one of these was detained together with his partner.

All but one spoke more languages than their mother tongue. Most interviewees spoke Lingala (spoken in DRC, Angola and the Central African Republic), Dari or Pashto (both spoken in Afghanistan and Pashto also in Pakistan) as their mother tongue. French and English were the most frequently spoken foreign languages.

### 2. Personal 'Dublin story'

When the interviewees were asked to narrate their personal 'Dublin story', certain common elements emerged repeatedly, especially the number of times they went from one European country to the other.

A 22-year-old Afghan man said: *"In 2007 I left Afghanistan for Iran, then Turkey, Greece, Italy, France and finally, in April 2008, I arrived to the UK where they took my fingerprints for the first time since I had entered the EU. I applied for asylum there because my father was against the Taliban. I got a negative decision after the first interview and in March 2010 the UK sent me back to Afghanistan. My uncle was working with the Taliban and he forced me to join him, but I didn't want to, so in order to keep safe I stayed for 13 months in different places in Afghanistan. In April 2011 I left Afghanistan again for Iran, Turkey, Greece, then I went by lorry to Italy and finally with a small car I ended up in Belgium, where I applied for asylum. Now I am waiting for my interview."*

An Algerian, who claims to be 16, said: *"I arrived in the EU through Greece, where I had been living for about four years on an irregular basis. Other Algerians were helping me there. I left Greece on foot for Montenegro; from there I took a taxi to Albania, then to Serbia and Romania. At the Serbian-Romanian border they arrested me. The border guards forced me to apply for asylum in Romania. I was offered a choice: either to apply for asylum or to be transferred to a detention*

[42] Immigration Office Annual Report 2011, page 220.

*centre. Two months after my asylum interview I received a negative decision. At that time I was living in an open centre in Galati, where the conditions were very bad. There were no beds and no food. We received 10 euros to live on for 15 days. Most people left this centre after a few days to live in a squat, but I stayed. The guards were very corrupt. Sometimes I slept outside and had to beg for something to eat. Racism against foreigners is very bad in Romania. Many of my friends needed to steal to eat. They ended up in prison for six months. The police are often violent. [Tears welled up in his eyes as he talked about his life in Romania.] After I received the negative decision I left Romania by truck and went to Italy, where I took the train to Belgium. There I was arrested in the train to Ostend. They transferred me to the CIM, where I applied immediately for asylum. The Immigration Office sent a transfer request to Romania, which accepted it. I have already refused once to board the aircraft to be transferred to Romania. I will never go back there! I absolutely refuse to return to Romania! I'd rather be returned to Algeria!"*

These stories reveal not only the number of countries some interviewees crossed before applying for asylum, but also the hardships they faced, which sometimes seemed to play a role in their decision to change country.

The second element to emerge most frequently was the number of times the interviewees applied for asylum**.**

A 21-year-old Afghan man said: "*I arrived in the European Union through Greece. Together with 30 other people I took a boat from there to Italy, as an irregular migrant. In Italy the police arrested all of us in a railway station when we tried to board a train. They took our electronic fingerprints. We were offered accommodation in containers where we didn't receive anything to eat. I left this accommodation the same day and for 10 days I lived on the streets and in railway stations. My wallet was stolen. I did not have anything to eat. In the end I left for Belgium where some of my cousins live. In Italy I had not applied for asylum but upon arrival in Belgium I immediately went to the Immigration Office in order to do so. FEDASIL could not provide any accommodation, so they suggested I look for accommodation myself and they would pay the costs. I was unable to do so because I do not speak the [Belgian] languages and do not know how to find accommodation in Belgium, so I slept at a friend's place and in railway stations. After my interview at the Immigration Office I was arrested and brought to the CIB where I was detained for 20 days. From there I was transferred to Italy, where they took me to a reception centre, but there was no place available. They told me to return to that centre in six months, instead I returned to Belgium, where I went to the Immigration Office on several occasions to reapply for asylum, but I was not given an appointment. In the end I was arrested as an irregular migrant at the station in Ostend and transferred to the CIM. In the detention centre I filed another asylum request. My transfer to Italy has been requested, but I cannot return to Italy because my situation there is no better than in Afghanistan.*"

In this case the asylum seeker tried, in vain, to apply for asylum in the country of his choice. The forced transfer didn't prevent him from returning to the country that transferred him.

Finally, the third most frequently mentioned element was the number of times the interviewees said they had been detained.

A 37-year-old Kurdish man from Syria said: *"I fled from Syria to Hungary, where I applied for asylum in February 2009, about three months after I left Syria. I got a negative decision but I don't know why. About one year later, I was detained for five months in a Hungarian prison in Nyírbátor. I paid a lawyer who managed to secure my release and to get me a residence permit. In view of this, I went to the Hungarian authorities, but they contacted the Syrian embassy. A few months later I received an order to leave the territory with an entry ban of three years. I stayed for three months with a Syrian friend in Hungary, and then I took a truck to Turkey, where I stayed for about six months. After that, I came to Belgium, where I applied for asylum in January 2012. Now I am detained again and Belgium says I should go back to Hungary."*

This Syrian man was detained in Hungary. He had probably hoped to "erase" his Dublin traces by leaving the EU territory and returning to another EU member state to start a new asylum procedure from scratch. Instead he faced detention again and a possible transfer to Hungary.

These stories show how determined some asylum seekers are. They cross many countries, risk detention, forced transfers and other forms of hardship, but still continue trying to get the protection they claim to need. A large majority of nearly 85% of the interviewees believed their chances of a positive response to their asylum claim had suffered due to the

transfers between EU countries. The rest believed the transfers had actually improved their chances. The opinion of one interviewee reflects the feeling of many in the Dublin procedure: “You manage to get in but not to get out. You’re stuck, like a mouse.”

### 3. Knowledge of Dublin procedures

When asked what they knew about the Dublin procedure, most of them said Dublin defines the country responsible for their asylum application. Five said that Dublin is about transfers and four the fingerprinting country. Only 10% of the interviewees had an advanced knowledge of the Dublin procedure and mentioned several aspects of it.

Asked how well they felt they were informed about the Dublin procedure, nearly 70% said they knew little or nothing, a high number compared to the 10% who said they felt well informed. The others felt somewhere in-between knowing and not knowing the procedure. Nobody felt he fully understood Dublin.

Most interviewees said they got their information on Dublin first from administrative authorities (42.5%), followed by lawyers and other migrants. Only two persons said they had been informed by NGOs. The vast majority got this information verbally, 10.3% in writing and 20.7% both verbally and written.

About three quarters of those who had been informed about the Dublin Regulation said they had received this information early enough in the process and 70% had understood the information imparted to them. The stated reasons for understanding the information were mainly that they had been given a thorough explanation in a language they knew. On the other hand, when the interviewees did not understand, it was usually because they were informed in a language they didn’t know or because the information was too complicated. Some said they were too stressed and so were incapable of understanding what they were told.

“I know I can be sent back to Italy, but I don’t understand why. I didn’t apply for asylum in Italy,” one interviewee said. This man seemed to have some knowledge of the Dublin procedure but apparently not enough to fully understand why the fact that he had not applied for asylum in Italy was not a ground for him to be allowed to start an asylum procedure in Belgium.

Of those who had asked the state to provide them with information, 44% said they received it. However, 36% never asked. Most of those who asked (65%) said the information wasn’t helpful. The interviewers noticed sometimes that the asylum seekers felt this way because the information was not what they had hoped to hear. There seems to be a link between unpalatable information and information which is not easily understood, because people don’t want to hear it.

### 4. Appeals

More than half (52.5%) of the interviewees said no one had informed them about how to appeal a transfer. The rest had been informed, usually verbally by administrative authorities, followed by lawyers. Nearly one-third of the interviewees tried to appeal the transfer; the rest did not try either because they were still in the determination phase or because there was no prospect of success or support from a lawyer.

Asked whether they had been in touch with a lawyer, 75% of the interviewees responded positively. The number of those who had a state paid lawyer was four times higher than those with a privately paid lawyer. Some 40% found that their lawyer had taken good care of their case, a view formed by the amount of effort taken by the lawyer, his availability and the amount of information he provided.

Still 25% had not been in touch with a lawyer. The reasons why so many had not been in touch with a lawyer were not researched, but we do know that four of them were awaiting the determination of the responsible state, while six the implementation of the transfer decision.

As to whether the interviewees were informed about discretionary clauses, just over half responded negatively (52.8%). As with other information imparted, those who were aware of these clauses cited their sources as the administrative authorities, followed by lawyers or other migrants. About one-third of the informed interviewees tried to argue their case based on one of these clauses, mainly health reasons; none ended up with a positive outcome.

“Yes, they asked me the question, but it was not so clear. I didn’t have the occasion to say much. The Immigration Office didn’t give me much time to express myself and I had the impression they had decided already to send me back to Sweden anyway.” Although he had formally been given the opportunity to express his reasons for wanting to stay in Belgium, this interviewee felt his views didn’t have an important impact on the outcome of his case. Another interviewee echoed this: “Migrants who have been living here know the system a bit. They say that if Belgium decides they want to return you to Switzerland, they will do so, they won’t listen to you if you don’t want to be returned.”

**5. Asylum case**

Less than half of those interviewed (all interviewees were ‘transferees’) said they would apply for asylum or return to Belgium after they were transferred. Most (60.5%) said they didn’t yet know what they would do after their transfer. One said he would end up in prison after his transfer and another said he would harm himself.

58% did not know how to apply for asylum in the country they were being transferred to. Of those who knew (16 persons), 12 said they had applied for asylum there before.

“I apply for asylum in Belgium. I want to work and to be able to live, simply live.” These are the words of a young man from sub-Saharan Africa who had lived for two years on the streets during his asylum procedure in Italy and who was facing a transfer back there. Asked what he would do on his return to Italy, he replied: “Die. Just die. Why would Belgium send me back to Italy? I was there for two years on the street. I had to beg to eat. This is against the human dignity.”

**6. Personal well-being**

The majority of those interviewed (82%) said the Dublin procedure had disturbed their initial plans, defined by more than half as searching for safety, by one-quarter as searching for work, and by the rest as hoping to study or to start a family. More than a third said the procedure was an obstacle in the way of their search for safety. One man said he had a visa for Italy, and had counted on returning there anyway, so for him not much changed. Some said they would go to a different EU country. Very few considered returning to their country of origin.

Some questions about the assistance provided by the authorities, such as housing or work, were irrelevant for most interviewees because they were detained. As to the provision of education, a bit more than half of those who answered the question said they had the opportunity to enjoy some form of education, such as language classes. Medical care, food, clothing and basic services, such as toiletries, transportation and recreational activities, were mostly available and deemed to be of good quality.

80% of those who were detained said they experienced ‘unspecific negative impacts’, 20% said it was their mental health that suffered.

When asked about their connections to Belgium and the country they faced a transfer to, most cited links with Belgium, namely that they spoke one of the national languages, that they had family or at least compatriots there. On the other hand, 44% saw no advantages in the country they were facing a transfer to. A few mentioned language as an advantage, which may be explained by the fact that one-fifth of the interviewees had already been in that country prior to their arrival in Belgium. The presence of family, relatives or friends was mentioned by a few.

To the question whether their families had been impacted by the Dublin procedure, of the 17 interviewees who had family members in the EU, nine replied in the affirmative, with some answers underlining the fact that they were unable to care for their families, because they were detained, and anxiety on the part of relatives.

The overwhelming majority of the interviewees (95%) said they had never tried to abscond from the authorities. Nearly half said it was because they still had hope or trust in the system; others said either that running away was not allowed or that they had no will to do so, or because of their health. Only two people tried to abscond, one because of the unsatisfactory outcome of his case and the other because he felt he was innocent and that he had not applied for asylum in Italy before – his reasoning shows once again that the Dublin Regulation is not easy to understand.

One of those who stayed said: “I don’t want to live in illegality because it makes no sense. I thought: if I always follow the rules, everything will be fine. I trusted the authorities and that’s why I gave them all my documents.”

## 7. Personal views on the Dublin Regulation

65% of the interviewees found the Dublin Regulation to be unfair, unjust or not good. Only one person found the Dublin Regulation to be a good thing. 13% said it should be accepted since it is the law, with most specifying that they were powerless and left with no other choice. 13% said the Dublin Regulation needed to be reviewed while others said they didn’t know anything or else had no opinion about it.

The main view to emerge was that people would like to choose where to apply for asylum but were unable to do so due to the Dublin Regulation. Detention and the duration of the procedure were also mentioned.

One man said: “It is an economical regulation. Sometimes it is cruel. Until now I haven’t met any person who had a positive experience with Dublin.” Another said: “On one hand they might be right, because they [the EU member states] have decided to be unified, but if they want to force someone to go to a country, they should also listen to that person. Dublin is a bit strange. For instance, if Italy agrees to take me back, but I have just left Italy because of problems there and Belgium doesn’t even know about all those problems in detail, this is a bit complicated. You can compare it to insects, you try to remove them, but they come back to you, even more numerous. This is the same when you have problems. I have been analysing a lot and this Dublin system is disturbing me.”

Most (34%) said they wished they had known about the Dublin Regulation before being put through the procedure, with some (13%) saying they would have wanted to know in advance about the hardship they would face. Seven mentioned knowing more about European mentality, culture or rules governing work and documents; the rest didn’t want to know anything that specific in advance.

“I had problems. I didn’t know anything about Europe. I thought it was possible to live in Europe without documents. I would have liked to know this before. We are nomads,” one said. Another confirmed this lack of knowledge when she explained how she ended up in Europe: “I didn’t even know I was going to come to the EU, my father-in-law helped me to get out of the country. I thought I would arrive in a neighbouring country. I learned about Dublin only once I arrived in the EU.”

If they were to give advice to other migrants, most (19%) would tell them to stick to the rules of the Dublin Regulation. Others (16%) would advise them to be informed before travelling to the EU or (14%) to carefully choose which EU country to head for. The difference between one country and another was explicitly mentioned by an asylum seeker who had been detained in Hungary: “Countries like Hungary, Romania, Bulgaria, Greece, Poland, they are all Dublin countries, but the situation is not good there. They cannot be compared to EU countries like Belgium, Germany, France, Switzerland, Italy, Spain, Sweden, Norway, Finland and Denmark. Those are the ‘real’ EU countries.”

Some said they would advise other migrants to have their documents in order before coming and would add that the EU is not a bad place in itself but it does depend where in the EU you end up. Four said they would tell others not to come to the EU. One said, “I wouldn’t advise anybody to live in Italy. He risks putting his life at stake.” Another says, “Europe is not the paradise that I imagined back in my country. You should not neglect what you do have in your country. But if you have to flee war, then you have no choice.”

One said: “You have to be patient, morally, physically and spiritually. You need solid nerves to be able to go through detention and transfer.”

Asked what their biggest problems were, the interviewees mentioned first their fear of returning to another EU country and detention; second, getting asylum or not and the absence of family; and third, their fear of return to their country of origin. Others mentioned medical issues, a lack of stability, accommodation or work.

Nearly 30% said the best solution for their situation would be to have a normal life, while some 25% felt it would be to get refugee or other legal status, 21% said staying in Belgium would be best, while 18% said they wanted to be free. Five per cent they wanted to start or join their family.

“To be someone who lives in peace and who works for the country that helped me,” one said. An elderly widow from sub-Saharan Africa, who tried to join her son in the Netherlands, expressed the same longing: “To live in peace, like before, for these last days of my life.”

## *DATA ANALYSIS*

### A) Understanding and accepting information

A total of 70% of the interviewees said they knew little or nothing about the Dublin procedure and only 35% of those who had asked the state for information found it to be helpful. Questions like “how well are you informed about the Dublin Regulation?” or “was the information provided by the state authorities helpful for your situation?” can only be answered subjectively, because the answers depend on individual interpretations of “good knowledge” or “helpful information”.

The interviewees often took these questions as an opportunity to express their frustration about their own Dublin case and this coloured the way they viewed the information received, for example, saying it was unhelpful because they were going to be transferred anyway. For them, helpful information would have been information in their favour. Even if they might have understood the rules intellectually, it appears to have been hard for some to understand them emotionally, and to accept them.

Others said they knew nothing about Dublin and gave the impression that they didn’t want to know anything, however as the interviews progressed, it turned out that they did know at least something. Interestingly, 70% of the interviewees said they understood the information imparted when they asked the state authorities (only half asked for information). This 70% might seem to contradict the above-mentioned 70% who professed to know little or nothing about Dublin, but seems to confirm the gap between the intellectual understanding and emotional acceptance of information. Information is difficult to understand if one doesn’t accept it.

It is a reality that the Immigration Office has made efforts to provide asylum seekers with information in a language they can understand, and not only verbally. Their information brochure about the asylum procedure, including a chapter about the Dublin Regulation, is available in 23 languages. Whenever necessary and possible, interpreters are called in to help. We may question how come most interviewees remember having received Dublin information only verbally, while the Immigration Office insists it gave an information brochure to every person who applied for asylum. This might be due to the fact that the information about Dublin is only a short chapter in the brochure, which can easily be overlooked, especially if the migrant doesn’t even know initially that the Dublin procedure will be applied in his case. A separate brochure about Dublin, which may be referred to at different stages of the procedure, might help asylum seekers to better absorb useful information.

Even if the majority stated that they had understood the information, there is still 30% who did not understand it. Besides language problems, they said the information was too complicated or they were just too stressed to take it in. These are interesting indications as to why information sometimes fails to sink in. Migrants come from different backgrounds and have varying levels of intellectual capacity. Some might have benefitted from higher education while others may be illiterate. So it is important that information is provided not only in a manner that is technically correct but also in a way that can be understood by the individual. Leaving enough room for questions and remarks during hearings will give officials the opportunity to verify if the information imparted has been actually understood and, if this is not the case, then to explain it in a simplified way. Stress seems to be another important factor when it comes to grasping information. If one is too stressed and preoccupied, then no information, no matter how simply, patiently or repeatedly explained, will be understood. Creating an atmosphere of trust and understanding, insofar as this is possible, might be part of the solution; however announcing “bad” news or information to someone who is unable to hear and grasp it remains a difficult challenge. It is therefore all the more important to provide repeatedly and on different stages of the procedure information of good quality.

**B) Appeals and discretionary clauses**

Over half of the interviewees said they had not been informed about how to appeal a transfer or about the discretionary clauses. In its brochure, the Immigration Office mentions the possibility to appeal a transfer decision as follows: “If you don’t agree with this [transfer] decision, you have 30 days to introduce an annulations appeal at the Council for Foreigners’ Disputes. For this, it is preferable to be assisted by a lawyer.” However, in the brochure, it is not explained how legal aid (a lawyer paid by the state) may be found. According to the Immigration Office, such information is given to asylum seekers once they arrive to the open reception centre. Besides the written information on how to appeal, some questions during the Dublin interview refer to the discretionary clauses: asylum seekers are asked about family members with refugee status in member states or in third countries, family members in Belgium or Europe, their health condition, whether they have any objections if their asylum request is treated in this member state or in a third country determined by the Dublin Regulation, or if there is a specific reason why the person wants to file an asylum application in Belgium. It would seem that asylum seekers are formally informed about the possibility to appeal and at least asked about possible reasons for applying the discretionary clauses. Yet most of them say they have not been informed about these issues. Their reply could be interpreted, once again, as an expression of frustration, but we may also suggest that the information provided by the authorities (most interviewees were informed by the authorities) was not explicit enough. An extra effort by the authorities could be done here.

Should we also question the role and competence of the lawyer? There is no information about the areas of specialization of the lawyers for this sample but about 75% were state-paid and, according to the Immigration Office, such lawyers who tackle Dublin cases are not necessarily specialized in asylum law. This tallies with the experience of JRS Belgium when meeting asylum seekers in the Dublin procedure. Very few lawyers of this sample appear to have informed their client about the possibility of appealing. We don’t know if this omission was due to lack of knowledge, lack of communication or because they did not want to give any false hopes to their client. Anyhow, based on previous experiences, JRS Belgium can confirm that once they know they are handling a ‘Dublin file’, many lawyers assure their client that it is impossible to take any action.

Moreover, six interviewees didn’t have a lawyer at the time of the Dublin interview. Four others, who were in the phase of the determination of the responsible state, also reported not to have been in touch with a lawyer. Unfortunately we don’t know why one fourth of the interviewees did not have a lawyer. Were they not informed about the possibility to get one, didn’t they want any lawyer or did some lawyers themselves said on forehand they wouldn’t be able to undertake any action? Based on their experience in detention centres, JRS Belgium workers have noticed how social assistants are sometimes sceptical about the use of legal assistance for persons in the Dublin procedure. The mere fact that lawyers are not allowed to assist at the time of the Dublin interview does not mean that they wouldn’t be needed until that phase. On the contrary, it is very important that lawyers inform their clients from the very beginning about the modalities, possibilities and consequences of the Dublin procedure.

However, it must be said that most of those who said they had been in touch with a lawyer were satisfied with the care applied to their case and based their opinion on the amount of effort taken or the extent of availability.

Given the figures, we cannot draw any firm conclusions about the reasons why so many interviewees said they were not informed about appeals or discretionary clauses, but at some point they seem to indicate a lack of clear information on these issues.

**C) Uncertain future**

On the one hand, 60% of the interviewees said they hadn’t planned what they would do after they were transferred, and on the other hand, most did not know how to apply for asylum in the country they would be transferred to. Could this uncertainty and lack of information about the asylum procedure be a cause for their reluctance to accept transfer decisions? The interviewees were not asked explicitly if they agreed to be transferred or not but most did mention that their biggest fear was return to another EU country. From previous experience with persons in the Dublin procedure, JRS Belgium knows that most would prefer to stay in Belgium. Other figures seem to confirm this preference since 74% said they had connections to Belgium. Also, the majority (82%) said the Dublin procedure had disturbed their initial plans. Therefor it is extremely important that the Belgian authorities stay closely in touch with the authorities of the country deemed responsible and that a follow up is carefully checked and ensured for each individual, especially for the most vulnerable ones. JRS Europe has developed a tool in this sense, the *Dublin II Country Information Sheets* (to be found on

their website), in order to inform the asylum seekers, lawyers and authorities about different Dublin countries. Also the Dublin Transnational Project[43] created similar brochures. These kinds of tools should be developed by the authorities for all the countries where the Dublin Regulation is applied.

Even though most of the interviewees did not know how to apply for asylum in the country they would be transferred to, a minority did know the procedure. Most of the latter had already applied for asylum earlier in that country so the fact that they were informed was not due to the efforts of the Belgian authorities. This might indicate that information provision on this issue is lacking. However it is worth mentioning that, on the initiative of some educators in centre 127, a special effort is made to inform persons in the Dublin procedure about what it entails and the country they will be transferred to. The educators have noticed that appropriate information often allows for better acceptation of one's situation. Concretely, they have prepared several workshops, which are organised when there is the need, and provide a space for information, discussion and sharing of experiences. Besides the Dublin Regulation workshop, training about a specific country or a language course is sometimes organized for a small group when there are enough detainees in the Dublin procedure linked to the same country. This initiative seems to be quite unique and highly appropriate for the concrete needs of persons in the Dublin procedure. It is an excellent example of a good practice and should be encouraged and emulated.

Another remarkable outcome of this sample is the fact that, when asked about their initial plans prior to entering the Dublin procedure, more than half of the interviewees said they wanted to search for safety. And of the 80% who said the procedure had disturbed their initial plans, most emphasised again that it was an obstacle in their search for safety. Of the few who said they did have new plans, most mentioned once more that they were going to search for safety. Seeking a safe place thus appears to be one of the interviewees' main concerns.

The asylum seekers' uncertainty as to whether safety will ultimately be found, combined with insufficient and unclear information about the procedures of the country they will be transferred to, may pose obstacles in the way of trusting the authorities. Official information provided by the transferring country about the asylum procedures, reception conditions and health systems of other EU member states, often does not correspond with asylum seekers' personal experiences. If the Belgian authorities assure asylum seekers that there are decent reception conditions in Italy, when some might have left Italy precisely because these conditions were so poor, it will be difficult for them to trust the information they receive and to accept transfers.

Although lack of trust might well be a reason for not accepting transfer decisions, the figures show that the vast majority (95%) of the interviewees never tried to abscond from the authorities, mainly because they still had hope or trust in the system. Obviously we don't know about those who did abscond because it is nearly impossible to trace them. But based on the figures we do have, we observe that on the one hand the interviewees did not abscond because they still trusted the system to some extent, and on the other hand they were very suspicious of their transfer because they didn't know if they would succeed in reaching a safe place.

Finally, the fact that many asylum seekers in the Dublin procedure are detained does not help to enhance their trust in the authorities. Detention rather augments their resistance and frustration. 80% of the detained interviewees said detention had a negative impact, 20% specified it was negative for their mental health. However, when asked about education, medical care, food, clothing and basic services, most said these services were available and of good quality.

**D) "The Dublin Regulation is unfair"**

"An unfair regulation that has to be accepted since one is powerless against this law" appeared to be the general perception of the interviewees about the Dublin procedure. They found it unfair in most cases because they would have liked to choose where to apply for asylum. Due to the Dublin Regulation, this is not possible. Prior to entering the Dublin procedure, most would have liked to know that the Regulation existed, which they did not. If one does not know the rules beforehand, any law will most likely be perceived as unfair, hence the importance of information. The fact that most interviewees would advise other migrants to stick to the Dublin rules and to be well informed beforehand underlines this. The interviewees are well aware of the complex consequences in case of non-compliance with the rules. Unfortunately this awareness came too late for them since they have had to face many difficulties they could have avoided had they been better informed. Some even said they would have liked to know beforehand about the hardships they risked facing.

[43] http://www.dublin-project.eu/

If asylum seekers said they wanted to choose in which country to apply for asylum, this is often not possible due to the general Dublin principle, which is to avoid asylum seekers to file their application in more than one country. Because it is sometimes very hard for them to simply obtain a visa for the country of their choice or to reach that country without being fingerprinted under the way, some go from one country to the other. It is thus all the more important that the risk of entering a Dublin procedure is widely known by all asylum seekers and people assisting them. Another kind of system where, for instance, asylum seekers have first choice of country, would prevent some of the current pernicious effects, such as forced transfers, of the Regulation. We could think of a system which is more based on solidarity between countries and on the choice of the asylum seekers, in function of criteria based on connections they have with certain countries, such as family presence or language knowledge.

The realisation that fear of return to another EU country and detention are the two biggest problems highlighted by most of the interviewees, and that all they long for is a normal life or a legal status, prompts us to reflect on how states' legal obligations may be better aligned to the needs of the asylum seekers.

## *CONCLUSIONS AND RECOMMENDATIONS*

### 1. Review of the Dublin Regulation

There is a big gap between the expectations of the asylum seekers and the aim of the Dublin Regulation. The first ones are looking for safety because they couldn't find it in their own countries; on the other hand, the European objective is to have, inside the EU, the best policy for avoiding that persons apply for asylum in more than one European country. At the moment when the asylum seeker thinks it has become possible to live in a safe place, he is sent to another state to lodge his asylum request. However, the determination of the responsible state supposes that the Member States are equal, which is not the case for the following reasons: firstly, since the application of the Regulation we have seen that the countries at the external borders of the EU are more burdened in terms of the number of asylum seekers; secondly, we all know that the European countries themselves have different policies towards foreigners, because certain countries have, for instance, a recognition rate for asylum seekers which is much higher than others.

In the past (before 2008), Member States met regularly to reflect about the practical application of asylum requests in their respective countries. Those meetings were an opportunity for the authorities to have an overlook of the difficulties caused by this European Regulation. These kinds of reflections could be very useful in view of a complete review of the Dublin Regulation.

- **Recommendation to the EU**
  *To review the principle itself of the Dublin Regulation which is based on two wrong presumptions: the equivalency of the number of asylum seekers entering the different countries, and the equality between those countries in terms of the treatment of asylum requests and general reception conditions*

- **Recommendation to other EU member states**
  *To start again the reflection meetings between the Dublin Units of the different countries about possible improvements of the Regulation, including the burden sharing of the asylum requests on a European level.*

### 2. Detention

Detention is the deprivation of a fundamental right, which is the individual liberty. Even for those who committed infractions, imprisonment is nowadays increasingly seen as a measure which brings along more problems than solutions. This is *a fortiori* the case for foreigners who committed no other infraction than to be in a country where they don't have the right to be. Today, we know better than ever the appalling impacts of the deprivation of liberty of foreigners who are kept in detention centres. This has been researched in several reports, such as *Becoming Vulnerable in Detention* by JRS Europe in 2010. Especially asylum seekers, who have often gone already through a lot of hardship, should not be placed in detention centres. The same applies even more for persons in the Dublin procedure, for it is not a crime to lodge one's asylum request in country A, whereas the European Union has foreseen that the request should be treated in country B. Anyway, the legal motivation of such a detention has to be accurately specified in the light of the fundamental rights. The

abolition of detention could also be an important element in order to raise the trust of the asylum seekers and the acceptance of decisions.

- **Recommendation to the Federal Parliament**
  *To reform the law so that the detention of asylum seekers, in particular of persons in the Dublin procedure, is forbidden.*

- **Recommendation to the Immigration Office**
  *Pending a new law on the prohibition of the detention of asylum seekers, to use detention only as an exception, a measure of last resort, in the light of the fundamental rights.*

### 3. Legal assistance

All asylum seekers should know the rules of the Dublin Regulation before the Dublin interview takes place. They have to be aware of the consequences of the information they provide during the hearings: the reasons for applying for asylum in Belgium rather than elsewhere, visa, family links, health, fingerprints, etc. Lawyers are the best people to give them such information.

Very few lawyers informed their client about the issues of discretionary clauses and appeals. The reason for this has not been researched, but in the past, JRS Belgium has observed discouragement from the side of lawyers whenever their client happened to enter the Dublin procedure. A worrying percentage of 25% of the interviewees didn't even have a lawyer. If the Immigration Office mentions in its brochure that it is better to be assisted by a lawyer when appealing a transfer decision, then those 25% have lost the battle beforehand.

- **Recommendations to Fedasil, the Immigration Office and the bar association**
  *A) To ensure that all asylum seekers have the opportunity to consult a lawyer already before the Dublin hearing (through a system of legal permanency).*
  *B) To give social services specialized trainings so that they are better prepared to provide information about the Dublin Regulation, the asylum procedures in other Dublin countries, possible appeals, etc.*

- **Recommendations to the Secretary of State for Migration and Asylum**
  *To review article 3 of the Royal Decree of 11 July 2003 about the procedure to be followed by the service of the Immigration Office responsible for the examination of asylum applications, in order to allow the presence of a lawyer during the Dublin hearing at the Immigration Office.*

- **Recommendation to the bars (Offices for Legal Assistance)**
  *To train lawyers specifically about possible actions in the Dublin procedure*.

### 4. Information

Many interviewees feel powerless against the Dublin Regulation because they cannot choose the country in which to apply for asylum. Most had never even heard about it before. Hence the importance of informing them about the Dublin procedure and helping them understand its basic principle.

As the figures show, the interviewees generally understand the information about the Dublin procedure provided by the state authorities. However additional efforts, such as creating a separate user-friendly Dublin brochure, could be an improvement. The fact that most interviewees said they had not been informed neither about appeals nor about discretionary clauses, while the authorities appear to inform asylum seekers systematically, might indicate that the provided information is not clear enough.

If the information was not understood, it was mainly because it was too complicated or because the receiver of the information was too stressed and thus not capable to grasp what he was being told. It is therefore important that the

authorities check to see if the information imparted has actually been understood and that they create – as much as possible – an atmosphere of trust and understanding to reduce the stress and frustration level of the migrant.

The complex relationship between the intellectual understanding and emotional acceptance of information might account for the significant number of people who initially professed to know nothing or very little about Dublin but who turned out in reality to know quite a few aspects of the procedure.

Most interviewees didn't have a plan about what they would do after their transfer nor did they have information about how to apply for asylum in the third country. Their biggest fear was precisely to return to another Dublin country. All these factors might indicate why so many refuse to accept transfers. If enough information about the asylum procedure in the other Dublin country is given, as happens in the Caricole centre, and if there are reassurances about individual safety, in that risks of inhuman and degrading treatment are checked individually, trust in the authorities could augment.

- **Recommendations to the Immigration Office**
  - *A) To provide sufficient and understandable information to persons who have to undergo the Dublin Regulation.*
  - *B) To avoid the use of other migrants to help interpreting or translating whenever information about the Dublin procedure is provided, and instead use official interpreters.*
  - *C) To create a separate user-friendly brochure about the Dublin procedure, which could be referred to at different stages of the procedure. To add in that brochure complete information about the discretionary and humanitarian clauses and the provisions about legal assistance.*
  - *D) To indicate in the decision itself (annex 25 quater or 26 quater) not only the possibility to appeal the decision, but also the legal provisions about legal assistance.*

- **Recommendations to the Immigration Office and Fedasil**
  - *A) To check from the very beginning of a hearing at the Immigration Office if the provided information has been understood and to answer any asylum seekers' questions about it.*
  - *B) To organize regularly workshops about the Dublin procedure.*
  - *C) To provide accurate information about the country of transfer and the asylum procedure there, in such a way that the persons could be able to make projects for their future.*
  - *D) To develop the country information sheets started by NGOs and extend their number, so that sheets are available for all the Dublin countries.*

**5. Fairness in procedures**

Because of the high number of Dublin files, it has happened in the past that asylum seekers were obliged to present themselves several times to the Immigration Office only to be given a new date for a first hearing, which delays the asylum procedure, and, by consequence, increases the uncertainty for the foreigners about their future.

We could think of improvements which would make the Regulation to be more in line with the needs of the asylum seekers.

- ***Recommendation to the Immigration Office***
  - *A) To continue reducing the backlog of Dublin files.*
  - *B) To allow asylum seekers to clarify their fears and objections to transfers.*
  - *C) To give asylum seekers systematically a copy of the completed questionnaire of the Dublin interview.*
  - *D) To check the risks for asylum seekers in case of a transfer individually (including indecent accommodation, medical negligence, bad treatment, etc.) and to precise in the transfer decision the reasons why the fears expressed by the asylum seekers could be neglected.*
  - *E) To provide special care for vulnerable persons to be transferred.*
  - *F) To reassure that transferred persons to a Dublin country with a doubtful reputation are followed up in the other country by contacting the Dublin Unit or other asylum instances there.*

**6. Transparency**

The interests of the asylum seekers and of the European states receiving them are obviously not the same ones, but these states are all democracies, so in order to ensure that the weakest party is most protected, transparency in the administration is a key point. In this sense, the contact meetings led by the CBAR/BCHV between governmental offices and NGOs are very important. We would like to go a step further and receive there more information about the application of the Dublin Regulation, such as the use by the Belgian authorities of the discretionary clauses.

- ***Recommendation to the Immigration Office***
  *A) To publish more information (especially during the contact meetings with NGOs, organized by the CBAR/BCHV) about the application of the Dublin Regulation and especially the use of discretionary and humanitarian clauses during the Dublin procedure.*

# DIASP national report: FRANCE

**Author: Forum réfugiés-Cosi, www.forumrefugies.org**

## *INTRODUCTION*

In the course of this study, *Forum réfugiés-Cosi* interviewed 27 asylum seekers in various stages of the Dublin II Regulation procedure. Fourteen were awaiting a decision on their potential transfer and five had challenged the decision. For eight interviewees, the transfer had been ordered and was pending implementation.

The interviews were conducted by a member of *Forum réfugiés-Cosi* in two locations (at the orientation platforms[44] in Lyon and in Nice) in France, between February and June 2012. No interviews were carried out in detention centres.[45] In addition to the interviews with the asylum seekers, the findings in this survey are the outcomes of interviews with lawyers specialised in asylum law, with staff of *Forum réfugiés-Cosi* working in detention centres and with the Dublin Unit in Nice and Paris. A review of the literature has also fed the findings in the section on the implementation of the regulation.

*Forum réfugiés-Cosi* wishes to express its thanks to the asylum seekers who have kindly agreed to be interviewed and to all the persons who have helped in the drafting process.

## *MEMBER STATE PRACTICES*

*Caveat*: This review of practices is mostly based on observations in the region of Lyon. In France, the prefectures are the immediate administrative proxies of asylum law. They are responsible for issuing the temporary permit to remain (Autorisation Provisoire de Séjour) and are therefore the authority in charge of determining the responsible Member State under the Dublin II regulation.[46] As a result, practices related to the implementation of the Dublin II Regulation tend to vary from one department to the other.

### 1. Provision of information

In accordance with section 1.2.3 of the circular of 1 April 2011[47], the prefectures must inform the asylum seeker, in a language that one can assume he understands, of the whole procedure concerning the application of the Dublin II Regulation – inter alia, its impact on his asylum application, response deadlines, transfer deadlines and possible extensions of time limits under the Dublin II Regulation.

In fact, practices vary widely from one prefecture to the other. Asylum seekers under the Dublin II procedure are issued a "Dublin notice". This document consists of one photograph, the asylum seeker's personal data (first name, last name, date of birth, nationality) and the dates on which he must present himself at the prefecture. Besides, this document informs the asylum seeker about whether he has been placed under a "take charge" or "take back" procedure. In general, the prefectures regularly summon the asylum seekers placed under the Dublin procedure to get information about its progress. These appointments take place about every 15 days in Lyon. In Nice, asylum seekers under the Dublin Regulation are summoned every month. In Paris, Dublinees are not summoned regularly and receive the response about the identification of the responsible state by post.

The level of completeness of the information provided also varies from one prefecture to the other. Information is not necessarily provided about the identified take-back country or about the criteria leading to this decision. The asylum

[44] In France, these orientation platforms can have several missions; they can receive asylum seekers to provide administrative, legal and social support and can also handle requests for housing and postal address (*domiciliation*).
[45] In general asylum seekers under the Dublin II procedure in France are placed in detention only a few days before the actual transfer is enforced. This short period had to be used in priority to support asylum seekers in their appeal process rather than spending time on the DIASP interviews.
[46] In parallel, a "Dublin unit" in the division for asylum at the border and permit to remain within the Ministry of Interior is tasked to centralise all requests sent to France by other Member States.
[47] Circular on the implementation of the Dublin II Regulation, 1 April 2011 (NOR IOCL1107084C)

seeker is not necessarily informed about the date when the country supposedly responsible for his application was contacted and sometimes does not know the date of its response either. This information can be obtained by looking at the asylum seeker's official file. In the Prefecture of Rhône, Dublinees are formally informed about these dates through the notification of readmission order letter delivered to them once the decision to "take charge" or "take back" has been made. In Lyon, this decision is generally explained and indicates the deadline until when the transfer must take place.

Finally, the presence of an interpreter varies greatly when information on the Dublin procedure is given in prefectures. In Nice, an interpreter is called to translate written information when the applicant does not speak French.

### 2. Linguistic assistance

During their appointment at the prefecture to apply for a permit to remain on the grounds of their asylum application, claimants are interviewed according to a form (Dublin form or residence permit form). During this appointment, questions are asked about civil status, family of the applicant, modalities of his entry into French territory, countries through which he travelled and potential prior asylum applications. This is when the applicants may mention the presence of family members residing in another member state. These questions are asked by officers at the desks of the prefecture.

All asylum seekers are affected by this process. The form is written in French and in English and must be filled in French. The presence of an interpreter during this appointment varies; it is often a compatriot who provides translation in the applicant's language.

Asylum seekers are sometimes provided with a leaflet (available in five different languages in Lyon), which includes general information about the asylum application and some very limited information about the Dublin II procedure (inter alia, the states covered by the Regulation and the criteria for the identification of another state that might be responsible). In Lyon, the "Dublin notice" is translated into most of the languages usually spoken by the majority of asylum seekers or at least in one understandable language (often in English). However, this notice does not exist in Lingala, for instance, even though Congolese asylum seekers are often placed under the Dublin II procedure.

Finally, the notification of readmission order is not always translated into an "understandable language" but the prefecture has the obligation to provide some translation (by finding someone who can translate in the prefecture or by reaching a translator by phone). The French authorities have recently changed their methods to avoid seeing their readmission order quashed on the grounds that the asylum seekers had not been informed in a language they understood. Certain prefectures require that the asylum seeker bring an interpreter along, even for the handing over of the transfer decision (for example, the Prefecture of Basse-Normandie). This practice was found to be irregular by the Council of State in a decision on 13 February 2012.[48]

### 3. Legal assistance, access and quality

Apart from cases where applicants under a Dublin procedure had access to housing thanks to the emergency reception scheme, Dublinees only have access to the legal assistance provided by the NGO-led orientation platforms. For instance, *Forum réfugiés-Cosi* is able to offer information through its "Dublin on-duty advice office", available half a day every two weeks, to assess the asylum seeker's legal situation and recommend a lawyer if necessary. This is an important support for asylum seekers under the Dublin procedure but is constrained by its limited scope.

In France, people with low income can apply for a "jurisdictional allowance" through which the State pays for lawyers' fees and costs of legal proceedings. Access to legal aid can be obtained after the notification for transfer to the responsible member state has been issued. Applicants must request this allowance at the office for legal aid of the relevant administrative court (*Tribunal administratif*). This office can ask for further information and a short account of the legal and de facto reasons why the asylum seeker thinks the contested decision is unfounded and may lead to a violation of his fundamental rights. Access to legal aid is more difficult for applicants under the Dublin procedure (this is due to their particular administrative status – non-admitted to residence) and is not granted if their arguments are deemed unconvincing.

[48] Council of State, 13 February 2012, n° 356458

Finally, when lodging an emergency "*référé*" to the administrative court, asylum seekers can request the assistance of the lawyer 'on call' (who will be paid retroactively through the jurisdictional allowance system).

## 4. Level of transparency

Statistical data on the implementation of the Dublin II Regulation is not officially published by the French authorities but information may be delivered on request. Some information on the flows of Dublin Regulation transfers (incoming/outgoing) with other member states is available in the report to parliament of the secretariat general of the immigration control committee.[49]

## 5. Use of discretionary clauses (articles 3 and 15 of the Regulation)

In France, the sovereignty clause takes on a special aspect because it is founded on Article 53-1 of the Constitution in addition to Article 3.2 of the Regulation: "*The Republic may enter into agreements with European States which are bound by undertakings identical with its own in matters of asylum and the protection of human rights and fundamental freedoms, for the purpose of determining their respective jurisdiction as regards requests for asylum submitted to them. However, even if the request does not fall within their jurisdiction under the terms of such agreements, the authorities of the Republic shall remain empowered to grant asylum to any foreigner who is persecuted for his action in pursuit of freedom or who seeks the protection of France on other grounds.*"

Legally, the administrative authorities must determine whether to use the sovereignty and humanitarian clauses before implementing any readmission procedure.[50] The implementation of the right to seek asylum implies the possibility for the French authorities to take responsibility for examining the asylum application, even though international or EU law may allow them to entrust another state with this determination. The demand for an individual examination of each claim is also enshrined in the circular of 1 April 2011, which stresses that the implementation of the Regulation should not be automatic and that the prefecture may decide not to resort to it for humanitarian reasons.

It is difficult to know how the sovereignty clause is applied in France partly because, when an informal appeal (*recours gracieux*) is accepted, the prefecture simply allows the asylum seeker to lodge a regular application for asylum, without having to explain why and without mentioning whether it is under one clause or the other. There are no statistics publicly available. The effective implementation of these two clauses is scarce and uneven throughout the territory. In Paris, it seems that the humanitarian clause has been used for asylum seekers who were deemed non transportable and for whom no transfer could be carried out. In contrast for instance, in the prefecture of Nice, an asylum seeker who was ill was put under the Dublin Regulation, with a transfer to Poland, while his wife applied for asylum in France.

When French authorities do resort to the discretionary clauses, it is usually to reunite families or to protect people with serious health problems. In Lyon, the humanitarian clause was referred to by the prefecture to get around the restrictive concept of family in some rare situations. For example, the twin brother of an asylum seeker was provided with a temporary permit to stay.

The use of the humanitarian clause on the basis of medical reasons is pretty rare. The possibility to access healthcare in other EU member states is assessed in a strict manner: as long as the asylum seeker is transferred to an EU country, it is presumed he is bound to find the required treatment.

*Transfer suspension*

As a consequence of the judgment MSS/v. Belgium and Greece[51], the Ministry of Interior asked the prefectures to stop, on a temporary basis and awaiting further instructions, transfers towards Greece, in a telegram dated 14 March 2011. Consequently, prefectures must apply the modalities of article 3.2 of the Dublin Regulation and therefore declare France responsible for examining the application for asylum. This is currently implemented by the prefectures.

[49] http://www.immigration.interieur.gouv.fr/Info-ressources/Actualites/L-actu-immigration/Les-chiffres-de-la-politique-de-l-immigration-et-de-l-integration-Rapport-au-Parlement

[50] See jurisprudence of the administrative court of appeal of Versailles, 19 June 2012, n°11VE00263

[51] Application no. 30696/09, European Court of Human Rights, 21 January 2011

## 6. Use of appeals, i.e. judicial remedies

The Dublin Regulation pertains primarily to administrative law in France and not directly to asylum law.
As soon as the asylum seeker is reported as being under the Dublin Regulation, he has the opportunity to send his comments to the prefecture within 15 days.

As a Dublin "notice" is not binding, it cannot be challenged before the administrative court. Throughout the process to determine the responsible state, no legal recourse is available. The only possibility is to lodge an informal appeal to the prefecture against the decision of assignation under the Dublin Regulation.

Two types of appeals are available:
- *Informal appeals*: Applicants receive a written reasoned response within a four-month timeframe. These appeals have worked when it was possible to identify the presence of family members who reside in France legally or when proof of a three-month stay outside the European Union can be provided. In facts, these appeals tend to work for situations in which a Dublin procedure shouldn't have been put in place at all.
- *Court appeals*: If the asylum seeker does not agree with the transfer decision, he may file a regular administrative appeal against it within two months. In such cases, the jurisdictional allowance may be granted but the appeal does not carry a suspensive effect.

In addition, the appeal for interim measures in order to suspend an administrative decision (*référé suspension*) (L.521-1 of the code of administrative justice) enables the suspension of a transfer order in the event of an emergency and where there is serious doubt about the legality of the decision. According to French case law, a situation of emergency is generally granted when the claimant is actually detained in an administrative detention centre. Although processed relatively rapidly, appeals for interim measures do not have a suspensive effect during the examination of the claim and getting access to a lawyer in detention centres can be very difficult. Asylum seekers are usually arrested and placed in administrative detention centres in late afternoon for a departure scheduled on the next day. Only people whose case was previously handled by a lawyer can expect to have swift access to legal advice.

## 7. Reception conditions

Dublinees are excluded from some of the reception benefits granted to "regular" asylum seekers.

*Allowance*
At the time of the interviews, as well as at the time of writing, asylum seekers placed under the Dublin Regulation were still deprived in practice from the main social aid usually granted to other asylum seekers. They were not formally entitled to the temporary waiting allowance (*allocation temporaire d'attente* (ATA): 11.01 euros per day for other asylum seekers).

This situation has been brought to the attention of the European Court of Justice (ECJ) through a preliminary ruling filed by the Council of State in the case Cimade-Gisti C-179/11, in order to seek clarification on the obligations resulting from the Reception Directive (2003/9) concerning asylum seekers under the Dublin Regulation.[52] The Court ruled that asylum seekers under the Dublin procedure must have access to decent reception conditions. This means having a temporary waiting allowance like other asylum seekers, until the transfer to the responsible member state actually takes place. However, this decision is not yet fully applied in France. Asylum seekers under the Dublin procedure may apply for the temporary allowance at the "*Pole Emploi*" office and the payment will be ordered but only for those cases in the French courts and by arguing the implementation of the ECJ jurisprudence.

*Health*
Dublinees are eligible for the "*Aide Médicale d'Etat*" (AME – medical state aid) after having been in France for three months[53]. This cover provides free medical care to third-country nationals in accordance with the regulations stipulated in

[52] Court judgment (Fourth Chamber) of 27 September 2012 (reference for a preliminary ruling from the Conseil d'Etat - France) - CIMADE, Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration (Case C-179/11)
[53] Asylum seekers in the regular procedure, like any other third-country nationals with a certain income level, have access to healthcare thanks to the universal healthcare insurance (CMU) system but they are exempted from the 3 months residence requirement applied to

the Family and Social Action Code. Pursuant to Article L 251-1 of the Family and Social Action Code, any third-country national who has been residing continuously in France for more than three months, even if he has been staying on the territory without a permit, is entitled to medical care in public hospitals.

While waiting for this social protection, Dublinees may go to hospitals where they can find healthcare access points – "*Permanences d'Accès Aux Soins de Santé*" (PASS). Only vulnerable people (sick people and children) under the Dublin procedure may request to benefit from the AME as soon as they arrive.

Since March 2011, the AME had become a payoff allowance and migrants had to pay an annual fee of 30€ (causing serious difficulties as these asylum seekers do not have any social aid and are not allowed to work). This tax was revoked by parliament on 19 July 2012.

*Housing*

Since they are not granted a temporary permit to remain, asylum seekers under a Dublin II procedure are not entitled to a place in the national receptions scheme for asylum seekers (regular reception centres) as per French law. However, in a decision of 20 October 2009, the Council of State ruled that asylum seekers placed under a Dublin "notice" are covered by the Reception Directive and therefore the prefectural authorities have to ensure that their basic needs are met, at the very least. The necessity to provide asylum seekers under the Dublin II procedure with accommodation was confirmed by the circular of 24 May 2011 on the management of emergency accommodation for asylum seekers. Indeed, it is clearly stated that asylum seekers under a Dublin procedure should benefit from the asylum seekers' emergency accommodation system. According to this circular, accommodation is only available up to the date of notification of the Dublin transfer order, or for one more month by special dispensation. Nonetheless, one should note that this text is not legally binding and this right has still not been transcribed into French law. Asylum seekers under the Dublin procedure can claim the application of the Reception Directive before a court if they do not have a place in an emergency centre for asylum seekers.

In reality, the majority of Dublinees are living in emergency night shelters or in the street. Only those who are vulnerable, such as families or sick people, may get accommodation in some asylum-seeker centres (transit centre or asylum-hotel). The DNA (national reception scheme) in France is overwhelmed. *Forum réfugiés-Cosi* has opened a temporary accommodation system, called "SAS", where Dublinees may get housing. In 2012, *Forum réfugiés-Cosi* delivered social and legal accompaniment to several Dublinees: Eighty-three were accommodated in the SAS centre, 114 were housed for some time in specific 'hotel-like' facilities and four stayed in the transit centre.

*Unaccompanied minors*

The Dublin procedure is applied to all asylum seekers aged over 14 years without exception (as per the Regulation). The official policy of the Dublin Office is that it doesn't apply transfers to unaccompanied foreign minors. Unaccompanied minors can however be placed under Dublin notifications by prefectures. Such cases have been identified in different cities in 2012.

## 8. Asylum procedures

Unlike other asylum seekers, those placed under a Dublin II procedure are not allowed to have their asylum claim examined by the French first-instance determination authority (French Office for the Protection of Refugees and Stateless People / OFPRA).

Asylum seekers in the Dublin II system have access to asylum procedures in France only if they succeed in challenging the decision to apply the Dublin Regulation to them:

Through an informal appeal (*recours gracieux*) to the prefecture during the first 15 days

Through an appeal to the administrative court.[54]

other third country nationals. Whereas asylum seekers in an accelerated procedure or Dublin procedure, who are not eligible for the CMU, can benefit from the state medical aid (AME) only after 3 months of residence in France.

[54] See more details in section 2.6

In addition, Dublinees who have not been transferred within the prescribed deadlines (6 months) are supposed to have access to the normal national asylum procedure in France. In reality, an extended deadline has been imposed on many Dublinees so they are facing a delay in their potential access to the asylum procedure. This extension (18 months) is often justified by the assumption that the asylum seeker is considered by the prefecture as "absconding" and as trying to sabotage the implementation of the Dublin Regulation. This deadline extension concerned 18% of asylum seekers placed under a Dublin procedure in 2011. In many cases, no written decision concerning the extension of the deadline was provided, which makes it difficult to contest the situation before an administrative judge.

According to the Dublin Regulation, the six-month deadline is extended to 18 months in cases of absconding. The 1 April 2011 circular clarifies that this encompasses two situations only:
• When an asylum seeker does not comply with the summons from the prefecture and when it is not possible to notify him of the transfer decision;
• When an asylum seeker does not comply with multiple summons sent explicitly to execute a previously communicated transfer decision.

However, in practice, various prefectures clearly do not respect this legal provision and its judicial interpretations. For example, the Paris Prefecture systematically extends transfer deadlines from six to 18 months, on the grounds of absconding, after the first missed appointment.[55] These improper deadline extensions abnormally lengthen the Dublin procedure and delay access to the "regular" asylum procedure in France.

Besides, at the end of the extension, asylum seekers who finally can apply for asylum are often placed under the accelerated procedure[56]. This means they have 15 days to submit their asylum claim and that OFPRA then has 15 days to make a decision. A side consequence is that their appeal at the National Court of Asylum (appeal court - CNDA) has no suspensive effect on a removal decision taken after a rejection from OFPRA.

Concerning access to the asylum procedure for asylum seekers who are returned to France, their application is treated in the same way as any other. They restart the procedure where they left off. If his application was turned down by the National Court of Asylum (appeal court - CNDA), the asylum seeker may apply to OFPRA for a re-examination of his application only if he has new evidence. If the asylum seekers come from a safe country of origin, their applications are examined under the accelerated procedure.

## 9. Verification of information

With regards to the production of evidence, the French authorities have indicated in the April 2011 circular[57] that in the absence of identity or travel documents, the statements of the asylum seeker should be used. However, according to the same text, the results of the fingerprints comparison in EURODAC will be decisive in the search for another member state that may be potentially responsible.

When asylum seekers claim to have remained for over three months outside the borders of the European Union after their last stay and prior to re-entering France, the prefecture asks them to submit material proof of exit and re-entry in EU territory. Official documents, delivered for instance by local hospitals or local authorities, certifying this stay in a non-EU country, are generally not considered sufficient. The asylum seekers are asked to provide the travel documents with which they left EU territory, as well as the document with which they returned to France.[58]

## 10. Detention

[55] National report of the European network for technical cooperation on the application of the Dublin II Regulation, Report on France, December 2012
[56] Considering that the fact that the person had been considered as "absconding" is a reason to use sing Article L 741-4 of CESEDA that foresees that the accelerated procedure can be applied "if the asylum request is based on a deliberate fraud or constitutes an abuse of the asylum procedure, or has only been made to prevent a notified or imminent return order".
[57] Circular of 1 April 2011 (NOR IOCL1107084C)
[58] National report of the European network for technical cooperation on the application of the Dublin II Regulation, Report on France, December 2012

Following the circular[59] of 6 July 2012 of the Ministry of Interior, 'prefects' are encouraged to enforce the procedure of house arrest for families with minor children rather than resorting to detention – even though families with children may still be placed in administrative detention centres.

Asylum seekers in France are not automatically detained but they may be detained in immigrant administrative detention centres (*Centres de retention administratifs* – CRA). These are not penal detention centres. Detention in France is used to carry out the removal process, as a transit area before the transfer to the responsible country. Dublinees cannot be detained before a readmission decision has been taken and notification has been made.

After notification of a readmission order, an asylum seeker under a Dublin procedure has two choices:
He accepts the transfer and receives a "*laisser passer*". From this date on, the asylum seeker has one month to leave French territory and reach the responsible state voluntarily.
He does not accept and, after one month, will no longer be allowed to remain in France. He will therefore face the risk of being arrested and subjected to a readmission under escort. In this case, asylum seekers under a Dublin procedure are detained in administrative detention centres.

Asylum seekers placed under the Dublin procedure are not detained for a long period[60] (three days on average) as their transfer is usually organized before their arrest. Most of the time, transfer flights are scheduled for the day after assignation in an administrative detention centre. In 2012, in Lyon, the longest detention period for asylum seekers placed under the Dublin II procedure has been five days (the family concerned had refused to board the plane).

In theory, people under the Dublin procedure may be examined by a doctor when they arrive at the centre. However, once again due to the short period spent in these centres, Dublinees often do not have enough time to meet a doctor before the actual implementation of their transfer.

The legality of the decision to detain can be challenged in court within 48 hours and the administrative court must rule within 72 hours. This period starts from the moment when the measure is notified (and not from the arrival at the administrative detention centre).The short duration of stay in the detention centre however implies that asylum seekers often do not have time to consult the legal aid services. Asylum seekers often have no document other than the transfer decision. It is therefore impossible to check the regularity of the procedure, particularly in terms of compliance with the deadlines stipulated by the Regulation. In any case, this appeal has no suspensive effect.

### 11. Implementation

French law provides for three methods of transfer:

- Voluntary transfers: Cases where the person agrees with the transfer. This is systematically offered when the transfer decision is communicated. France is supposed to be in charge of organizing the transfer or covering its cost. However, the asylum seeker is usually not aware of this possibility of financial assistance.
- Enforced transfers with controlled departure: Cases where the asylum seeker is accompanied by a state representative until he boards the mean of transportation.
- Enforced transfers under escort: Cases where the asylum seeker is accompanied by a state representative until he is handed over to the authorities of the other state. These transfers are supervised by the border police (PAF).

The modalities put in place to arrange transfers can vary from one prefecture to another. In the Rhône Department, a refusal of voluntary transfer (refusal to accept the transfer upon notification) does not necessarily result in immediate detention.

## *NATIONAL DATA FINDINGS*

### 1. Basic information

[59] NOR INTK1207283C
[60] In comparison with the authorised detention period of a maximum of 45 days.

The persons interviewed for this study were 81.5% men and 18.5% women. The average age among interviewees was 30 years (the youngest was 18 and the oldest 61). Most were married but their families were not in the European Union at the time. The average length of time they had been under the procedure at the time of the DIASP interview was 10 weeks (the shortest was three weeks; the longest eight months).

The sample varied in terms of nationality. More than half of those interviewed came from sub-Saharan African countries (Democratic Republic of Congo – DRC, Guinea, Nigeria, Rwanda and Sudan). A quarter of the interviewees were from the South Caucasus (Georgia and Armenia). None had stayed in France beforehand. All the interviewees were facing a request for transfer to another EU member state (referred as 'transferees').

For more than half, the request for transfer was pending and they were awaiting a decision. One-third had been notified of an order to be transferred and were awaiting its implementation. The rest of the sample were either in the process of challenging the transfer or had just won an appeal against the transfer decision.

## 2. Personal story

Asylum seekers seized the opportunity of the interviews to explain their personal story at length, detailing the stages of their journey to France.

Every asylum seeker's story is different but we can identify common patterns in the way the interviewees talked about their journey to France and the elements they considered as decisive. As a first element, the majority mentioned the first country through which they entered EU territory. Then most interviewees moved to describe the European countries they crossed and stressed whether their fingerprints had been taken or not. Finally, they usually mentioned the number of times they had applied for asylum (when relevant). In this context, some interviewees stressed that they had not intended to lodge such a claim in the first countries of entry.[61] One asylum seeker told us he "had to ask for asylum at the border, it was the condition to enter Polish territory."[62]

Finally, in several cases, interviewees insisted on the periods of time when they stayed outside EU territory for more than three months.

These accounts shed light on the many steps that asylum seekers have to take to reach a western country such as France. The interviewee from Mongolia described a journey during which he stopped in no less than six countries before reaching Lyon.[63]

All those who answered the question about the impact of the Dublin II Regulation (11) believed it has worsened or will worsen their chances of finding protection in Europe.

## 3. Knowledge of Dublin procedures

When we asked the asylum seekers what they knew about the Dublin II Regulation, nearly half (47%) reported knowing that the Dublin Regulation is related to the identification of the country that should be responsible for their asylum application. A third of the interviewees pointed out that they were aware that implementation of the Regulation implies transfers between two European countries. Only a few (18%) seemed to have advanced knowledge about Dublin II procedures and mentioned several elements.

The vast majority of those interviewed had heard about the Dublin II procedure but did not understand what it meant as they lacked information. A worrying fact is that four said they knew absolutely nothing about it. Conversely seven of the interviewees considered themselves well informed even if they missed certain aspects of the procedure. Those who had been provided with some information reported that the two main sources were non-governmental organisations (just over half) and administrative authorities (44%).

[61] This occurred in Estonia for interviewee FR1, and in Spain for interviewee FR6
[62] Interview FR24
[63] Interview FR4

The findings of the survey with regards to the level of understanding of the information provided is almost evenly divided: 13 said they understood the information while 14 said they did not.

The interviewees gave indications as to which conditions are more favourable to a better understanding of the information. Most of those who felt they understood the information stressed the importance of getting a thorough explanation (66.7%) in the right language or with interpretation (11.1%). When asked to explain their lack of understanding, eight said it resulted from the complexity of the information conveyed while four mentioned the absence of appropriate translation. One of the interviewees said the use of "Google translation" to explain the information was "more guessing than understanding."[64] As an additional element, the stressful situation faced was also identified as an impediment to understanding in two cases.

Finally, it is interesting to note that only one-quarter of the interviewees said the state authorities provided them with information specifically upon request.

## 4. Appeals

Two-thirds of the sample said they had been informed on how to challenge the transfer decision to another European country. Fourteen people said they received information about appeals from an NGO; out of this group, nine (64%) people tried to appeal. No one said they received this information from border guards and three said they received it from administrative authorities.

Out of the whole sample, only 13 of the asylum seekers under the Dublin II procedure tried to challenge the transfer decision imposed on them (with an informal appeal or a court appeal). It should be noted however that 14 of the interviewees were not yet at a stage where the decision could have been challenged in court (those waiting for the decision on the responsible state cannot challenge their assignation under a Dublin II procedure, only the transfer decision can be challenged before the administrative court[65]).
Interviewees alluded to various reasons for not challenging the transfer decision. Some said they had not understood that they could have challenged the decision while others referred to the difficulties inherent in the obligation to challenge it within the prescribed deadline of two months. Indeed, one of the interviewees said he wished he had challenged the decision but did not manage to get an appointment with a lawyer before the deadline passed.[66] Finally, as an illustration of the feeling of lack of control over their lives, one interviewee strikingly said: "I think my situation had been already doomed. And I think there is no point challenging the decision here because the dice are cast."[67]

The answers gathered about interviewees' experiences during the appeal process are varied. The perception of whether the case was well attended to by lawyers is often confused with the actual result of the process.

When looking at the results of the interviews, it is very interesting to note that absolutely all the interviewees who had contacted a lawyer (12) were advised by what the questionnaire referred to as "state lawyers" – in France, these are private lawyers paid through the state subsidised allowance (jurisdictional allowance[68]).

*Information on the use of the sovereignty clause*
A majority of the asylum seekers interviewed (63%) had not heard about the possibility that the French authorities decide to examine their application by applying the sovereignty clause. Only 10 people in the sample said they knew about the discretionary clauses. Among this group, NGOs were identified as the unique source of information. Only two people[69] said they argued for the clause. One said his case was positive (he obtained a temporary permit to remain) and the other was waiting for the decision. Besides, even though this was not raised in the framework of the humanitarian clause, one interviewee from Armenia had been told that he would not be transferred [to Italy] because of his serious illness – at least for the first year.[70]

[64] Interview FR 23
[65] See more details in section 2.6
[66] Interview FR4
[67] Interview FR10
[68] See more details in section 2.3
[69] Interviews FR14 and FR1
[70] Interview FR10

**5. Asylum case**

The answers to the question covering what the interviewees intended to do after their transfer to another country very frequently triggered anxiety. Some simply did not want to envisage what would happen after their transfer and several said they would hurt themselves. A few interviewees replied that they would not accept to go. One Armenian man forcefully expressed his distress: "I will not go. Maybe I would kill myself. If I do kill myself in front of them, who will be responsible?"[71] The majority (56%) had no plan on what to do. As one interviewee said: "How can I have plans for the future when I live in emergency housing?"[72]

Interestingly, for some of the interviewees, this question was completely abstract as they simply did not know to which country they would be transferred. Indeed – as described in chapter 2 – the authorities do not have to let the asylum seeker know which member state has been requested to take him back (or take charge).[73]

It also appears that there was inefficient transmission of information on the asylum system in the country that the interviewees were to be transferred to. More than two-thirds said they had not received any information about the asylum system in the country supposed to receive them.

**6. Personal well being**

The French authorities did not provide housing for almost three-quarters of the persons interviewed in this survey. One-third were living in the street while five were able to find places in emergency shelters from time to time. Only a few were accommodated at friends or compatriots.

The few interviewees who were granted access to asylum seekers' reception facilities (special 'hotels' or special emergency reception centres) were exclusively families with young children or sick persons.

As a general rule, access to the labour market is prohibited for all asylum seekers in France (at least during the first year) so it is not surprising that none of our interviewees had access to work.

For the overwhelming majority of the asylum seekers interviewed (88.9%), access to education was not provided. This reflects the reality known by many NGOs that have denounced the difficulties asylum seekers under the Dublin II procedure face when it comes to accessing basic rights. Despite education being a right in France for any child between six and 16 years old, children impacted by the Dublin procedure hardly have access to education facilities, usually because of the precarious housing situation of their parents. This is all the most preoccupying when one knows that such a Dublin procedure can last for up to 18 months.

Medical care is the area in which the state authorities are most involved. Access to some sort of medical care was provided in 15 cases. However, as access to state medical aid (AME) is postponed to after three months of residency in France, this can place asylum seekers in very precarious situations. A Congolese asylum seeker told us: "I had heart problems, but with the Dublin procedure, I could not be examined by the doctor. They told me I had to wait for three months."[74]

These findings make it blatantly clear that the vast majority of asylum seekers under the Dublin II procedure are left without any means of subsistence. Twenty-one (77.8%) of those interviewed had absolutely no access to food or clothing. None received assistance for access to other basic services from the national authorities although around one-quarter received basic support – such as assistance to use the public transport – from charities such as *Secours Catholique*.

Most of the interviewees felt they had a special connection with France. Among these 19 interviewees, nine said this stemmed from their knowledge of the language, four said it was linked to the presence of compatriots and three to the presence of family members. Similarly, 19 said they saw no advantage in the country they were being transferred to.

[71] Interview FR15
[72] Interview FR10
[73] See more details in section 2.1
[74] Interview FR27

*Family life*

Eleven people said the application of the Dublin II Regulation had strongly impacted their family. Family separation[75] and inability to care for their children[76] were raised as the main impacts. "My cousin [living in Lyon] does not want to help me because I don't have any permit to stay. He does not want to take the risk."[77] Some interviewees were disturbed by the question and were really moved when it came to speaking about their families.

With regards to their plans prior to their current situation, two-thirds of the interviewees mentioned the search for safety as the reason for leaving their country of origin. The additional side-reasons alluded to were their hopes of finding a job and better treatment for illness. Nineteen said the Dublin procedure had disturbed these plans, in particular because they had failed to find a safe place so far. Three-quarters of the interviewees said they did not have any new plans whatsoever.

*Detention*

To the question whether previous detention experiences during they journey had left an impact, most of those who had been detained referred to unspecified negative impacts, with a few elaborating that they suffered from mental health difficulties as a consequence. An interviewee poignantly told us: "It has been really hard physically, financially and psychologically."[78]

A quarter of the interviewees told us they have – at some point – absconded from a government authority. In the context of this sample, this proportion can be explained by the fact that some had been registered in another member state before reaching France and, as a result, were considered to have absconded.

Conversely, three-quarters of the interviewees said they had never absconded from the authorities. Many were keen to stress that they did not attempt to abscond because they still had hope in the system and did not want to do anything illegal in order to increase their chances of being regularised. Interestingly, they still believed in the system and did not want to be considered as being at fault.

However, while not many had absconded at interview stage, quite a few said they might have to consider doing so, should they face a forced transfer: "Maybe we would live clandestinely because the risk is very high. It would be better living here on the sly than going back there [to Poland]."[79]

## 7. Personal views about the Dublin Regulation

The general views about the Dublin II Regulation among interviewees were unsurprisingly negative. One told us: "Maybe the system implemented is good for Europe but it is not good for asylum seekers."[80] The vast majority said they found the Dublin procedure to be either unfair or unjust or not good. Only three (10%) accepted the Dublin procedure because it is the law. "It is a law so it means that we have to respect it and law is supposed to be fair. But I think that this law has to be more flexible and it should consider the individual situations, to decide case-by-case."[81]

Another recurrent comment about the Dublin II Regulation was that people felt they had no other choice but to lie to get access to the asylum system. As an old man said: "I always speak the truth and if I had known I would not have told the truth. Dublin procedures encourage people to lie, that's why people hide their passports or destroy them."[82]

When asked about what they would have wanted to know before coming to the EU, the majority said they wished they had known about the Dublin II procedure. Interestingly, however, many interviewees made a point of stressing that they would have left their countries anyway. A Georgian woman said: "We were threatened so we would have taken the risk of

[75] Interviews FR4, 14, 17, 19, 20
[76] Interview FR 21
[77] Interview FR19
[78] Interview FR4
[79] Interview FR24
[80] Interview FR23
[81] Interview FR22
[82] Interview FR10

coming even if we had known before."[83] Seventeen interviewees had no advice for other migrants but the main potential advice that emerged would be to get as much information as possible.

For the overwhelming majority, their biggest problems were fear of being returned to their country of origin or to another EU country. The difficulties they had to cope with to get access to the asylum procedure were raised as a major source of concern by a few.

When asked about the best solution they could envisage for their situation, nearly half mentioned getting refugee status or another legal status. Obtaining "legal documents" was a key goal perceived as the best solution to their situation.[84]

## *DATA ANALYSIS AND MAIN THEMES*

### A) A really primary/basic impact: the risk of a life in destitution

Being placed under a Dublin II procedure in France has some practical and immediate consequences for the asylum seekers concerned. This simple observation is recurrent throughout the interviews conducted for this project.

*Very marginal access to housing facilities*

Asylum seekers under a Dublin II procedure face very serious difficulties to access stable housing facilities. In the context of an already oversubscribed national reception scheme, asylum seekers under a Dublin procedure are not considered as a priority. The circulars[85] establishing access to emergency housing facilities are not binding texts in French law and the number of places available are in any case insufficient. Many asylum seekers have to rely on emergency night shelters or to live in the street.

The findings of this survey remarkably reflect the reception crisis France is going through, which is leading to a situation where many asylum seekers in general are being deprived from access to reception conditions. The shortage of places in reception centres has forced the authorities to prioritise the categories of people who can have access to them. Unsurprisingly, families or sick persons are a priority but, as a result, young isolated asylum seekers are often left living in the street. While these difficulties impact all asylum seekers in France, this situation is particularly striking for asylum seekers placed under a Dublin II procedure as they are clearly not a priority group (and are not eligible to the national reception scheme by law in any case).

As an additional disadvantage, asylum seekers who are not granted access to reception facilities do not benefit from the legal and social support regularly offered in reception centres. As a result, they suffer from a "downgraded" access to information.

*Absence of state support for food and clothing*

With the exception of the few who were accommodated in special reception centres[86], all the other interviewees were relying on charities to get food on a daily basis. This observation comes in sharp contrast with the theoretical obligation under the Reception Directive to grant minimal reception conditions equally to asylum seekers under a Dublin procedure.[87] Being excluded from the benefit of the temporary waiting allowance (€11 per day) and not being allowed to work, asylum seekers under a Dublin II procedure very often have no resources at all and have to cope with serious survival issues.

*Obstacles to get access to healthcare*

Finally, as illustrated earlier, asylum seekers under a Dublin II procedure may face difficulties in getting access to healthcare. The postponement of admissibility to state medical care to three months after entry into France can have serious consequences on the health of those involved. This delay is really detrimental for many asylum seekers who have mental health problems and for whom postponed access to treatment can be disastrous.

[83] Interview FR22
[84] Interviews FR2, FR3, FR4, FR5, FR11, FR18
[85] See more details in Section 2.7: In theory, they are entitled to an emergency reception solution until the notification of the transfer decision.
[86] Those who have the chance to get access to special reception centres (*centre de transit*) can benefit from the monthly subsistence allowance (AMS).
[87] As confirmed by the recent jurisprudence of ECJ case C-179/11, cf. section 2.

In addition, recipients (in general) of state medical aid in France can face severe difficulties in getting access to health professionals as some are reluctant to receive patients covered by such a scheme. This practice has been documented by many NGOs[88] and these treatment refusals are punishable, at least in theory.[89]

Our survey shows that these difficulties – at the core of day-to-day survival – are all intertwined and that this "on hold" waiting period (before getting a decision and then before the transfer deadline) causes a high level of anxiety among asylum seekers under such a procedure.

**B) Impact on the treatment granted: a second class of asylum seekers**

Asylum seekers under a Dublin II procedure feel they are treated as a second class of asylum seekers. One of the interviewees said that having a "Dublin notice" [the only document provided to Dublinees] is the same as having no paper at all.[90]

If interviewees were so keen to tell their stories to us, it is probably because at no point in the French Dublin procedure were they given a chance to explain why they intended to seek asylum in France. The Dublin "interview" is focused on the journey and the identification of another state that is potentially responsible. Even if some NGOs do listen to their stories and motivations, the asylum seekers feel that the state authorities do not want to hear their explanations and do not consider their specific reasons for having left their countries of origin.

They also usually fail to understand why looking for safety in France should pose problems. If they have connections here (family, common language or presence of community), it simply makes sense to them. They simply do not understand why they are not being heard by OFPRA like other asylum seekers.

In addition, asylum seekers frequently feel they are being punished for not complying with rules they are hardly aware of. They feel they are being treated as a homogenous group without getting a chance to detail the specific circumstances that would justify an individual examination of their case.

These feelings are corroborated by our observation of the practice in France. As underlined earlier, in terms of entitlements, there is a huge difference of treatment in comparison to "regular" asylum seekers.

Several of the experiences shared in the context of these interviews revealed a loophole in the Dublin II system. An interviewee from Mongolia told us: "In the three countries where I applied for asylum, I have never been interviewed."[91] The Dublin Regulation is supposed to guarantee that only one (but at least one) member state is designated as responsible for the examination of the asylum claim. Thus these testimonies stand in sharp contrast to the proclaimed objective of the Dublin II Regulation to put an end to the phenomenon of "refugees in orbit".

This survey has also shown that the expressed intention to refuse transfers may be linked to the asylum seekers' intimate knowledge of the situation in the other EU member states. As one interviewee puts it, "although it is EU, there are lots of differences between the member states."[92] Indeed, there was a clear shared understanding among the interviewees that asylum systems vary quite a lot from one country to the other and this comes directly from their practical experience. One interviewee told us he was convinced that Poland will deport his family back to Georgia.[93] Detention in Spain and really hard living conditions in Italy were mentioned several times during the interviews. Some of these experiences were so disastrous that asylum seekers would – at all costs – refuse to be transferred back. One said he would rather go back to Afghanistan than to Italy.[94] These testimonies illustrate vividly what many NGOs regularly say about the absence of a genuine high-standard harmonisation of reception and procedural guarantees in European Union member states.

[88] See for instance the practical sheets of Collectif interassociatif sur la santé (CISS)
[89] Circulaire DSS n° 2001-81 du 12 février 2001 relative aux refus de soins opposés à des bénéficiaires de la protection complémentaire en matière de santé
[90] Interview FR27
[91] In that case: Poland, Sweden and the Netherlands; Interview FR4
[92] Interview FR24
[93] Interview FR22
[94] Interview FR3

### C) Impact on the understanding of the procedures: an unsuited transmission of information

Some asylum seekers in the Dublin procedure clearly fall through the cracks when it comes to provision of information. This was clearly exposed by the fact that, despite being in the last phase where the transfer has already been ordered, some interviewees said they knew nothing at all about the procedure.[95]

It appears from the interviewees' answers that the simple provision of leaflets does not alleviate the feeling of misinformation. This finding matches our observations that an allotted time, with interpretation if necessary, is the only efficient way to provide proper access to information.

Our interviewees identified diverse reasons for difficulties in accessing the right information: complexity of the procedures, scarcity of information given, stressful circumstances and language barriers. Some interviewees stressed that it helped to have a document they could refer to and read again at a later stage[96] but others also said that since they were illiterate, a written document simply doled out by the prefecture, without any explanation, was of no help at all.[97] Information seemed to be better understood if provided on paper and simultaneously explained verbally.[98]

Finally, our questionnaires highlighted the fact that half of the interviewees said the state authorities did not provide information when they asked for it. This sheds light on findings *Forum réfugiés-Cosi* and many other NGOs already have, namely that – short of clear legal obligations imposed on the desk officers and sufficient means allocated for translation – the provision and level of information is still inconsistent, depending on the desk officer in charge and varying considerably from one prefecture to the other.

A side observation about the rationale of the Dublin II Regulation: something that stands out in our findings is that, whether or not people know about the Dublin Regulation prior to their departure has no bearing on their decision to leave their countries. Most interviewees had very little information about the Dublin Regulation before leaving for the European Union and they clearly stated that they would have left in any case, even if they had been informed about the procedure which would be imposed on them, and the poor living conditions they would have had to cope with. A few asylum seekers proved to know detailed rules about the Dublin system. But here again, even though they were aware of the rules and could have used this knowledge to avoid it, their situation was simply so difficult that they could not take the steps to get around the Dublin Regulation. For instance, knowing about the rule that being outside the EU for more than three months is a reason for the Dublin Regulation not to be applicable, a few asylum seekers went back to their countries of origin. They were however forced to leave again before the three-month period was up.

While one of the purposes of the Dublin II Regulation is to discourage asylum seekers to "choose" their country of asylum, this survey shows that asylum seekers continue to aim for one specific country – despite the situations they might know they will face.

### D) Impact on the right to an effective remedy: limitations and difficulties

The very small portion of asylum seekers in our sample who said they received information about the appeal procedures from the administrative authorities indicates a deficiency in the provision of information relevant to the rights to an effective appeal.

Our findings also indicate that all the asylum seekers who had been assisted by a lawyer also benefited from the jurisdictional allowance system. In France, this means that the fees for some private lawyers are covered (to some extent). It is good practice that such a system provides for this possibility. This dependence on such a system is easily understandable when one looks at the level of resources of asylum seekers under a Dublin II procedure.

[95] Interview FR2
[96] Interview FR8
[97] Interview FR5
[98] Interview FR11

It is therefore all the more worrying to note that access to this allowance can be rendered difficult for some Dublinees.[99] Asylum seekers under a Dublin procedure usually live in precarious situations, very often distant from legal support of specialised NGOS, and may have to write their legal allowance application on their own. Their living conditions are often not conducive to the drafting of a substantiated application and can result in their request being dismissed as not well grounded, even though such asylum seekers are precisely those who need a lawyer to help them formalise their claims in court.

### *CONCLUSIONS*

*Forum réfugiés-Cosi* reiterates its position with regard to asylum seekers placed under a Dublin procedure: they are first and foremost asylum seekers who should be treated as such, with the special procedural and reception rights attached.

Asylum seekers in the Dublin II procedure in France are on an unequal footing right from the start. In practice, the fact that they are asylum seekers (and not just any migrant) barely has any impact on the treatment they receive from the authorities. They regularly face situations of acute destitution and are faced with salient obstacles to access food and medical care.

Their precarious situation is all the more difficult as it often follows a long and difficult journey at the end of which they had hoped for something better. The extremely rare use of the discretionary clauses demonstrates a lack of consideration for the specificities of each claim.

In addition, our survey sheds light on the fact that the effectiveness of the provision of information about the Dublin procedure is a significant issue in the French system. Asylum seekers are not sufficiently informed about the Dublin II procedure. This is because – when provided – the information is not thoroughly explained and not always conveyed in a language that the asylum seeker can understand. In these circumstances, it is very difficult for people to get accurate information. These deficiencies in the transmission of information also have side consequences hindering access to judicial remedies.

### *NATIONAL POLICY RECOMMENDATIONS*

The current situation in France is a source of concern for many reasons. In light of this research, the following recommendations can be made:

Asylum seekers under the Dublin II procedure should be granted the same reception rights as other “regular” asylum seekers. Housing should be provided and, as a minimum, an allowance should be given to preclude situations of extreme destitution. The ECJ jurisprudence of September 2012 should be implemented in practice by the authorities and the administration (*Pôle emploi*) should be instructed to provide the ATA allowance to asylum seekers under a Dublin procedure when the requirements are met. These rights should be enshrined in French Law (CESEDA) and not simply provided for through non-binding circulars.

Efforts should be taken to convey more effectively and translate appropriately the information related to the whole Dublin II procedure. Such information should be provided at various moments in the procedure. It should include, inter alia, the name of the country identified for the transfer and the steps and deadlines pertaining to the appeal that may be lodged against the assignation and transfer decisions.

The sovereignty and humanitarian clauses should be used more by the French authorities. A truly individual assessment of the situation should be carried out on a case-by-case basis.

France should not transfer asylum seekers under the Dublin II procedure to countries where the asylum system is reported to be inadequate.

[99] See more details in section 2.3

# DIASP national report: GERMANY

**Author: JRS Germany, www.jesuiten-fluechtlingsdienst.de**

## *INTRODUCTION*

For this study, 33 interviews were conducted with refugees currently in Dublin procedures in Germany. Almost all of them were "transferees", i.e. waiting to be transferred from Germany to the EU member state responsible for their case under the Dublin II regulation. This reflects in part that Germany is rather a "sending" state in the Dublin system, however, the proportion is somewhat distorted.[100] A possible reason for this proportion is that JRS Germany is focusing on pastoral care for detainees, so it was generally easier for our interviewers to access persons awaiting their transfer in detention. However, the only two "returnees", i.e. migrants already transferred back to Germany by other EU member states, were also interviewed in detention; all 16 interview partners interviewed outside detention were also awaiting their transfer.

We met the interviewees in the following locations:

- Detention centre Berlin-Koepenick, a specialized detention centre in a former GDR women's correctional facility, today run by the local police, offering almost 200 places for men and women, but currently accommodating between 10 and 20 detainees.
- Detention centre Eisenhuettenstadt, a specialized detention centre in the federal state of Brandenburg, built in 1993 and operated by a private firm under control of local authorities, offering about 100 places for men and women, currently accommodating between 10 and 40 detainees.
- Detention centre Munich, part of the correctional facility Munich-Stadelheim, offering 70 places for men on a separate floor[101], currently accommodating between 20 and 30 detainees.
- Outreach centre of the Iranian Presbyterian Church in Berlin.
- XENION, Berlin.
- Munich Reception Centre for unaccompanied minors, placed in former US Army barracks in the north of Munich.
- JRS Germany office in Berlin.

JRS Germany wishes to thank all refugees that were interviewed in the course of this study for their co-operation, often notwithstanding their own difficult situation. In addition, we would like to thank our interviewers, first and foremost Ms Irma Maruskeviciute, who conducted almost half of the interviews, but also Br Felix Polten SJ, Br Erick Berrellezza SJ and Ms Natalia Schönbrodt. Special thanks also to Mr Aziz Sadaghiani of the Iranian Presbyterian Church and to Ms Doro Bruch and the team at XENION. The author also wishes to thank Ms Maria Bethke, Mr Dominik Bender and Mr Uli Sextro for valuable inputs to the report.

## *MEMBER STATE PRACTICES*

### 1. Transformation into national law

The Dublin Regulation has not been formally transformed into German national law. This is considered not necessary, given the binding character of an EU regulation. Consequently, only minor adaptations and a limited number of referrals can be found in the domestic law.[102] In part, these date back to the older concept of "safe third countries", which was introduced in German asylum law as early as 1993 and later merged with the Dublin rules. In addition, aspects of Dublin II procedures are regulated by decrees and administrative directives.

[100] In 2012, Germany made almost 11.500 "take charge" or "take back" requests to other member states, while there were about 3.600 requests by other member states (BAMF, Asyl in Zahlen, Januar 2013). 3.037 migrants were actually transferred (BT-Drs. 17/12234, question no. 5 c).

[101] The floor is split in the middle. While at the time of the interviews, the full capacity was used, at the time of the publishing of this report, only 35 places are in use. Women and minors were placed in the respective remand custody units at the time of the interviews; since April 15th, 2013, they are accommodated in the correctional facility at Nuremberg on a separate floor, like the men in Munich.

[102] Examples are Sect. 27a Asylum Procedures Act (AsylVfG), declaring asylum applications inadmissible if the applicant travelled through another Dublin state, Sect. 34a par. 2 AsylVfG, excluding temporary legal protection in Dublin cases, and the Decree to determine the responsible authority in asylum procedures (AsylZBV).

The Dublin Regulation, however, does not represent a complete set of rules. Instead, it focuses on the criteria to be used for establishing the responsibility of a member state to examine an asylum application, and sets out the rules for the procedure between member states. On the other hand, little is laid down about the material and procedural rights of the applicants. In addition, at least as far as they are interpreted by German authorities and courts, most provisions of the Dublin Regulation are perceived to not establish individual rights for the asylum seekers concerned. This had led to a number of serious problems in application of the law, and in part still does.

## 2. Initiation of the Dublin procedure

A Dublin procedure will be initiated whenever a foreigner asks for asylum in Germany (2.2.1) or, after entering the country, is found to have asked for asylum in another state applying the Dublin regulation (2.2.2) and there is evidence that another state than Germany is responsible for the asylum procedure under the Dublin regulation.
No Dublin procedure is initiated if the foreigner only applies for subsidiary protection, either under EU law (Art. 15 Qualification Directive) or national law (Sect 60 par. 5, par. 7 s. 1 Residence Law). Also, the Dublin regulation is not applicable if the person concerned has already been recognized as refugee in another Dublin state. In this case, the person will, however, be transferred back to the state that recognized him according to national law and bilateral reception agreements. If the person concerned has been granted subsidiary protection in another Dublin state, Germany will count that as rejection of the initial asylum application and send a “take back” request to the respective state.

In the past, some asylum seekers have successfully stopped a Dublin procedure by withdrawing their asylum application or restricting it to a request for subsidiary protection, thus depriving the Dublin procedure of its foundation. However, later the BAMF changed its position and argued that any asylum application, even if it was later withdrawn or restricted, constituted a basis for a Dublin procedure. Following the ECJ decision “Kastrati”[103], the BAMF altered its opinion, now stating that the Dublin regulation is not applicable if the asylum seeker has applied for asylum only in Germany (not in the Dublin state deemed responsible), and this only application is withdrawn or restricted to subsidiary protection.[104]

### 2.1. Dublin procedure after asylum application in Germany

Before actually being interviewed about her/his reasons to seek protection, any asylum seeker in Germany will be fingerprinted and have her/his fingerprints checked with the EURODAC database. In addition, s/he might be interrogated about the way s/he travelled to Germany. If either of this produces evidence that the applicant has already been registered in another state applying the Dublin regulation (“Dublin state”)[105], or at least has travelled through such a state, and the Federal Asylum Agency (Bundesamt für Migration und Flüchtlinge - BAMF) comes to the conclusion that the other member state is responsible for examining the case, a Dublin procedure will be initiated. This might also occur at a later stage of the procedure, if information about the applicant having travelled through another Dublin state becomes available to the BAMF later.

The applicant is – if at all – informed about the initiation of the procedure and some of the applicable deadlines, but not necessarily about its steps and possible legal remedies. If the person concerned applies for asylum in Germany, the BAMF will usually hand out a form with information on the core issues of the Dublin procedure. However, this form is not always available in a language the applicant understands[106], and it contains only limited information on the responsibility criteria, e. g. totally leaving out any information on the Humanitarian Clause (Art. 15 Dublin regulation).

NGOs have criticized that the Dublin interviews concentrate on facts that would establish responsibility of another member state, but tend to neglect those facts that would be of interest to decide about the application of the humanitarian or sovereignty clause.

### 2.2. Dublin procedure without asylum application in Germany

If the person concerned does not apply for asylum in Germany, he will be treated as an illegal immigrant. Responsible authority is not the BAMF but the local immigration office or, in certain circumstances, the Federal Police (see 2.2.3). In these cases, too, he will be fingerprinted and a routine check with the EURODAC database be carried out. If during this

[103] ECJ, C-620/10.
[104] Escherle/Abbasova, Entscheiderbrief 6/2012, p. 1 f., www.bamf.de.
[105] The Dublin system includes not only EU member states, but also Liechtenstein, Norway, Iceland and Switzerland.
[106] NGOs have reported repeatedly that asylum seekers present the information form in German to them, not understanding its content.

check the person is found to have lodged an asylum application in another member state, the immigration office will require the BAMF to send a "take back request" to that member state. In these cases, the person might be informed only in a very brief way that he will be transferred back to that other member state, and information has in many cases been made accessible only at the moment of deportation. Depending on the outcome of the Dublin procedure, the immigration office will decide on further steps (see 2.4).

2.3. Dublin procedure after interception near the borders

A special situation occurs if the asylum seeker is intercepted in connection with crossing a border. In these cases, again, there are several possibilities: The question whether the person will be treated as an illegal immigrant (and removed either back across the border or to her/his country of origin) or a Dublin procedure will be initiated will be decided according to whether s/he applies for asylum, and whether circumstances or a fingerprint check provide evidence for the responsibility of another Dublin state (see 2.2.1 and 2.2.2). But the role of the immigration office will be taken over by the Federal Police now.

If the interception happens near a border, and there is evidence that the neighbouring state is responsible for the asylum case under the Dublin regulation, and an intergovernmental agreement delegating the Dublin procedure to the border police is in force with that state, the Federal Police will even be responsible for the Dublin procedure instead of the BAMF.[107] In practice, however, this is only the case with Denmark and, for sending requests, with Austria and the Czech Republic. Another similar agreement exists with Switzerland.[108] In most cases, the BAMF will guide the Dublin procedure, requesting the member state's responsibility and clarifying the modalities of transfer, and the Federal Police will secure and execute the transfer (in most cases, by ordering detention – see below).

The greater involvement of the Federal Police in practice implies a number of disadvantages for the applicant.
Firstly, the Federal Police is responsible for border control, removal and sometimes for the Dublin procedure, but not for the asylum procedure. While gathering information through evidence, databases or interviewing the person, it is the perception of NGOs that they tend to focus very much on the travel route of the applicant, rather neglecting issues that would justify the application of the sovereignty or humanitarian clause.

Secondly, while asylum applicants usually obtain a legal right to stay by law (*Aufenthaltsgestattung*) as soon as they articulate their request for protection, an exception applies to those who request asylum after being intercepted near a border: Their request is counted as an asylum application and leads to a permit to stay only if the request is transferred in a written form to the BAMF. Without a right to stay, consequently, they are treated by the Federal Police as illegal immigrants, and are usually detained for the whole duration of their Dublin procedure. This is especially delicate as it would be in the hand of the Federal Police to immediately transmit an asylum request to the BAMF as they receive it, thus giving the applicant a right to stay, but in practice the Federal Police only transmits the request after detention has already been ordered.

Thirdly, even if their asylum application is transferred to the BAMF at a later stage, these persons are not released from detention, since another special clause in the Asylum Procedures Act[109] allows for continuing their detention until the end of the Dublin procedure.

Fourthly, the asylum application, even if transferred to the BAMF, will not be processed there. Instead, following a directive from the Federal Ministry of Interior dating back to 2006, the BAMF will – if at all – inform the applicant that her/his application will only be processed and her/his reasons to seek protection be dealt with if the Dublin procedure establishes Germany's responsibility for the individual case. This has two disadvantages: on the one hand, the applicant, again, has no possibility to bring before the BAMF possible reasons for the use of the sovereignty or humanitarian clause. On the other hand, s/he will not get a formal decision on her/his application, and thus have no chance to lodge a remedy. The latter has been deemed illegal in recent decisions by the Administrative Courts of Munich and Karlsruhe.[110]

[107] Sect. 3 AsylZBV.
[108] BT-Drs. 17/11235, p. 8.
[109] Sect. 14 par. 3 AsylVfG.
[110] VG München, decision of 2012/11/22, file no. M 23 E 12.30743; see also VG Karlsruhe, decision of 2013/04/22, file no. A 1 K 968/13.

## 3. Implementation of the Dublin procedure

### 3.1. Responsibilities

The BAMF runs a specialized Dublin unit which is responsible for contacting the member states. The Dublin unit is split in two departments: *Referat 430*, based in Nuremberg, and *Referat 431*, based in Dortmund. Whenever an asylum procedure in one of the BAMF's 22 branches in the 16 federal states of Germany provides evidence for the responsibility of another Dublin state, the branch will transfer the file to the Dublin department in Dortmund. The Nuremberg department is responsible for cases where no asylum application is lodged in Germany, and for EURODAC and general issues.

### 3.2. Decision on Dublin criteria

The BAMF branches use a checklist with criteria for the responsibility of any other Dublin state, but also criteria for Germany's responsibility. The executive handling the case is expected to also mention, if applicable, issues that would justify the use of the humanitarian or sovereignty clause.[111]

The sovereignty clause, however, is hardly ever applied in practice. Even the BAMF itself seems to assume that this clause will be applied very rarely. The Dublin instructions only contain the directive to include a boiler plate in decisions mentioning that no reasons for an application of the clause were apparent.[112] In contrast, reasons for an application of the humanitarian clause must always be discussed in the individual case, if they emerge.[113]

It is not always guaranteed that the facts relevant for the application of the Humanitarian or Sovereignty Clause reach the Dublin Unit in time. If they emerge during the asylum interview in the respective BAMF branch (which in some branches is conducted before the Dublin procedure), it can take months before the minutes of the taped interview are written and sent to the Dublin unit.[114]

Further, there have been allegations that in some cases even the "standard" Dublin criteria have not been applied in the order prescribed by the Dublin regulation.[115]

### 3.3. Contact with other Dublin states

If another member state's responsibility is indicated and the BAMF comes to the conclusion that neither the sovereignty nor the humanitarian clause will be applied, the Dublin unit will contact the respective Dublin unit of the member state deemed responsible for the asylum case. It will use the standardized contact form according to Regulation (EC) no. 1560/2003. Both for the request to the other member state and for the member state's response the deadlines according to the Dublin regulation must be kept.

If the other member state accepts its responsibility, the BAMF will write a "Dublin decision" and forward it to the immigration office (or to the Federal Police, if responsible).

If the member state's response is negative, the BAMF will routinely check whether the refusal is legitimate. According to the BAMF's internal instructions, if necessary, a second request is to be sent to the same member state or to other member states if there are indicators for their responsibility. At least the latter raises doubts if the person concerned is detained during detention. In this situation, the principle of proportionality demands to send requests to all potentially responsible member states at the same time in order to keep detention as short as possible.[116]

### 3.4. Reception conditions during the Dublin procedure

During Dublin procedures, asylum seekers in Germany are generally granted the same reception conditions as asylum seekers for whom Germany is responsible – unless they are detained (see 3.5). This means that they will get accommodation, means of subsistence either in cash or in kind and peremptory health care according to the Asylum Seekers Benefits Act (AsylbLG), but have no access to the labour market for at least one year.

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[111] BAMF, Internal instructions, p. 15/54.
[112] BAMF, Internal instructions, p. 16/54.
[113] a. a. O.
[114] Bender/Bethke, 10 Jahre Dublin – Kein Grund zum Feiern, p. 17.
[115] Bender/Bethke, 10 Jahre Dublin – Kein Grund zum Feiern, p. 18.
[116] LG Munich, decision of 2013/3/20, file no. 13 T 6193/13

The quality of reception conditions has repeatedly been criticized by churches and NGOs. Accommodation is frequently in homes in isolated areas, in bad condition, with several people forced to share a room. Sometimes, asylum seekers have to share these places with homeless people. While most of the federal states have decided to grant means of subsistence in cash, in some places, especially the state of Bavaria, they are still granted in kind, which means that asylum seekers cannot buy their own food, but are forced to accept whatever is given to them in weekly packages. Health care is granted for acute illnesses and pains, but it can be difficult to get treatment e. g. for chronic illnesses.

3.5. Detention during Dublin procedures

As mentioned above, it may occur that an asylum seeker will have to await the result of her/his Dublin procedure entirely in detention. In fact, in cases where the asylum seeker is intercepted near a border and the Federal Police is responsible instead of the immigration office (see 2.2.3), detention is more or less the norm.

Detention will even be ordered if it is clear that the person concerned is still in the on-going asylum procedure in the responsible Dublin state, that s/he has only temporarily left this state (e. g. to visit relatives), even if this might not be permitted, and if s/he is willing to immediately return to the responsible state. While in these cases it might seem the easiest thing to just let the asylum seeker return to the responsible state, the Federal Police, in line with its guidelines, will arrest the person, have the asylum seeker detained, initiate a Dublin procedure and finally deport him to the responsible state, thus causing long delays and substantially unnecessary times of detention. Off the record, even Federal Police officials will express skepticism about this practice.

NGOs have repeatedly criticized sharply the practice of detaining migrants during Dublin procedures, as this implies detaining asylum seekers who might later be identified as refugees.

3.6. Number of asylum seekers detained

There are no statistics about the number of detained Dublin cases, but pastoral workers estimate that the percentage of Dublin cases among detainees ranges between 60 and 80 percent. Given that in 2011 a total of 6,466 persons were detained in Germany,[117] that would make up to 3,800-5,200 detained Dublin cases. For the federal state of Schleswig-Holstein, the regional government announced that in 2012, 87 % of migrants detained there during the year were Dublin cases. The higher percentage is linked to the fact that Schleswig-Holstein lies on the transit route to Scandinavia.

*3.6.1. Living conditions in detention*

Living conditions in detention vary widely between federal states. While some federal states maintain specialized detention facilities, the majority of federal states still executes detention inside correctional facilities, where house rules are generally much stricter.[118] Some federal states have even detained female and minor migrants together with remand prisoners until lately[119] – a practice repeatedly held to be illegal by courts.

The fact that an asylum seeker has been detained in Germany during her/his Dublin procedure might afflict her/his future possibilities to live and travel in Europe, given a final positive decision on the asylum application. Every Dublin transfer causes a re-entry ban under German national law. The re-entry ban is permanent and will only be limited on application. Before a decision on this application, the responsible immigration office will generally expect the applicant to pay for the costs of detention, which can amount to 60-100 euros per day.

## 4. Conclusion of Dublin procedure

4.1. Responsibility of Germany or the requested state

If the Dublin procedure establishes Germany's responsibility, the Dublin unit will transfer the file back to the responsible BAMF branch. The asylum claim will then be handled in a normal procedure and the applicant released, if detained.

If the Dublin procedure results in the requested member state's responsibility, the BAMF will prepare the transfer of the applicant. Modalities of transfer will be clarified with the member state. If the person concerned applied for asylum in

[117] BT-Drs. 17/10596, p. 92.
[118] See, JRS Europe, *Becoming Vulnerable in Detention*, 2010, German national report.
[119] BT-Drs. 17/10597, p. 58 ff.

Germany, the Dublin decision (see 2.3.3 and 2.5) will be sent to the local immigration office or Federal Police. If the person concerned did not apply for asylum, it will be the immigration office's or Federal Police's task to inform the person about the transfer pending. The immigration office or Federal Police will book a flight, if necessary, and bring the person concerned to the airport or border on the day for which the transfer has been arranged.

4.2. Information for the asylum seeker

While the BAMF informs the immigration office or Federal Police about the pending transfer, this does not necessarily mean that the asylum seeker will be informed, too. In fact, in most federal states, the asylum seeker is informed about the transfer and handed out the Dublin decision only on the day the transfer is actually scheduled. As this severely limits the asylum seeker's access to effective remedies, it has been sharply criticized by churches and NGOs. A number of courts have ruled that the asylum seeker has to be notified of the Dublin decision in advance.[120] Following this, four federal states (Schleswig-Holstein, Rhineland-Palatinate, Brandenburg and North Rhine-Westphalia) have issued instructions that oblige the immigration offices to notify asylum seekers between three days and a week before the transfer. In addition, the federal state of Lower Saxony has "asked" local immigration offices to inform Dublin transferees at least two days ahead of transfer.

However, these deadlines are often too short to prepare for legal action against Dublin orders. Consequently, in an attempt to grant timely access to courts for their clients, lawyers have started to ask for access to the BAMF's files repeatedly and file an urgent action as soon as the draft Dublin decision appears in it.

4.3. Transfer

According to article 7 of the Dublin Cooperation Regulation (no. 1560/2003), transfer can be provided for in one of three ways:

> "(a) at the request of the asylum seeker, by a certain specified date;
> (b) by supervised departure, with the asylum seeker being accompanied to the point of embarkation by an official of the requesting Member State, the responsible Member State being notified of the place, date and time of the asylum seeker's arrival within an agreed time limit;
> (c) under escort, the asylum seeker being accompanied by an official of the requesting Member State or by a representative of an agency empowered by the requesting Member State to act in that capacity and handed over to the authorities in the responsible Member State."

However, German domestic law only allows for the third option of forced removal. The person concerned may either be denied entry to German territory at the border (Sect. 18 par. 2 no. 2 AsylVfG), or, if s/he has been intercepted near a border, s/he may be "pushed back"[121] (Sect. 18 par. 3 AsylVfG). If the person has already entered the country, s/he will be deported at the order of the BAMF (Sect. 34a par. 1 AsylVfG).

## 5. Legal remedies

5.1. Content of Dublin decisions

The Dublin decision contains two parts: The asylum application is rejected as inadmissible because another member state is responsible to handle it,[122] and the asylum seeker's forced removal is announced.[123] Unlike other decisions in asylum procedures, the asylum seeker will not be given a period of time to voluntarily leave the country. This may cause difficulties for persons who intend to return to Germany later, since a deportation automatically causes an unlimited re-entry ban under national law.

5.2. Legal action and interim legal action

[120] VG Hannover, decision of 2009/12/10, file no. 13 B 6047/09.
[121] The term „push back" is used here in direct translation of the German term *Zurückschiebung*, which is de facto a deportation with lower legal protection standards, but only admissible if the person concerned has been intercepted near a border and in direct context of an irregular entry.
[122] Sect. 27a AsylVfG.
[123] Sect. 34a par. 1 AsylVfG.

Like any administrative decision, the Dublin decision can be challenged with an action in the Administrative Court. But this action has no suspensive effect, i.e. the claimant could be deported even while his case is pending in court.[124] In this situation, the law usually provides for the possibility to file an urgent action, which aims at allowing the applicant to stay until the case is decided by the court.

Yet, in Dublin procedures, as in cases where the applicant awaits deportation to a "safe third country", the law explicitly excludes the possibility of an urgent action.[125] This exclusion is exceptional in German law and has caused a lot of criticism. It was introduced in German asylum law in 1993 and deemed in line with the constitution by the Federal Constitutional Court in 1996.[126]

However, in recent years, new debates have been sparked. Above all, it was the crisis of the Greek asylum system emerging 2008/09 that led NGOs, lawyers and finally courts to put in question the existing rules. It was a series of (at least) thirteen decisions from the Federal Constitutional Court beginning in September 2009 which finally opened the door for a more effective protection for refugees. The Constitutional Court issued a temporary injunction, stating:

> "The decisive factor for issuing the temporary injunction was that the applicant, relying on sources seriously to be considered, [feared] that it might […] not be possible for him to duly register in Greece. If the temporary injunction [would] not [have been] issued, this could [have] mean[t] that he could not be reached for the proceedings in the main action, so that a success in these proceedings would not help him any longer.[127]"

Although the Federal Constitutional Court's order did not rule on the constitutionality of the planned deportation, but restricted itself to weighing up the consequences of a possible deportation against a temporary stay in Germany, it gave way for a series of decisions from Administrative Courts who would stop transfers to Greece. Finally, in early 2011, the Federal Government announced a temporary halt of deportations to Greece that has been prolonged twice since then and currently runs until 2014.

Meanwhile, other countries have come to the center of attention. The situation in Italy has caused Administrative Courts in about 200 cases to temporarily stop Dublin deportations. Some courts have stopped transfers to Hungary, and the situation in Malta has caused the BAMF to announce that vulnerable persons, especially unaccompanied minors, would no longer be transferred there.

The ECtHR decision *M.S.S v. Belgium and Greece* and the ECJ decision *N. S. v. Secretary of State for the Home Department* have underlined member states' responsibility to take into account the actual state of the asylum system and the reception conditions in the receiving state.

*De facto*, today, interim legal protection is granted if the court is convinced about the existence of systemic flaws in the asylum system in the receiving state. If the court is not convinced, it can either hold that the application for a temporary injunction is ill-founded, or reject it, pointing to its legal inadmissibility.

This, however, establishes a state of legal ambiguity, which should be ended by the coming recast Dublin regulation. Until now, unfortunately, the Federal Government has not indicated for which of the three possibilities for temporary legal protection given in the new regulation it will opt. Instead, the government has announced it would "apply the new regulation". As it is clear that the current law is not in line with the coming regulation, this should at least mean that Art. 34a par. 2 AsylVfG were no longer applicable in Dublin procedures, i.e. asylum seekers would be given the opportunity to apply for a temporary injunction in every case.

### 5.3. Legal aid in Dublin procedures

[124] As a general rule, actions against administrative authorities' decisions have a suspensive effect under German law. This means that, if action is taken within a given deadline, the decision must not be executed before the court has decided on the claim. An important exception applies to asylum cases where the BAMF finds that the application is "manifestly ill-founded": in these cases, suspensive effect is excluded by law, Art. 36 par. 1 and Art. 75 AsylVfG.
[125] Sect. 34a par. 2 AsylVfG.
[126] BVerfG, Decision of 1996/05/14, file no. 2 BvR 1938/93, published in BVerfGE 94, 49.
[127] BVerfG, Decision of 2009/09/08, 2 BvQ 56/09.

If asylum seekers want to challenge their Dublin decisions, they face numerous problems: tight deadlines, language barriers, and complicated laws. As a consequence, they will usually depend on the help of a lawyer. Since there is no system of state lawyers, they will have to assign a private lawyer. Apart from the difficulties to get in touch with a lawyer when you just arrived to the country, do not speak the language, and maybe are detained, this causes costs that they frequently cannot afford. In this situation, they either depend on funding by third parties[128] or on public legal aid.

The legal aid system, however, has been criticized by churches and NGOs as insufficient for asylum seekers in Dublin procedures.[129] Legal aid before going to court is difficult to access, and the low rates paid do not compensate for the demanding work of specialized lawyers. Legal aid in court procedures is linked to a prospect of success in the case, which courts frequently deny.

5.4. Non-judicial remedies

Insecurity about their legal possibilities and – often ambiguous – perspectives has led a certain number of asylum seekers to take refuge to non-judicial remedies such as filing petitions in regional or Federal Parliament, or, sometimes, church asylum.

## *DATA FINDINGS*

### 1. Basic information

The "average" migrant interviewed for this study would have been a single 28-year-old man from a West African country, staying in Germany for about six months at the time of the interview. It is likely that we met him in detention.

In other words, 94 % of our interview partners were men, and only two of them were women. Their age ranged from 16 to 49 years. Slightly more than half were singles, about one third was married, and two were already widowed. They came from a wide range of countries, with slightly more Afghani and Iranian nationals than others. As for regions of origin, with 27 % West Africa was highest represented, followed by South Asia (21 %) and the Middle East (18 %).

At the time they were interviewed, they had lived in Germany on average for 6 months; however, there was a wide range from only a few days to 28 months. More than half of our interviewees were detained (58 %), and they had spent on average one month in detention, again with a range from a few days to five months.

Almost half the interviewees, or 45 %, were in transfer pending and waiting for a decision, meaning that they had not heard about any decision in their case yet.[130] About one in five knew that their transfer had been ordered already, and they were waiting for implementation. Only a minority of 13 % were challenging the transfer.

### 2. Personal 'Dublin story'

Almost all migrants interviewed for this study had travelled through various European countries. Some had lived in Europe for as many as ten years at the time of the interview, still not having found a place to stay. Many spent years travelling from one country to another, often with the help of people smugglers. An Afghan, still a minor when he came to Europe, described how it took him five attempts and almost two years to reach Germany, being deported from Italy to Greece, from Serbia to Macedonia and back to Greece, and from Hungary back to Serbia, and being detained for eight months in total along the way. Among migrants from West African countries, it was a frequent experience that they had spent some time in Libya, and then left for Italy during the crisis in 2011.

While travelling, the interviewees frequently had experienced hard times, having to live in the street, depending on help from residents, fellow migrants or charities to cover for their basic needs. An Iranian told us that while spending a few months in the Greek harbor city of Patra, he had to sleep on the beach and sometimes ate cats` and dogs` food. But destitute living situations were not restricted to countries like Greece, Italy or Malta. Interviewees also reported to have

[128] E. g., JRS Germany runs a legal aid fund for detainees in three federal states.
[129] For details see, inter alia, Bender/Bethke, 10 Jahre Dublin – Kein Grund zum Feiern, p. 38f.
[130] As explained in chapter 2, due to the information policy of the German authorities, this does not necessarily mean that indeed no decision had been issued yet.

lived as a homeless in Amsterdam, to have been left without any help from the state for months after applying for asylum in France, and to have been thrown out of a refugee camp in Spain after eight months, being forced to live in the street. Several of our interview partners said they had not been granted access to medical assistance they would have needed. Corruption and violence both by police and mafia were mentioned. The overall impression thus is that, under the current system, asylum seekers face a high risk of destitution, and they are exposed to a high level of vulnerability.

While a few of the interviewees seemed to drift through Europe to some extent, going from one place to another as it seemed they had better chances to make a living there, a the better part of them was very focused in travelling. Family members present somewhere in the European Union were a reason for this. “I have two sisters in Belgium, and I wanted to be near them”, “I had friends in this or that place”, “I was arrested when I tried to bring my wife and children from Austria to France to stay with me” or “I have an uncle in Sweden, and I intended to live with him” were sentences we often heard. It was frequently these of our interview partners who commented very negatively on the Dublin system, as it clearly disturbed their plans. One young Somali, detained in Munich, said, “I travelled from Italy to Austria to marry my girlfriend there, but I missed the station and ended up in Germany. Now Italy is responsible for me, but I actually don’t want that.” A man from Ghana, who lived in Italy, simply wanted to visit a friend in Düsseldorf, and ended up in detention in Munich for five months.

Nearly two thirds of interviewees were detained at some point. Detention often lasted for long periods. Detention conditions varied widely: While one former detainee described the detention centre at the airport of Amsterdam as “good”, the majority of interviewees told horrifying tales. A Somali reported how, during a detention period of 15 months in Malta, his friend died one night after getting very sick, with police not bothering to help or call an ambulance. A refugee from Chechnya described a situation in a closed camp in Poland that reminded him of the one he had fled from: boots of police passing his room at night, keys being turned. Several interviewees told us that they themselves or other inmates had attempted suicide in detention.

Almost all migrants we spoke with had applied for asylum at some point along the way. Not all could tell us about the outcome of their asylum procedure – very often, interviewees would simply mention that they had “lived” in a country for some time, not mentioning their residential status. Greece and Italy were the countries where it had been particularly difficult to lodge an asylum application in the first place. One man reported that in various places – Ancona, Foggia - the responsible authorities initially had not accepted his asylum application, and he could only lodge it after months. Several interviewees mentioned that Italy had returned them to Greece – at a time where the living conditions and the systemic flaws in the Greek asylum system where already publicly known. From Poland, Chechen refugees reported other Chechens missing, suspecting that president Kadyrov’s men might be responsible. – Some interviewees repeated their asylum application in Germany, obviously still hoping to find protection, others didn’t. One man told us that, after four years in the European Union, he just wanted to return to Kosovo.

The sheer duration of Dublin procedures puts an enormous stress on asylum seekers. Many reported that they had suffered from uncertainty during months of waiting for a Dublin decision. As one Iranian engineer put it, who had waited for a response from Italy for nine months: “I am mentally distressed. I now live in uncertainty. I am restless because I do not know whether I have to return to Italy.” A Chechen refugee waiting for a Dublin decision concerning Poland said, “I have sleepless nights full of nightmares.” A woman, also from Chechnya, told us, “We live in constant uncertainty. That’s why I am restless and do not come to inner silence. My husband could not bear the situation any longer. Now he is treated in a psychiatric clinic, and I am alone with our children.”

The only thing the Dublin system seems to be beneficial for is the business of people smugglers. Several interviewees informed us that they had paid up to 12-14.000 Euros to smugglers who had taken them to Europe, through different countries and finally to Germany.

With one exception[131], most migrants we interviewed had the impression that transfers between EU countries had negatively affected the chance that their asylum application would be accepted, with about one fifth not being able to tell whether their case had turned to the better or worse. Most had come to Germany hoping they would find protection here.

[131] The exception was a man from Turkey, waiting to be transferred to France. He had been intercepted while trying to bring his family from Austria to France, too. In France, his asylum procedure was still going on, so he hoped for a positive decision there.

But those who already knew a bit about the Dublin regulation realized that they could not get another asylum procedure in Germany after they had already applied for asylum in another member state. They usually rated that as a change for the worse. A Liberian described his situation as somewhat paradox: “In Spain, I wasn’t allowed to leave the country because I applied for asylum there. I did so because they treated me so bad.[132] But I think because of running away my chances are worse.” A rather tragic case was the one of a young man from Afghanistan, who had been separated from his family. He stayed in Austria, his family in Heidelberg (Germany). They decided to meet in Salzburg, near the German-Austrian border, but he missed the stop and was arrested on the German side of the border. During his detention in Munich, his interview date with the Austrian authorities passed, which might have been detrimental for his case, and he was very worried about that.

### 3. Knowledge of Dublin procedures

During the interview, we would ask every interviewee what s/he knew about the “Dublin Regulation”. If this term was unknown to them, we would hint that this is the European “law” determining that an asylum seeker can have her/his application examined only once, and which EU member state is responsible for the assessment.

Even so, interviewees proved to be rather poorly informed about the Dublin regulation and its rules. From some of them, we got very brief answers like “I have no idea” or, in one case, a hefty “This is a sh** regulation.” While 51 % of interviewees at least had understood that the Dublin regulation was the cause they were to return to the state where they first applied for asylum, only 9 % had additionally understood the role of fingerprinting in this procedure. Only three of our interview partners could tell us additional details about the Dublin regulation – one could link it to the Schengen Zone, one had learned that it had come into force in 2003, and another one had heard that if he stayed in a member state for a certain minimum period of time, this state would become responsible for his case.
No one of our interview partners prompted us at this stage of the interview to be informed about other details of the Dublin regulation. They did not seem to know that there are certain criteria to be checked to establish a member state’s responsibility. However, when later asked in more detail, it turned out that a little less than half of them had received some information on the existence of the sovereignty and humanitarian clause, even if most of those had obtained the information after their Dublin interview had already taken place (for more details see 3.4).

Almost half said they felt they knew nothing at all about the Dublin regulation. Three-tenths said they had heard about it but didn’t understand it due to a lack of information; 12% found themselves in the middle of knowing and not knowing.

If they had obtained any information about the regulation, then they stated in the majority of cases that they got the Information from other migrants (41%) or from lawyers (22%). However, 19% said that they got no information at all. In at least one case, the interviewee said that our interviewer was the first person ever explaining to him the Dublin rules. In contrast, state officials did not seem to be the favorite source of information: Two thirds of all interviewees said that they did not ask the state for information. On the other hand, 9% got no information although they asked the state for information.

By far the largest part of those who claimed to have got at least some information said they got the information orally (87%). Only two interviewees mentioned that they had received a “paper”, possibly the BAMF information form. They felt only little better informed. One migrant reported that he had actively researched on the internet to find out more about Dublin, and he (as one of few) claimed to be well informed about the regulation, while still not understanding some aspects. Seven-tenths said that they got the information at stages where they could no longer use it, e.g. after the Dublin interview.

Just over three-fifths (65%) of those interviewees who said they had obtained information understood the information that was given to them; the rest (35%) did not understand it. While those who were informed by other migrants usually had heard the information in their mother tongue, those informed by authorities or courts had frequently only got information in English, which, in some cases, caused problems in understanding. Nine percent of those who had received information said it had been too complicated to understand.

[132] He had been detained for a month on arrival, been sent to a camp where he waited for a decision for eight months, then been forced to leave the camp, and lived in the street for another six months that he succinctly described as “no work, no money”.

Of those who got information, still only little more than half, or 55%, said that the information was helpful, while 44% said that it was not helpful.

It should be noted that almost a quarter of our interview partners (24%) had no knowledge at all about basic features of the Dublin regulation, such as sending asylum seekers back to the country where they first applied, even if they said that they had received information. This gives way for the assumption that the information they got was not useable. However, in some cases it might have been a matter of circumstance, as at least two interviewees said they had either not wanted to understand, or had not believed what they heard.

### 4. Appeals

Only little more than half of the migrants we interviewed said they had received information about how to appeal against a transfer. Nearly half said they had not been informed. Those who claimed to have been informed had usually got the information orally (76%). Only two interviewees said they had received information in written, in both cases from their respective lawyers. Lawyers were the most likely source for information on appeals (30%), followed by NGO staff (24%) and detention centre staff (18%).

Only about one third of our interview partners tried to challenge a transfer decision, 67% did not. Those who did not challenge their decision gave as main reason that they lacked information on the possibility to appeal and how to do it (43%). Two of the interviewees showed at least some level of information by saying they were awaiting the member state's or the German Dublin decision. Quite obviously, interviewees did not feel in the position to challenge a decision on their own, as another 22% said their reason for not challenging their decision was that they did not have (or could not afford) a lawyer. Only two migrants interviewed said they didn't challenge their decision because they accepted it – one had been returned to Germany, the other wanted to be transferred back to France, where he lived.

Of those who said they had appealed, not all seemed to be clear about whether they had actually appealed against the Dublin decision, the decision to detain them, or both. Most were still waiting for the outcome of the procedure, with only one reporting that his appeal (in Sweden) had been rejected. When asked about their experience with the appeal, about half of them highlighted positively the help they received from lawyers or NGO staff, so, again, this seemed to be an important issue for appealing in the first place. Several interviewees described their mixed feelings in the process of appealing: the 18-year-old Afghani refugee arrested on the train from Austria[133] expressed his hope to be released from detention so that he could live with his mother, brother and sister in Germany. A 17-year-old Somali said, "I'm mainly in a situation of ambiguity and fear."

A slight majority (55%) of the interviewed migrants had been able to take contact with a lawyer. The vast majority of them (78%) was content with what the lawyer did and expressed a high level of trust in their respective lawyers. "My lawyer is competent and taking good care of my case" was a typical answer. Interviewees would also point out the emotional support they felt: "I don't feel alone and that someone helps me", said a 27-year-old man from Afghanistan. "The procedure is complicated and without help I wouldn't be able to face the situation." However, one out of six interviewees who had assigned a lawyer expressed disappointment. They usually would accuse their lawyer of not doing anything in their favour, and criticize the bills they had to pay, which ranged between 300 and 600 Euros.

Slightly less than half of our interviewees (49%) had heard about the possibility that the government can – under certain circumstances – decide to either examine the asylum application or transfer the applicant to another European Country.[134] However, only 37.5 % stated that they received this information before or during the Dublin interview or at a comparably early stage of the procedure; the rest said that they received it too late, after the Dublin interview, that their lawyer later tried to introduce the relevant information in the procedure, or they just could not tell when they had obtained the information. Among those who were not informed at all, detainees were highly overrepresented (71%).

[133] See 3.2.
[134] We did not ask in detail here whether they knew about the existence (and respective provisions) of the sovereignty and humanitarian clause.

It was mostly lawyers (31%) or other migrants (25%) who had informed them about the sovereignty and humanitarian clause; only one in four had learned about this possibility from administrative authorities, and another 19% from detention centre staff. If they had been informed, it would almost always have been orally (93%). Only one 25-year-old man from Georgia reported that he had received written information in his mother tongue in Eisenhüttenstadt.

Half of those interviewees who had been informed about the existence of the sovereignty and humanitarian clause had the chance to argue for their application. Health issues were comparatively often raised in this context (20%), underage of the applicant and/or family members in Germany were other reasons. Of those who had argued for the application of the Sovereignty or Humanitarian Clause, 82% had the feeling that their request to stay was listened to. Nearly three fifths (60%) assessed the outcome positively, often pointing to the fact that – at least until the time of the interview – they were still staying in Germany.

**5. Asylum case**

We asked the interviewees what they intended to do in case they were transferred to another Dublin state. Almost half of them were blocking out this possibility, still occupied with fighting for a right to stay in Germany. “This is like a closed bag”, a 33-year-old man from Afghanistan tried to describe his situation: “You do not know what is in it, what the decision will be.” Others seemed depressed: “I don’t have any plans”, a Liberian told us. “The police is planning my future.”

Those who would take into account the option that they might have to leave Germany were split about their future plans: 39% had more or less constructive plans what they intended to do after being transferred; their ideas ranged from continuing an on-going asylum case in the other state or seeking asylum again to marrying a citizen of that state. Many had no detailed plans, but just hoped to live free, and somehow make a living.

By contrast, 28% were deeply frightened by the perspective to be transferred. They were either afraid of the living conditions there – “Norway was hell”, an Afghan refugee said, and a Ghanaian announced, “I will leave Italy again. Maybe wait till my wife gives birth to the baby. But in any case leave Italy”. A 25-year-old refugee from Chechnya feared he might disappear in Poland like, he claimed, others from his country had done before. Or they were afraid to be deported back to their country of origin, in which case, a woman from Chechnya feared, her husband would commit suicide.

Two interviewees would actually prefer to go back to their countries of origin instead of being transferred. Both expressed great tiredness with their situation in Europe. A 31-year-old man who had fled Iraq ten years earlier said, “I’m tired of the procedure in Sweden and Europe. I live here so long, I work, I pay my taxes, I never committed a crime. But still I’m not accepted and don’t get papers. Now I am even arrested. I’m tired of being a second class human.”

Some told us frankly they’d try to get back to Germany, sometimes with a desperate undertone: “I’ll try to come back to Germany”, a 23-year-old man from Afghanistan said whom we met in Berlin. “But when the police will arrest me, I will beat them, and afterwards I’ll try to commit suicide.”

While some of the people facing a transfer clearly had had experiences in the country they were going to be transferred to, with others, it might have contributed to the feelings of insecurity and fear that they had no sufficient information about what to do and how to apply for asylum there. 39% of “transferees” said they lacked this information. Of those who knew how to apply for asylum, most had obtained this information from other migrants (37%) or border guards (26%). The information would most likely have been given orally (58%), in about one out of five cases it was additionally provided in written.

**6. Personal well-being**

The vast majority of the interviewees got assistance from the authorities in at least one of the fields of housing, work, food, education, clothing, recreational activities, medical care and transportation. Only two migrants received no whatsoever assistance, and these two were absconded at the time of the interview. However, 58% of interviewees were detained, so the range of services provided to them and their quality of life was significantly below the average level.

In detention, housing, food and medical care are generally provided.[135] Recreational activities are provided to a certain extent, at least the opportunity to spend some time in open air every day should be granted.

Those interviewees who were not detained (and not absconded) were all granted housing, food and clothing. The vast majority said they were granted medical care. Two thirds reported they had access to transportation. Only one third stated they had access to education, and only one interviewee said he had access to recreational activities.

If they had commented on the quality of services provided at all, they were slightly more likely to have rated them as being negative. Housing conditions were most frequently criticized. Interviewees described how living in a home with many other migrants, sometimes having to share a room with others, caused conflicts and influenced their well-being negatively. Some tried to find an apartment of their own, but ended up frustrated: landlords wouldn't accept asylum seekers, and the authorities would not allow them to move out of the home. Money and medical assistance were the other two points raised by several interviewees. It should be noted, however, that shortly after the end of the interviewing period the Constitutional Court ruled that the social benefits for asylum seekers, who had been left unaltered for 19 years, had to be raised significantly to a level similar to those for national citizens. Medical care for asylum seekers, on the other hand, is a constant issue in political debate (see 2.3.4). Those who mentioned access to work were unhappy with German law banning them from the labour market for at least the first year of stay.

On the other hand, especially those who compared their living conditions with experiences they had had in other European states earlier tended to rate them rather positive, which was also true with those migrants that we met in detention centres.

**7. Detention impact**

Nineteen interviewees were in detention at the time of the interview. Another six had detention experiences from their journey through Europe. They rated their experience quite controversially.

A smaller group of seven interviewees said detention had not had any significant impact on their life and their case; some even highlighted positive effects: a young Vietnamese in the detention centre at Berlin-Köpenick, who wanted to return to his country as soon as possible, compared the conditions to a holiday ("no work, television, enough sleep, enough to eat"); a 27-year-old man from Afghanistan said that through detention he had got in contact with the JRS there, who then had put him in contact with a lawyer, who had in the end succeeded in challenging the detention order and bringing him out again.

On the other hand, the vast majority of 72% of those interviewees with detention experience described the impacts of detention negatively. Nearly one quarter reported that their mental health had been negatively affected. They referred to symptoms like tiredness, feelings of depression, stress and frustration. Two tenths highlighted the negative effects on their social life. To be separated from their family members was their main issue; in one case, a man from Ghana complained that he had been separated by detention from his pregnant wife, with whom he was due to be transferred to Italy. This situation made detainees feel ashamed, in some cases, they did not even dare to tell their families. "I don't even want my mother to come because I don't want her to see me like this", said the young Afghan who had been intercepted at the Austrian border. Sixteen percent of our interviewees who had been in detention at some time felt criminalized, pointing out that they hadn't committed any crime. A similar number simply saw detention as a waste of time. Those who had been detained in other countries reported nightmarish conditions from Greece, with 35 people having to share a cell and police beating them, and being detained for no evident reason in Italy.

**8. Personal plans**

A little more than half of all interviewees (51%) claimed they had a special connection to Germany. This was most frequently because of the presence of family members, relatives or friends (41%), of familiar ethnicities (29%) and compatriots (18%).

[135] There is an on-going discussion about the range and quality of health care offered in various detention centres in Germany, though.

On the other hand, 30% of interviewees were able to also identify advantages in the country they were due to be transferred to. Again, presence of family members, relatives or friends was mentioned most frequently (50%), followed by presence of familiar ethnicities and/or compatriots. Some migrants said they had even started to learn the language of this country, so it might be easier for them to start there.

Those who had been returned from other states to Germany saw no particular advantages for them in the countries that had transferred them. And one third of all interviewees saw no advantage whatsoever, neither in Germany nor in the country responsible for their case.

Almost every second interviewee (49%) pointed out that also her or his family had been impacted by her/his own experience with the Dublin regulation. Several migrants reported scenarios of family separation – spouses being detained separately, or deported separately, because different European states were responsible for their respective asylum cases. To know that their relatives were detained in Germany also meant psychological stress for the families, and this in turn negatively affected the mental well-being of the person detained, in a kind of vicious circle.
The majority (81%) of our interview partners talked to us about the plans they had had prior to their current situation in the Dublin system. Nearly two tenths (19%) said they could not make plans due to their insecure situation. Of those who shared their plans with us, 29% had planned to seek asylum and live in peace in Germany. The same percentage said they had just wanted to live in Germany, and another 29% stressed that they had wanted to work and earn money to make a better life. Nineteen percent had planned a future in another EU member state, and for two interviewees it did not seem to matter where they went as long as they did not have to return to their respective countries of origin.

A vast majority said that the Dublin procedure was disturbing these plans. In most cases it was the projected transfer that was pointed out as a reason; 79% had no new plans. The other 21% had new plans in a wide spread of work, for starting a family, the search for safety and going to a different EU country (17% each) and 33% going to the country of origin.

**9. Why (not) abscond**

One third of interviewees reported that they had absconded from the authorities at some point in the past. In nearly all cases, this had been in other European states; only two interviewees were currently not in contact with the German authorities at the time of the interviews. One of them had left Hungary after being repeatedly detained and exposed to threats by police and planned to present himself to the authorities to apply for asylum soon. The other one described his present experience as “living in constant fear”. A third refugee had earlier absconded when he learned about his upcoming transfer to Spain, but had later reported to the police and was now detained in Munich.

For those who had absconded from the authorities in other countries, in every second case the reason had been that they couldn’t stand the situation there anymore. A 27-year-old man from Afghanistan reported to have been insulted and hit in Greece. Another Afghani said that in a camp in Slovakia he had been forced to take medicine against his will. A 35-year-old from Iran told us that Spain had put him into prison for one year for no particular reason. – The second most frequent reason to abscond was to avoid a transfer; Italy and Norway were among the countries the migrants seemed to be most afraid to return to.

Of those two thirds who said they had never absconded, 32 % said they had never had a reason to do so. Some explicitly stressed that they had confidence in the police and so they saw no need to run from the authorities. Another 14% accentuated that they were striving for a legal status in a European country, either by applying for asylum or for a visa. Five interviewees who we met in detention pointed out laconically that even if they intended to, there was no way to abscond.

**10. Personal views about the Dublin Regulation**

The overall view that migrants and asylum seekers unveiled in our study to have of the Dublin regulation is that it is unfair and limits their opportunities. Roughly 75% commented in that direction. Only very few had a more positive view, like one interviewee who said he understood the regulation was necessary, but it still disturbed his plans for the future. Others showed less understanding. Many focused on their individual situation, complaining about separation from family members or having to live in detention. As an example, a man from Ghana accused: “Look at me and my situation. These

rules are very unfair. I got arrested as well as my pregnant wife. We can't move freely and have to go back to Italy. It's crazy." Others would see things from a more general angle, like a 30-year-old man from Bangladesh, detained in Munich and worried about his wife back home: "It is a moral as well as a religious obligation that the rich help the poor. Europe is rich. And Europe could help the poor with work, food, money. But Europe doesn't do so. And I think Dublin shows this clearly." A 17-year-old boy from Somalia added, "Dublin seems to be like an instrument to keep refugees out." A young man from Afghanistan even called it "a war against migrants".

Especially those who had detention experience were likely to comment like a 19-year-old Afghani did: "The Dublin regulation disturbs our plans to live a normal life in peace and safety. Instead of working I find myself in camps or in detention. Through Dublin I feel, and I am, criminalized. But I haven't done anything."

Some had been intercepted on their way through Europe, trying to meet with family or friends, and actually intending to go back afterwards. The application of the Dublin rules had disturbed these plans and, in some cases, led to longer periods of detention. In addition, absence from the country responsible for their asylum case threatened to have a negative impact on their asylum procedure. From this group came comments like, "If a migrant has good reasons to go to a certain country, like family, they should let him pass through other countries", as a 22-year-old Somali put it. "The Dublin regulation should be more differentiated."

The Dublin regulation was also perceived by refugees to divert attention from those problems they considered the real ones: "We have serious problems, but nobody cares", said a 19-year-old Rom from Serbia. "In Germany the asylum is turned down. So we try to get to Austria. But they say that they are not responsible, Germany has to decide." Several interviewees expressed the view that it should be left to the refugee to choose her/his country of asylum.

More than half of the interviewees wished they had known the Dublin regulation and its rules as well as the living conditions for refugees in the member states before they came to Europe. Some stated that if they had known, they would never have chosen to go to Europe in the first place.

If the interviewees have an advice to other migrants, it is to choose carefully to which EU country they want to go to and to stick to the rules of the Dublin procedure. Some would even flat-out advise others to avoid Europe: "Don't come, it's too hard", said a man from Bangladesh, and a Chechen warned: "Please stay at home, if you don't have any big problems with the political situation or maybe others."

We asked the interviewees to identify the three biggest problems they were facing at the time of the interviews. Family issues – being separated from family members, not being able to support them etc. – were a major problem for 36% of interviewees. Not being able to obtain documents for a legal stay was identified as a problem by 33% of interviewees. Just over one quarter (27%) mentioned among their three biggest problems that they were detained; 24 % simply said the Dublin Regulation itself was a problem, and the same percentage of interviewees found it stressful not to have access to work. About two tenths (21%) mentioned the insecurity about the outcome of their procedures as a problem, another 21% said they felt fear about having to return to another Dublin state – Italy and Hungary were mentioned most frequently here. Eighteen percent of interviewees counted it as one of their biggest problems that they feared to be returned to their country of origin and/or wanted their asylum case to be heard. Health issues like depression, psychological problems or not getting proper medication were a problem to another 18 %.
Family issues, detention issues and the inability to obtain documents for a legal stay were the three issues most frequently brought up as "no. 1" problems. Fear to return to the country of origin was the issue mentioned most frequently as "no. 2" problem, followed by – in equal parts – fear to return to another Dublin state, family issues, documents for legal stay, health issues, insecurity about procedures and access to work. Access to work was also the top "no. 3" problem, followed by insecurity about procedures and the inability to obtain documents for legal stay.

For most, the best solution for their problems would have been to stay in Germany (71%), to have a normal life (10%) and to join or to start a family (10%).

## *DATA ANALYSIS*

### A) Information about Dublin procedures

Overall, it seems that lack of information is one of the biggest problems, if not the biggest, for migrants in Dublin procedures. Little more than half of them had at least a vague understanding that the Dublin regulation and its rules were the cause why they were to return to the state responsible for their asylum case (3.3). No one seemed informed about the details of the Dublin criteria, and again, it was only one half that had at least heard about the basic concept of the humanitarian and sovereignty clause (3.4).

This low level of information is in stark contrast with the state obligation to inform asylum seekers about the application of the Dublin Regulation.[136] But it seems linked to a high level of ambiguity about how state agencies actually fulfill that obligation. The BAMF has, at least, designed a form with some basic information on the application of the Dublin regulation. But it leaves out important issues like the humanitarian clause and sovereignty clause; according to observations by NGOs, in addition, it is not always available, and if so, then not always in languages the asylum seeker will understand. An additional interview to obtain further information is possible, but not standard, let alone compulsory (2.2.1). With immigration offices and Federal Police, information duties are shaped even weaker; from an NGO perspective, it is often unpredictable if at all and at what stage of the procedure the migrant will be informed about important facts like the stages of the procedure, the decision of the requested state, and possible legal remedies (2.2.2).

The result is that 49% of all interviewees say they feel not informed at all about the Dublin regulation and its rules, with another 30% stating that they had heard about it but didn't really understand it due to a lack of information (3.3). Another 49% said they had not been informed about the possibility to appeal against a Dublin decision and how to do it (3.4).

This is of particular concern as a lack of information on the migrants' side is likely to also cause a lack of information on the state agencies' side and thus negatively affects the quality of Dublin procedures and decisions in total. If migrants are not informed accurately about the Dublin procedure and its rules, e. g. the possibility of arguing for the application of the Humanitarian Clause, and they are not interrogated in detail about possible arguments either, the state agencies will make a take charge or take back request and a Dublin decision on an incomplete fact base. We were made familiar during the interviews with various cases where potentially relevant facts had only been introduced into the procedures after lawyers had taken over the case, informed their clients in more detail, and challenged the Dublin decision (3.4). And these were only the cases where the asylum seekers executed their right to a remedy. With many migrants being unaware of this right (see above), lack of information may lead to severe consequences, like family separations because different Dublin states become responsible for different family members. The right to a fair procedure needs a safeguard here.

Incomplete information is also a major strain for migrants during their Dublin procedures. Repeatedly, interviewees reported feelings of insecurity and psychological problems because they did not know at which stage their procedure was and which outcome it might have in the end (3.2). According to NGO observations, these difficulties amplify with migrants who have been intercepted near borders. In these cases, the BAMF will not even deal with the asylum application, so they are left in complete insecurity about their procedures and might find themselves deported to another Dublin state without ever having received any information about the state of their procedure (2.2.3). It adds to the problems that these migrants are most likely to be detained.

The state's failure to inform asylum seekers accurately is mirrored in the way they receive their information: If they received information about the Dublin regulation and its rules, the information mostly was provided by other migrants (41 %) or lawyers (22 %). In 87% of cases the information would have been provided orally (3.3). If they got any information about legal remedies, lawyers were the most likely source (30%), and another 24 % said they had been informed by NGO staff. Again, in 76% of cases the information was provided orally (3.4).

The fact that migrants report to have received their bits of information orally might, however, also point in another direction: they might not be able to make use of written information, e. g. because it was not provided in a language they understood and thus the information content was not recognized. The fact that 35 % of interviewees said the information that was given to them was too complicated and they could not understand it might support this view. In addition, migrants might simply be more open to listen to a person they trust.

**B) Acceptance of Dublin rules and decisions**

[136] Dublin regulation, Art. 3 par. 4.

The fact that migrants lacked information on the basic rules of the Dublin system and also felt uninformed about their individual procedure might directly contribute to the little level of acceptance for Dublin rules and decisions. Overall, the Dublin regulation was perceived as an unfair system, designed to keep refugees out of Europe (3.10). In numerous cases, Dublin procedures interfered with migrants' plans to live together with family and relatives or to go to a particular country because they had a network of friends and/or compatriots there (3.2). Clearly, the interviewees did not have the impression that the Dublin system took their interest into account appropriately.

Whether as a consequence of lack of acceptance of the Dublin rules or simply a lack of knowledge about these rules, almost all migrants had travelled through various European countries, and some had done so for up to ten years at the time of the interviews (3.2). It might point to a lack of acceptance, however, that some interviewees announced that they would try to return to Germany as soon as possible, even if transferred. This attitude seemed to be driven, among others, by fear of the living conditions they faced in the state they were to be transferred to, and by a negative perception of their chances to have their asylum requests assessed there (3.10). This fear corresponds with the fact that the interviews (again) revealed that the unexpressed, but central presumption of the Dublin regulation – that asylum seekers will have access to fair asylum procedures and comparable reception conditions anywhere in Europe – is questionable (3.2).

It should be noted, on the other hand, that the migrants interviewed for this study did not *per se* have a negative attitude towards laws. On the contrary, the wish to get documents and a right to stay (or the inability to do so) was the second most pressing issue the interviewees mentioned, only outnumbered by the preoccupation with the situation of their family members (3.10). Many of the interviewees shared a common dream of their future: to be heard with their asylum case, to receive a right to stay, to live and work in Germany, pay taxes and found a family. And they were very cautious about the issue of absconding from the authorities, showing a high level of awareness for the possible negative side-effects (3.10).

In this situation, however, it seems arguable whether the aim of the Dublin regulation to avoid secondary migration inside the Schengen area can be reached at all. But if not, Europe will more and more become a switchyard for refugees, with refugees themselves being at the mercy of border guards, asylum authorities and immigration offices. Some of our interviewees envisioned this, and they made a simple suggestion to escape this vicious circle: to leave the decision about the responsible asylum state to the asylum seekers themselves (3.10).

In fact, it might be to the benefit for both sides, if migrants' interests were to be taken more into account. As a stimulus for a debate in this direction, JRS Germany signed a memorandum together with six other church and civil society organisations that supports the idea of giving asylum seekers the possibility to choose their country of asylum. This proposal demands that the "place of irregular border crossing" provision be dropped and replaced by a "principle of free choice of member state".[137] There are several arguments in favour of such a change of system:

1. Free choice will allow asylum seekers to go where they can receive support from their families or communities. This is not just beneficial for the refugees but will also benefit integration and the provision of accommodation.
2. Refugees can be spared human rights violations if they are no longer forced to stay in countries that have neither a decent asylum system nor provide a minimum of humane treatment for them.
3. If asylum seekers are not deported to EU states to which they do not wish to go, that will prevent them from continuing to move around from one EU member state to the next. "Secondary" migration within the EU will then be avoided.
4. There will be a reduction in costs for the bureaucratic procedures necessary to return them from one country to the other. Any imbalances in capacity arising for member states may be corrected by European funds.

**C) Reception conditions in Dublin procedures**

Some of the interviewees told shattering tales of destitute and vulnerable situations during their journey through Europe (3.2). Compared to this, reception conditions in Germany might seem comparably good. With the exception of two interviewees (one having entered the country relatively short ago, preparing for his asylum application), all were in contact with the authorities and received assistance with housing, food and clothing. 92 % reported that they also received

[137] Allocation of refugees in the European Union: for an equitable, solidarity-based system of sharing responsibility - http://www.jrseurope.org/publications/JRS-G%20Memorandum.pdf.

medical care (3.6). So, as a consequence of the Asylum Seekers Benefits Act[138], obliging the state to grant minimum assistance to asylum seekers and migrants without a residence permit or with a perspective only to a short stay in Germany, the basic needs of interviewees seemed to be met.

It should be noted, however, that more than half of our interview partners were detained at the time of the interview. So the fact that they – evidently – received housing, food etc. did not necessarily influence their personal well-being to the better (see 4.4). Even by those who weren't detained, the quality of services was rated negatively in many cases. Housing conditions in the homes asylum seekers are obliged by law to live in were most frequently criticized, followed by money and medical assistance (3.6). While the monthly benefits for asylum seekers have been raised after the interviews in accordance with a ground-breaking decision from the Constitutional Court, health care for asylum seekers is still an issue, with assistance only being granted for acute illnesses and pains (2.3.4).

Access to work was one of the main issues raised by interviewees. Asylum seekers are banned from the German labour market for at least one year. A large part of our interview partners rated this among their three biggest problems (3.10).

Reception conditions in Germany, then, might not qualify as a „best", but instead, at most, as a "better practice" model, compared with devastating conditions in some EU member states.

**D) Detention in Dublin procedures**

To be in a Dublin procedure today is the no. 1 risk factor to become detained in Germany. 60-80 % of all detainees in German detention centres are migrants subject to Dublin procedures. The main cause, it occurs, is the Federal Police's practice to apply for detention orders for literally everyone they intercept at or near the borders, following a directive from the Federal Ministry of Interior from 2006 (2.2.3, 2.3.5).

Detention has devastating effects on the individual.[139] Families are separated, detainees reported psychological problems and to feel criminalized (3.7), others had witnessed re-traumatizing settings and suicide attempts during their journeys through Europe (3.2).

The main reason why courts order detention is that the person concerned is suspected to otherwise abscond from the authorities. In the light of our data findings, this seems at least arguable. If interviewees had chosen to abscond in the past, they had done so for grave reasons like actual or threatened violence by police. Vice versa, one might conclude that they would choose to not abscond whenever standards of a fair procedure are respected. This is underlined by reports from the interviewees who described times where they absconded as "living in constant fear", and explicitly stressed that, in Germany, they had confidence in the police and saw no need to run away (3.9).

Apart from that, detention of migrants in Dublin procedures is only possible due to an anomaly in law. While generally, asylum seekers receive a temporary permit to stay by law, an exception applies to those who apply for asylum after intercepted near a border. This exception is deliberately being taken advantage of by the Federal Police (2.2.3). Evidently, there is a need here to treat this group equal with other asylum seekers.

Especially in cases where migrants want to leave Germany anyway to return to their responsible Dublin state (2.3.5), detention is unnecessary. It may even have adverse effects on the person's asylum case (3.2). Germany should make use of the options that Art. 7 of the Dublin Cooperation regulation grants and allow for voluntary return in these cases. However, at the moment, forced return after a Dublin procedure is the only option, often including weeks of detention (2.4.3).

Whether in Dublin procedures or not, detention may always be only a last resort. This implies that authorities and courts must consider alternatives before applying for and ordering detention. This, in turn, obliges the state to provide for the existence of such alternatives.[140] Our research suggests that migrants in Dublin procedures have a high interest not to abscond, but to abide with the law, but that in large part they lack important information both about the Dublin system in

[138] *Asylbewerberleistungsgesetz*.
[139] See also, JRS Europe, *Becoming Vulnerable in Detention*, Brussels 2010, http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_28Jun10.pdf.
[140] See also, JRS Europe, *From Deprivation to Liberty*, http://www.jrseurope.org/JRSEuropeFromDeprivationToLiberty20122011.pdf.

general and their individual case. A clearing procedure, aiming at informing the migrant, carefully considering the Dublin criteria and a possible application of the Sovereignty or Humanitarian Clause, and, if indeed another Dublin state is responsible and transfer is inevitable, ensuring that the migrant will receive further assistance in the responsible state, might be such an alternative. State agencies and NGOs should reflect mutually on such possibilities.

**E) Legal aid in Dublin procedures**

According to our research, lawyers play an important role not only in appealing to court in the name of Dublin migrants, but also in providing information about the procedure and its stages (3.3., 3.4). 78 % of Interviewees were content with their lawyers and expressed a high level of trust in them. Only one out of six interviewees expressed disappointment.

But only 55 % of our interview partners had been able to take contact with a lawyer – in other words, almost every second one did not have this opportunity, and that might potentially have added to the problem of lacking information (see 4.1). Legal assistance should be made accessible to all migrants in Dublin procedures, then. This is especially important with Dublin migrants who are detained, who are overrepresented under those who lacked important information (as an example, 71 % of those who had never heard about the Humanitarian Clause were in detention).

Germany has no system of state lawyers. While most migrants were content with the work of their lawyers, the costs of legal assistance were mentioned as a problem and might indeed be a limiting factor. State legal aid schemes cannot fully compensate. Especially legal aid in court procedures (*Prozesskostenhilfe*) is only granted if the case has a perspective to be successful – but to establish this, special knowledge is necessary, so migrants will need a lawyer from the start.
In this situation, access to lawyers frequently can only be granted because NGOs moderate contact and also cover for the cost risk.

JRS Germany has recommended for several years to treat detainees in the same way as remand prisoners are treated, who are appointed counsel from the first day of confinement.

Given the complexity of many Dublin cases, as a minimum, competent and independent counsel must be secured, which should include offers by NGOs.

## *CONCLUSIONS & RECOMMENDATIONS*

**1) Information**

Interviewees have shown a severe lack of information not only about the rules and procedures of the Dublin regulation, but also about the regulation's responsibility criteria, the options connected with the Sovereignty and Humanitarian Clause, and their individual cases and possible legal remedies. This has proven to be detrimental not only to the individual well-being of the migrants, but also puts at stake the fairness of procedures (4.1). As a consequence, JRS Germany recommends that:

- Administrative directives should oblige all responsible authorities to inform asylum seekers and other migrants subject to Dublin procedures about the existence and principles of the Dublin regulation, including the full set of criteria to establish a state's responsibility and the possible application of the sovereignty and humanitarian clause.
- All information should be given in a language that the asylum seeker understands, preferably in written with an additional oral explanation.
- All migrants should be heard at the earliest possible stage of their Dublin procedure and interviewed about facts that might be relevant for the application of the Dublin criteria or the sovereignty and humanitarian clause. The interview should be recorded in written and be made available to the authority responsible for the Dublin procedure in time before a Dublin decision is made.
- State agencies should also be obliged to inform the person concerned about important stages of the procedure, e. g. if and when a request is sent to the other Dublin state, deadlines for replies and the actual reply of the other state.

- Administrative directives should oblige the responsible authorities to issue a written Dublin decision in every Dublin procedure. The decision should be made available to the person concerned in a language that s/he understands at least two weeks before the planned transfer and contain detailed information on possible legal remedies.
- Every asylum request filed with any German authority in their area of responsibility must be dealt with and answered with – at least – a Dublin decision.

**2) Detention**

Migrants in Dublin procedures face a high risk to be detained. The detrimental effects of detention to physical and mental health are well documented. This is to be taken even more serious as migrants in Dublin cases are often asylum seekers who have been persecuted by the state in their country of origin, so detention can have a re-traumatizing effect on them. As asylum seekers, they would normally have a temporary right to stay in Germany. But specific features in law allow for their detention when intercepted near a border, and the Federal Ministry of Interior has encouraged the Federal Police to actually apply for detention in all these cases (4.4). JRS Germany wishes to make the following recommendations concerning detention in the context of Dublin procedures:

- All asylum seekers, whether they apply at a border or elsewhere in the country, should be treated equally and receive a temporary permit to stay. Sect. 55 par. 1 s. 3 AsylVfG is to be deleted.
- Administrative directives should make sure that the Federal Police is obliged to forward any asylum request of a foreigner to the BAMF as soon as possible. To withhold the application until a detention procedure is completed is inadmissible.
- Alternatives to detention should be considered especially carefully in Dublin cases. Detention can only be a last resort. A Dublin clearing procedure could spare migrants the experience of detention in many cases.
- Living conditions in detention should be as close as possible to a normal life. Migrants in Dublin procedures should not be placed in correctional facilities, and must be separated in any case from convicted criminals and remand prisoners. The special needs of vulnerable persons must be taken into account; preferably, they should not be detained at all. If detention would result in a separation of families, it should be inadmissible.

**3) Execution of Dublin decisions**

While article 7 of the Dublin Cooperation regulation no. 1560/2003 provides for a range of options for Dublin transfers, including voluntary return, German law allows only for forced return (2.4.3, 4.4). JRS Germany recommends endorsing further options.

- Voluntary return to the responsible Dublin state should be admitted according to Art. 7 par. 1 lit. a regulation no. 1560/2003.
- In cases where it is clear from the beginning that the migrant is willing to return to the (presumably) responsible state, administrative directives should allow for state agencies to abstain all in all from a Dublin procedure and instead enable an accelerated voluntary return.

**4) Better acceptance of Dublin rules**

The data from the interviews has shown that migrants, while generally showing a high level of willingness to abide by laws, find it difficult to accept the Dublin system, because they do not have the impression that their own interests are reflected in it appropriately (4.2). Given the negative side-effects of the Dublin system with thousands of migrants detained and deported from one European country to another every year, JRS Germany holds a system change to be favorable.

- German Federal Government should lobby at EU level to alter the Dublin regulation's catalogue of criteria. The "place of irregular border crossing" provision should be dropped and replaced by a "principle of free choice of member state". This principle will allow asylum seekers to decide in which EU member state to file their application for protection. Compensation of burdens can be reached through a common European fund.

**5) Legal aid in Dublin procedures**

Access to qualified legal assistance plays a vital role for migrants in Dublin procedures. Lawyers are often the most important source for information about Dublin procedures, and without their help most refugees would not be able to challenge Dublin decisions. This is especially true with migrants in detention. But costs of legal representation are a limiting factor (4.5). As a consequence, JRS Germany recommends:

- Migrants subject to a Dublin procedure and detained should be appointed counsel free of charge from the first day of detention.
- Migrants subject to Dublin procedures, especially those in detention, should be informed at the earliest possible stage and in a language they can understand about their right to access NGOs and lawyers that can assist them, and be provided with necessary contact details.

**6) Reception conditions during Dublin procedures**

While reception conditions in Germany might be better than in some other European states, asylum seekers and other migrants in Dublin procedures are still marginalized, forced to live in homes that are frequently referred to as “camps”, denied standard medical care and banned from the labour market (4.3). As a consequence, JRS Germany recommends:

- The legal obligation for asylum seekers to live in a reception centre for three months should be abolished or significantly reduced. Asylum seekers and other migrants subject to Dublin procedures should be granted access to normal housing as early as possible during their procedure.
- Asylum seekers and other migrants subject to Dublin procedures should be admitted to the general health care system.
- The one-year ban from access to the labour market for asylum seekers and tolerated migrants should be abolished, giving migrants the ability to earn a livelihood. This would both encourage them and underpin their dignity, and relieve the state’s financial burden.
- German Federal Government should urge other EU governments to assume their responsibility for asylum seekers by granting them at least minimum assistance, thus avoiding destitute living situations.

# DIASP national report: HUNGARY

**Author: Hungarian Helsinki Committee, http://helsinki.hu**

## *INTRODUCTION*

This report is based on research and analysis of interviews conducted with asylum seekers in Hungary. For the purpose of the DIASP research, the Hungarian Helsinki Committee conducted 30 interviews, using two questionnaires pre-designed by the project's steering committee. The first questionnaire was used for persons transferred under the Dublin procedure to Hungary and the second for persons under the Dublin procedure in Hungary, who were awaiting the decision to be transferred to another member state. The interviews were conducted between March and July 2012.

Most of the interviews were carried out in immigration jails (in Győr, Nyirbátor and Kiskunhalas), since Hungary had a very strict detention policy at the time and most asylum seekers were detained. Some interviews were conducted in an open reception centre for asylum seekers in Debrecen and in a community shelter in Balassagyarmat. One interview was conducted over the phone.

## *MEMBER STATE PRACTICES*

### 1. Provision of information

Asylum seekers get an information leaflet about the asylum procedure, in their native language, or in a language they can understand, from the Office of Immigration and Nationality (OIN) before their first interview with this office. This leaflet explains the Dublin procedure by providing examples as to when the Dublin Regulation may be applicable. It should be noted, however, that the OIN leaflet does not clearly indicate that there is a hierarchy of criteria within the Dublin Regulation and does not list all the criteria within the Regulation.[141]

The HHC's experience reveals that the wording of these leaflets is too complicated and too official for the average asylum seeker to comprehend. The way of sharing information is not adapted to the individual circumstances or background of asylum seekers. Once in a reception centre or immigration jail, the asylum seekers can have access to the HHC's leaflets on the asylum procedure (recently updated and published in nine languages)[142], where the Dublin procedure is explained in a more understandable way. The HHC lawyers, who regularly visit accommodation centres and immigration jails, provide information verbally about the Dublin procedure to those concerned.[143]

If they are under a Dublin procedure, asylum seekers are informed of this fact within a few days of their first interview. They receive a written decision that orders the suspension of the admissibility procedure due to the initiation of a Dublin procedure. The decision is in the Hungarian language but the OIN is obliged to explain it verbally to the asylum seeker in a language that he understands. Once a decision on the Dublin transfer is made, this is also handed to the asylum seeker and explained to him verbally; this explanation covers the applicant's right to appeal. The time limit for carrying out the transfer is noted in the transfer decision. Asylum seekers receive notification of the exact date and time of the transfer a few days before it takes place.

According to the HHC's experience, the time between the suspension of the asylum procedure and the issuance of the Dublin transfer decision is the hardest for the asylum seekers, because they have to wait, sometimes for several months, and have no information about their procedure.

### 2. Linguistic assistance

[141] Example of the Immigration office's leaflet can be found here: http://www.bmbah.hu/ugyintezes_eljarasrend.php?id=59
[142] Examples of the HHC's leaflets can be found here: http://helsinki.hu/en/infoleaflets-for-asylum-seekers
[143] See also UNHCR report on Hungary as a country of asylum, April 2012, §40, http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html

Asylum seekers have the right to an interpreter throughout the entire asylum procedure (including the Dublin procedure). They have the right to request an interpreter of the same sex and, if the interpreter does not behave in a neutral way, they have the right to ask the asylum officer for another one.

The interpreters are provided by the OIN. The law does not list any additional qualification requirements for interpreters working in this field and there is no method stated by law or used by the authorities to verify their language skills or the quality of their translation. It is the HHC's opinion that an average interpreter without sufficient knowledge about asylum procedures, cultural diversity and the specific legal terminology is simply unqualified to translate properly in the context of an asylum procedure. In addition, in order to keep costs low, if there are more interpreters available for the same language, the OIN will unfortunately choose the cheapest and closest one and not the most qualified.[144]

Although the law obliges the OIN to use a professional interpreter, during the first interview with the authorities (usually the police), the interviewer frequently uses other foreigners as interpreters. This happens mostly when the asylum seeker speaks an "exotic" language (rarely spoken in Hungary), such as Somali, and an interpreter is not available at that moment. Later this may prove detrimental for the asylum seeker, because the OIN considers all the interviews conducted when making a decision in an asylum case (including those by the police).[145]

In general the interpreters used by the courts to decide on appeals in asylum cases are more qualified, trained and experienced than those used by the OIN. But even in court no special qualification or certification is required.[146]

Decisions are issued only in the Hungarian language but the asylum seeker has to be informed of the content in his language or a language he understands well. In practice, the officer just gives a summary of the decision, with the help of an interpreter. Recently, interpreters have not even been physically present, but only connected via internet when the decision was announced.[147] No decision is translated in written form.

### 3. Legal assistance, access and quality

Asylum seekers are automatically eligible for free legal aid unless it is proven that they have enough financial resources to obtain such aid.[148] The HHC has ensured professional legal assistance and representation of asylum seekers for more than 15 years. The UNHCR Regional Representation for Central Europe is funding this work in 2013. Since February 2013, the Judicial Affairs Service of the Ministry of Public Administration and Justice is also providing legal assistance and representation of asylum seekers, funded mainly by the European Refugee Fund National Actions Scheme. The lawyers working under this scheme received two days training. Since this is a very recent development, the HHC cannot yet judge the quality of their work.

In the judicial review phase, only lawyers can act as legal representatives. No such requirement exists in the administrative phase. If the asylum seeker has a lawyer, the OIN notifies him about the date and place of the interview.

### 4. Level of transparency

A limited number of statistics on the Dublin system are available on the website of the OIN. The authority usually hands out more detailed statistics upon specific request.

### 5. Use of discretionary clauses (Articles 3 and 15 of the Dublin Regulation)

Hungary rarely receives requests for application of the humanitarian clause and sends relatively few outgoing requests. In 2010 the OIN received no requests based on the humanitarian clause. The Hungarian authorities sent requests based on the humanitarian clause to other member states in eight cases, four of which were accepted. In 2011 there was one

[144] Practices in interviewing immigrants: legal implications report on Hungary, Hungarian Helsinki Committee, Orsolya Szántai Vecsera, March 2011, p. 6, http://helsinki.hu/wp-content/uploads/Practices-in-interviewing-immigrants-Hungary-logokkal.pdf
[145] Idem, p. 4.
[146] Idem, p. 3.
[147] Idem, p. 9.
[148] Asylum Act, Section 37 (3).

incoming request based on the humanitarian clause but the applicant's transfer to Hungary was not executed. The Dublin Unit sent two outgoing requests based on the humanitarian clause in 2011.

The OIN decided to apply the sovereignty clause in six cases in 2010 and in 52 cases (that concerned 62 applicants altogether) in 2011. Due to the situation of migrants in Greece, the OIN suspended the execution of transfers to this country, applying the sovereignty clause in these 49 cases (concerning 55 applicants). However, the application of the sovereignty clause in such cases is not automatic. The consent of the asylum seeker is required, which means that if a person wishes to return to Greece, the sovereignty clause is not applied.

Statistics about the discretionary clauses' implementation are not publicly available. They were obtained upon request.

In the OIN's experience, unification of family members and relatives through application of the humanitarian clause is rarely requested and accepted, as other articles of the Regulation provide a number of possibilities for unification. The difficulties in proving kinship and other circumstances also lead to the rare application of the humanitarian clause.[149] Written consent from the applicant is always sought before applying a humanitarian clause in line with Article 15.

No formal criteria have been outlined to define the application of the sovereignty clause by the OIN. The sovereignty clause is not applied in a country-specific manner; cases are examined on an individual basis. If the application of the sovereignty clause appears to be necessary, the OIN withdraws the Dublin request sent to another member state and notifies it that Hungary is now responsible for examining the asylum application.

The applicant, his legal representative and UNHCR have the right to request the application of the sovereignty clause by submitting a motion to the OIN. However, such a motion rarely results in the application of the sovereignty clause, because the OIN decides on a discretionary basis without taking other (previous) cases into account.

## 6. Use of appeals, i.e. judicial remedies

An asylum seeker has the right to request a judicial review of a Dublin decision within three days before a regional court. The court is a regular county court and not specialised in asylum cases. The court examines the facts of the case and the lawfulness of the Dublin decision and has eight days to take a decision. A personal hearing is specifically excluded by law so there is no verbal procedure. The appeal has no suspensive effect. An asylum seeker has the right to ask the court to suspend his transfer, however according to the Third-Country Nationals Act (TCN Act) and Asylum Act, this request does not have a suspensive effect either.[150]

In its decision, the court is entitled to overrule the OIN's decision or to order the OIN to conduct a new procedure, if the original decision or procedure was not in line with the Dublin Regulation or if Hungary should have applied the sovereignty clause based on human rights grounds.

Statistics on judicial remedies, for example, numbers of challenges and outcomes, are not publicly available.

## 7. Reception conditions

### 7.1. Asylum seekers under the Dublin procedure in Hungary

Asylum seekers in the Dublin procedure are entitled to the same reception conditions as other asylum seekers.[151] When the interviews for this project were conducted, asylum seekers were usually detained in immigration jails. In 2013 the

[149] Information obtained from the Dublin Unit, April 2012.

[150] Section 48B (5) of TCN Act: "Pending judicial review, implementation of the ruling on the return order shall not be suspended upon receipt of a request therefor."

Section 49 (9) of the Asylum act: "In the course of the court review, an application for the suspension of the implementation of the decision providing for delivery shall have no suspensive effect on the implementation of the decision."

[151] For more information on reception conditions of asylum seekers in Hungary see UNHCR report on Hungary as a country of asylum, April 2012, pp. 11-13, http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html

policy changed and asylum seekers are no longer detained but are instead accommodated in Debrecen reception centre. Unaccompanied minors are placed in children's home in Fót.

7.2. Asylum seekers returned to Hungary under the Dublin Regulation

The legislation and practice regarding asylum seekers returned to Hungary under the Dublin Regulation have changed since the interviews for the DIASP project were conducted. At the time of the interviews, Dublin returnees were mainly detained or accommodated in the open community shelter in Balassagyarmat. At the moment asylum seekers returned under the Dublin Regulation are considered as first-time applicants if they did not have an in-merit decision in their asylum procedure before leaving Hungary. They have the chance to prove the reasons for their asylum application in a detailed in-merit procedure and are not detained.

However, if an asylum seeker already has a closed case in Hungary (closed case means an in-merit negative decision (including manifestly unfounded applications) or withdrawal of the application in writing), he may be placed in immigration detention after being returned under the Dublin Regulation. According to the section 51 (5)-(6) of the Asylum Act, an application is manifestly unfounded if the applicant:

> a) Communicates only irrelevant or poorly relevant information in connection with his application to be recognised either as a refugee or a beneficiary of subsidiary protection;
> b) As a result of his conduct in bad faith, is not able to verify or substantiate his country of origin; or
> c) Has failed to put forward an application for recognition within a reasonable time, though he had had the option to submit it earlier and is unable to justify the delay with reasonable grounds; however, the application may not be rejected solely on the basis of such a delay.

Before the changes, asylum seekers returned under the Dublin procedure were entitled to the same reception conditions as other asylum seekers only if they had never applied for asylum in Hungary. Asylum seekers who had to reapply were not entitled to the same services as those lodging initial applications, even if the merits of their case had not yet been examined.[152] They were usually detained. The HHC is aware of cases where asylum seekers with subsequent asylum applications were requested to pay the costs incurred while they were detained or whilst living in a reception centre.[153]

At the moment, Dublin returnees who are not detained are placed either in the reception centre in Debrecen or in the community shelter in Balassagyarmat. The policy governing who is placed where is not clear and will soon change due to foreseen amendments to the Asylum Act. The new legislation is foreseen to enter into force sometime in the second half of 2013, and will provide grounds for the detention of asylum seekers for a maximum of six months.

In contrast to asylum seekers in Debrecen, where lawyers are present daily, the returnees placed in the community shelter in Balassagyarmat do not have access to free legal assistance provided by the state unless they travel at their own expense to Budapest, which is 90 km away. The HHC lawyer visits the place once every two weeks. Access to information regarding their asylum proceedings is limited, since no OIN asylum officers are present. The residents of the Balassagyarmat community shelter also complain that the meals are poorly cooked and insufficient and about the irregular medical service (only superficial medical examinations, the doctor does not come at fixed hours, no interpretation is provided to facilitate communication with medical staff). The atmosphere in the city is very tense and last year there were several demonstrations held against the existence of the community shelter.

7.3. Vulnerable persons and those with special needs

While the Asylum Act stipulates that vulnerable persons[154] should receive preferential treatment[155], there is no formal mechanism to identify asylum seekers with special needs at an early stage. Each asylum seeker undergoes an obligatory

[152] Asylum Act, Section 54 (b).
[153] Hungarian Helsinki Committee, *"Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary,"* December 2011, p. 5, http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf
[154] Section 2 k) of the Asylum Act defines the term "person with special needs" as an: "unaccompanied minor or a vulnerable person, in particular, a minor, elderly or disabled person, pregnant woman, single parent raising a minor child and a person who has suffered from torture, rape or any other grave form of psychological, physical or sexual violence, found, after proper individual evaluation, to have special needs because of his/her individual situation."

medical check upon arrival in Hungary but this medical check does not include psychological assessment. According to Article 3 of the Government Decree implementing the Asylum Act, it is the responsibility of the OIN employees (case workers, social workers) to identify those persons requiring special treatment in the asylum proceedings. In the event of doubt, the asylum authority may ask a medical expert or psychologist to establish whether a person requires special treatment. This assessment may be conducted solely with the consent of the asylum seeker, who should be informed about it in a language he understands. Despite this responsibility, absence of identification does not bear any legal consequences for employees.

Unaccompanied minors benefit by law from special treatment that, inter alia, provides for a guardian to be assigned, prohibits their detention and requires priority handling of their cases. Nevertheless, before and during the research period of the DIASP project, the HHC became aware of detainees who appeared to be much younger than the others and who looked more like teenage boys.

Beyond the protection of minors, there are no specific measures or services regarding the broader category of vulnerable persons, such as victims of trauma, as indicated by the Reception Directive. NGOs are largely responsible for services catering for such vulnerable groups.[156]

With the recent changes, additional guarantees have been included in the law regulating immigration detention, such as: considering the vulnerability factor every time a decision is taken (about placement etc.); recording the weight of the detainee upon arrival; paying more attention to those in need of psychosocial care; 24-hour direct access to toilets; access to courtyard and cultural programs; direct access to phones; a transparent complaint system; placing guards in hospitals only if justified, and others. Before the changes, the Hungarian legislation governing the policing of 'aliens' did not lay down special rules for vulnerable persons with specific needs in immigration detention. This was a major shortcoming. Their detention was terminated only if and when they were in need of prolonged hospital treatment. This provision, however, did not allow for favourable treatment of detainees with specific needs other than prolonged inpatient treatment, for instance, for reasons of psychological distress, age, pregnancy or disabilities.[157]

## 8. Asylum procedures

The admissibility procedure can last up to 30 days in the 'normal' asylum procedure but in case of the Dublin procedure it can take longer.

Before the recent changes, access to the asylum procedure upon return under the Dublin Regulation was problematic. The Hungarian authorities did not automatically consider asylum seekers returned under a take-back procedure to be asylum seekers, so they had to reapply for asylum once back in Hungary, even if they had previously sought protection in another European state. These applications were considered to be subsequent applications. Applicants were required to show new elements in support of their claims, which they could not have raised in their initial applications. Subsequent applications did not have an automatic suspensive effect on expulsion measures, if the latest decision by the OIN or the court indicated that the prohibition of expulsion on non-refoulement grounds was not applicable. The term "subsequent" refers to an application submitted once a previous asylum procedure has been closed with a final decision or has been discontinued (closed without a decision on the merits of the claims, for example, because the person absconded early on in the procedure). In most cases, upon return to Hungary, an expulsion order was automatically followed by administrative detention. As a result, asylum seekers transferred to Hungary under the Dublin Regulation were generally not protected against expulsion to third countries, even if the merits of their asylum claims had not yet been examined.[158]

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[155] According to the Article 34 of the Governmental Decree implementing the Asylum Act a person with special needs seeking recognition shall be eligible for free of charge health care services, rehabilitation, psychological and clinical psychological care or psychotherapeutic treatment required by the person's state of health with respect to the person's individual situation and based on a medical specialist's opinion.

[156] Reception Conditions and the Impact of the EU Directive in Hungary, Timea Szigo, Hungarian Helsinki Committee, May 2007, p. 4, http://pomocprawna.home.pl/dosciagniecia/ICF/5Hungary.pdf

[157] *Stuck in Jail*, Immigration detention in Hungary (2010), Hungarian Helsinki Committee, April 2011, p. 10, http://helsinki.hu/wp-content/uploads/HHC-immigration-detention_ENG_final.pdf

[158] See also UNHCR report on Hungary as a country of asylum, April 2012, §20, http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html and Hungarian Helsinki Committee, *"Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary,"* December 2011, http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf

Access to asylum from detention was also found to be problematic. In Kiskunhalas immigration jail, for example, asylum seekers could only submit their intention to seek asylum to the security guards between 14.30 and 15.15. This daily schedule was only available in Hungarian and was not properly explained to the asylum seekers. The HHC has even documented cases where some asylum seekers were unable to submit their applications or whose applications were not forwarded to the competent asylum authority.[159] This practice has now changed and detainees can post their intention to seek asylum at any time in a complaint box installed inside the jail.

During the time of the research, another very worrisome practice was in use. Even though a Dublin returnee may have been accepted into the asylum procedure, the OIN might have failed to examine his application on its merits, if he had originally reached Hungary through Serbia, which was considered to be a safe third country. In such cases, the asylum application was rejected as inadmissible and expulsion to Serbia, ordered by OIN, could be carried out. The result of this policy was that asylum seekers were returned to Serbia without an in-merit examination of their claim in any EU member state.[160] Positively, the OIN has changed its position and no longer considers Serbia to be a safe third country.[161]

### 9. Verification of information

According to the Dublin Unit, if verification of the authenticity of information or data provided by the applicant is necessary, there are a number of available options. An expert may verify the authenticity of identity documents, the provided data may be verified based on a request for information to another member state in the frame of the Dublin Regulation, and so on. When a family member of a migrant is resident in a member state, with a claim that makes reunification possible under the Dublin Regulation, and if the migrant provides identification data for this family member, then the Dublin Unit (depending on the quality and quantity of the data provided) may send a request for transfer or for information to the other member state. The authenticity of the data may be verified primarily by the other member state, which may ascertain whether the family member in question is in fact in its territory, and whether the statements given are concordant.[162]

The HHC is aware of several cases of asylum seekers who were returned to Hungary from Austria, and who claim that they were never stopped in Hungary and that their fingerprints were not taken. The grounds for returning these asylum seekers were either that they had been found close to the Hungarian border, or that their driver or smuggler was caught and admitted that they were coming through Hungary.

### 10. Detention

From 2010 until the end of 2012, detention of asylum seekers was the rule rather than the exception. Most asylum seekers entered the country in an irregular manner and were accommodated in one of the four permanent administrative detention facilities run by the police in Budapest, Győr, Kiskunhalas and Nyirbator. Families with children, married couples and single women were accommodated in the temporary detention facility in Bekescsaba. The maximum period of detention was 12 months and 30 days for families with children. The average time spent in detention was 4 – 5 months. [163]

According to the legislation and practice in force at the time of the research, asylum seekers entering or residing in Hungary unlawfully, or those returned under the Dublin Regulation, usually received an expulsion order upon arrival in Hungary, followed by placement in administrative detention. The two alternatives to detention (compulsory place of residence and seizure of money for travel documents and ticket in order to pay for the costs of removal) were rarely used in practice. Article 54 (2) of the TCN Act stipulates that before resorting to detention, the authority responsible for controlling 'aliens' should consider whether the above-mentioned alternatives are an option with a view to deportation. However, the experience of the HHC has shown that the OIN merely cited the relevant legal provision for detention orders

[159] The HHC's visit to the immigration jail in Kiskunahalas on 13 December 2011, http://helsinki.hu/megfigyelo-latogatas-a-kiskunhalasi-orzott-szallason
[160] Hungarian Helsinki Committee's report Serbia as a safe third country: Revisited, July 2012, http://helsinki.hu/wp-content/uploads/Serbia-report-final.pdf
[161] http://helsinki.hu/en/supreme-courts-opinion-on-the-application-of-the-safe-third-country-concept
[162] Information obtained from the Dublin Unit, April 2012.
[163] UNHCR report on Hungary as a country of asylum, April 2012, http://www.unhcr-centraleurope.org/pdf/resources/legal-documents/unhcr-handbooks-recommendations-and-guidelines/hungary-as-a-country-of-asylum-2012.html

without justifying how the detention of a particular individual met those legal grounds. Detention orders therefore lacked proper individualisation and never considered any special circumstances or alternatives to detention.

Following the changes in legislation in January 2013, expulsion/deportation can no longer be imposed on asylum seekers during the asylum procedure. Asylum seekers are therefore not detained if they submit their first asylum application as soon as they are apprehended (in practice: before the end of their first interview with the police). Asylum seekers are transferred to the authority responsible for refugee status determination (RSD) for a preliminary hearing and placed in an OIN open facility. Asylum seekers returned to Hungary under the Dublin Regulation are not to be detained either, unless they already have a closed case in Hungary (closed case means an in-merit negative decision or withdrawal of their application in writing). The "right to remain in the territory" has become the key concept of the current policy: those asylum seekers who have the right to remain are exempted from detention.

Withdrawal of a previous application in writing has the same impact/value under the new law as a final negative decision even if the merits of the case were not examined. This means that asylum seekers who withdrew their application in writing before leaving Hungary will be detained upon return and their new asylum application will no longer have a suspensive effect. One of the most typical reasons for withdrawal of the asylum application in 2012 was to be released from detention, to be returned to Serbia and to try once again to get to Western Europe via Hungary.

Asylum seekers in a Dublin procedure may be detained prior to their transfer to the responsible member state under Section 49 (5) of the Asylum Act. The authorities ensure that the foreigner will not leave his designated place of residence until the transfer is carried out. Detention at this stage cannot last longer than 72 hours in order to ensure that the transfer actually takes place. This provision is currently not in use.

In July 2013, amendments to the Asylum Act will enter into force, providing grounds for detention of asylum seekers. The maximum period of asylum detention will be 6 months and 30 days for families with children. Asylum seekers submitting subsequent applications will remain subject to the immigration detention (described above). The draft introduces alternatives to detention in the form of bail, designated place of stay and reporting obligation. The draft further states that asylum detention may only be ordered on the basis of individual deliberation and only if its purpose cannot be achieved by applying alternatives to detention.

There is no special appeals process for Dublin detainees to challenge their detention. According to the TCN Act, a detention order may not be appealed (Article 57, 2), but the legislation provides for automatic judicial review. Automatic judicial review occurs every time the court decides on a request to prolong a detention order. Detention, under immigration law, may be ordered for a maximum duration of 72 hours and may be extended by the court of jurisdiction (depending on the place of detention) until the third-country national leaves, or for a maximum 30 days at a time.[164]

The judicial review of the administrative detention of asylum seekers is ineffective, because the courts fail to address the lawfulness of detention as applied in individual cases, or to offer individualized reasoning based on the specific facts and circumstances of the applicant.[165] Administrative decisions imposing detention on migrants for unlawful entry or stay are subject to review by first-instance courts and it is mostly criminal law judges who review the cases in a manner normally applied in criminal cases. It is a common practice for the court to issue decisions for a group of five, 10 or 15 detainees within 30 minutes, thus significantly decreasing the likelihood of a fair and individualized review.[166] A personal hearing is obligatory only after the first 72 hours of detention; if this time period has passed, the detainee has to specifically request a hearing. If the detainee manages to submit a request for a hearing when the court is considering an OIN request to extend his detention order, then the court has to hold a hearing and hear the detainee's arguments. This system is very complicated for foreigners who lack Hungarian language or legal skills, and requires the assistance of a lawyer. However,

[164] Article 54 (3) of the TCN Act.
[165] Hungarian Helsinki Committee, *"Access to Protection Jeopardized: Information note on the treatment of Dublin returnees in Hungary,"* December 2011,

http://helsinki.hu/wp-content/uploads/Access-to-protection-jeopardised-FINAL1.pdf

[166] The HHC's visit to the immigration jail in Kiskunahalas on 13 December 2011, http://helsinki.hu/megfigyelo-latogatas-a-kiskunhalasi-orzott-szallason

the HHC reported[167] that officially appointed lawyers (who are required to be present by the law when the detention order is first prolonged[168]) fail to provide effective legal assistance in challenging immigration detention: they essentially neither meet their clients before the hearing, nor study their case file, nor present any objections to prolonging the detention order.

### 11. Implementation

Once a decision on the Dublin transfer is taken, it is handed in writing to the asylum seeker and its content is explained to him verbally. The time limit for carrying out the transfer is included in the decision. Asylum seekers get the notification of the exact date and time a few days preceding the transfer.

The deportation to the responsible member state is organized by the Dublin Unit in cooperation with the receiving member state. The Dublin Unit coordinates the tasks of all collaborating parties but the police implement the actual transfer.

According to the Dublin Unit, migrants may arrange their own voluntary transfer. In these cases the date of the transfer is determined by the OIN in cooperation with the applicant. If the asylum seeker chooses to return voluntarily, he should mention this intention in the interview. It is possible to get in contact with the International Organization for Migration, which will help the migrant to plan his voluntary return, and the OIN informs the receiving member state. Since the majority of asylum seekers under the Dublin procedure were detained during the period of the research, voluntary transfers were not really prioritized.

In case of transfers to Hungary, the alien-policing authority of the OIN meets the migrant at the appointed place and time. The police are also informed about the transfer since its presence is necessary in certain cases: if the migrant is under arrest, for example, or prone to aggressive behaviour. A doctor or an ambulance is assured when the physical state of the migrant makes their presence necessary.

In case of air travel, the competent police authority assists in the boarding of the migrant, and – unless the migrant's behaviour or personal circumstances (for example, age) warrant otherwise – the migrant travels without escort. In the case of overland travel, the competent police authority hands over the migrant directly to the authorities of the other state.

## *DATA FINDINGS*

### 1. Basic information

Nearly three-quarters of the interviewees were returnees (73.3%). Only one interviewee was a woman. The average age was 27, with ages ranging from 18 to 41 years. Four-fifths were single. A significant minority (36%) said they have family somewhere in the EU. Their nationalities were mixed: they came from west, north and east Africa, the Middle East and predominantly from South Asia (mostly Afghanis, some Pakistanis).

A slight majority of the interviewees said they had not been to Hungary before their return (55.3%). On average, the returnees said they had been to Hungary twice before the DIASP interview. One interviewee said he had been returned to Hungary no less than 10 times.

The average time that transferees spent in a Dublin procedure was just over two months. However, one person reported being in the procedure for 10 months.

At the time of the interviews, 60% of the interviewees had been in detention for an average of four months.

[167] Interview with dr. Júlia Iván, legal officer at the Hungarian Helsinki Committee, 14 March 2012.
[168] Third Country National Act, Section 59 (4).

## 2. Personal story

Most of the interviewees talked about their journey in terms of being returned to the country of first entry as well as the number of times they had travelled between EU countries, the number of times they had applied for asylum in Europe and the number of times they had been detained.

To take one example: a man entered the EU first in 2008 or 2009 through Greece. He made his way to Hungary in 2010 crossing Macedonia and Serbia. In Hungary, he was detained for the maximum period and his asylum claim was rejected. He chose to leave illegally for Germany. There he spent a month in jail and was returned to Hungary. He left again for Austria and spent one and a half months in jail. Upon his release he went to Switzerland, from where he was deported back to Hungary. He tried to get to Germany again, spent three months in jail and was deported back to Hungary. After some days he went to Austria where he spent one and a half months in jail again and was deported to Hungary. After some days in Hungary, he went to Switzerland and spent three months in jail there. Deported back to Hungary, he attempted to go to Germany several times. But he was always deported back to Hungary where he was kept in detention. In Switzerland he tried to commit suicide by hanging himself and was saved by the guards just on time.

Another person was smuggled to Greece, where he stayed for two years and found occasional jobs. The smuggler then took him to Germany to ask for asylum as the conditions in Greece were very bad. The man was stopped in Austria and jailed for 24 hours, followed by three months in an open camp. He asked for asylum however, based on an interview with an officer or a judge, the decision was taken to return him to Hungary under the Dublin procedure.

And another story: *"I entered the EU through Greece and continued my journey to Hungary, where I applied for asylum. I received a negative so I left for the UK. I was deported and detained. I applied for asylum again but I was not accepted into the in-merit procedure. When I was released I went to France and from there to the UK. I was again deported to Hungary. I applied for asylum again but this time I was rejected in the admissibility procedure already. I appealed to the court and the court annulled the rejection. However, the OIN issued another negative. I appealed but did not win so my case is closed."*

Almost all respondents (91%) held that the Dublin transfers would worsen their chances of getting protection in Europe. One interviewee put it as follows: *"In Greece the conditions were very bad, then Austria wanted to send me back to Greece, then Sweden sent me back to Greece and now in Hungary I was waiting for positive answers from Sweden or Austria, but they don't want to take me back. In Hungary I received a negative decision in the admissibility procedure and I will be transferred back to Serbia, which is considered as a safe country for Hungary. I therefore did not have any chance to have my asylum claim examined on the merits in the EU."*

## 3. Information about the Dublin system

Almost half of the interviewees (44%) said that all they knew about the Dublin system was about the European country responsible for their asylum application. For example: *"I can only ask asylum in one country of EU. I have been to Italy, so I have to go back there."* Only three people said they had "advanced" knowledge, meaning they knew two or more things about Dublin (for example, that the Dublin Regulation is an EU agreement, about the importance of fingerprints, about the six-month transfer deadline). Three-tenths said they "know nothing" about Dublin. Most, however, said they were "in the middle of knowing and not knowing".

It is clear that the administrative authorities were the biggest sources of Dublin information for the people who were interviewed. NGOs and border guards also provided information but to a lesser extent. Detention centre staff, spiritual advisors and fellow migrants appeared to be poor sources of information. None of the respondents said they received information from them. Information was usually offered verbally.

The majority (85.2%) said they were given Dublin information "early enough", meaning prior to receiving a transfer decision, during the first interview with the Dublin Unit. The vast majority (92.6%) understood the information because it was in their own language or in a language they knew, or because interpreters were present.

## 4. Appeals

Three-fifths of the interviewees said they had received information on how to appeal a Dublin decision. They had been mainly informed by lawyers (61.1%) or, to a much lesser extent, by border guards, administrative authorities and NGOs.

Two-thirds appealed the transfer; most were either unsuccessful or were still waiting for a decision. Four out of nine people who did not appeal attributed this decision to a lack of information.

Three-quarters had contact with a lawyer, usually a state or an NGO one, and 70% said the lawyer had taken good care of their case.

Only four of the interviewees knew about the discretionary clauses and had been informed about them by the administrative authorities. Two tried to take action on the discretionary clause but were not successful.

## 5. Knowledge about asylum case

### 5.1. Returnees

Two-fifths felt fully informed about their asylum case. There were, however, one-quarter of the returnees who did not understand the asylum procedures because they lacked information.

More than one-quarter (28.6%) of the returnees – not a high number – reported having learned about the Hungarian asylum system before being transferred to Hungary. They received this information mostly from the administrative authorities of the country that transferred them. However three out of six returnees said what they were told did not match the reality.

Half of the returnees had questions about their asylum case, about the asylum procedures, how to get refugee status and about what would happen with them in general.

Only two people said they experienced difficulties when applying for asylum, and they attributed this to detention and general procedural problems.

### 5.2. Transferees

The sample of transferees is very small so there is not much to say. Six people said they knew how to apply for asylum in the country they were waiting to be transferred to. Only a few said they got this information from specific people, naming border guards and NGOs. When asked if they had post-transfer plans, four said “no”, two said they would apply for asylum and one wanted to search for work, accommodation and educational opportunities.

## 6. Personal wellbeing

### 6.1. Housing

Most interviewees were detained; those who were not said housing was provided.

### 6.2. Work and education:

Accessing work or education was not a reality for anyone in the sample.

### 6.3. Medical care

Just over half of the respondents said they got to see a doctor regularly but nearly one-third felt the quality of the medical care was not good (only painkillers, not knowing when the doctor would come, communication problems...). One respondent said: *“In France it was very good. Here in Hungary we don’t know when the doctor will arrive to the shelter. He stays maximum one hour and there is no fixed hour. If no one is waiting in front of his office, he leaves and will not even stay for one hour.”*

### 6.4. Food/clothing

A little more than half of the sample was very negative about the quality of food received, mainly in detention.

6.5. Basic services

Several people who were not detained said it was difficult to pay for public transport and that they were not receiving assistance for this.

6.6. Legal services

Four-fifths of the respondents said they had access to a lawyer.

All the returnees said there was a difference in conditions in Hungary and the country that transferred them. The biggest differences were in access to medical care, basic services such as food, clothing and public transport, as well as housing. One example: "*In Austria the operation of my eyes would be free, here I have to pay. Here I am detained, in Austria I was not. In Austria there were many activities and I could work, here I can do nothing."*

With regard to detention, the vast majority said they had experienced negative impacts:
*"I lost weight; I am traumatised and shocked by the treatment of the security guards."*

*"It has affected my brain. The security guards are very violent. I was hardly beaten by them. When I was lying on the floor, they were kicking and boxing me and I was screaming, but no one came to help me. Certain guards are clearly racists."*

*"Detention in Hungary is a terrifying experience. There is a beating cell from which we hear screaming almost every day. We are terrorized by the security guards and we are afraid to make a complaint. Ramadan is going to start very soon. I am afraid how it will go."*

*"I am very sick and I don't receive appropriate medical care. I lost a lot of weight. In December I was vomiting all the time. I eat tablets now, but this is not enough, my head turns after and I still have a lot of pain in my lungs."*

The vast majority (86.7%) said they did not have any special connection to Hungary. A very tiny number reported family connections. Transferees said they had family connections in the country they were being transferred to, and that there were also work opportunities.

The majority said the Dublin Regulation has had no impact on their family lives. Those who did report an impact attributed it to the fact that their family was separated in the course of the procedure.

When people were asked if they had plans prior to their current Dublin situation, just over three-fourths said they were somehow "searching for safety" and talked about their plans to come to Europe to get refugee protection. A few others said they had plans to find work or to study.

The overwhelming majority said the Dublin Regulation had disrupted their plans. The most disruptive element was the transfer itself. *"I am stuck in Hungary now and I cannot work,"* said one. *"I don't understand why we need to come back to this country if they don't give anything to the people. Why do they take responsibility for me if they don't offer anything? For putting me in prison?"* A smaller group said Dublin had disrupted their search for safety and protection, or their plans to find work or to reunite with family.

Half of the respondents said they had new plans for their life. Only a few said they would continue to try to get refugee protection in Hungary. Most said they would go to a different EU country. One even said that although he wanted to get protection, he would rather go back to Afghanistan than stay in Hungary in detention.

Just over half said they had absconded from the authorities at one time or other, either because they were not satisfied with the decisions in their case, or because they thought they would have a better chance of getting protection somewhere else. One said: *"I left Hungary twice because I thought I will have better opportunities for life in Austria."* And another: *"I absconded from Greece because I wanted to join my brother in Austria and because the conditions in Greece were very bad. I absconded from Austria because they wanted to return me to Greece."* Only a few people explained why they did not abscond, saying it was because they knew it to be illegal or they had no will to try to abscond.

## 7. Personal views about the Dublin Regulation

The entire sample felt that the Dublin Regulation is unfair, unjust or just simply not good. In general they were very dissatisfied with the Dublin system because it prevents people from going to the country where they think they can best get protection. Here are some examples of people's opinions:

*"It will never stop asylum seekers and refugees from moving around. They can detain people, but they would go away and then they come back again. Asylum is a business in Europe. They use our money. The border guards take money and let us cross the borders. It is also absurd that since in my case Sweden and Austria did not accept responsibility, Hungary will send me back to Serbia."*

*"I lost trust in Dublin procedure. It is not clear which country is responsible. I wanted to make sure I apply for asylum in the responsible country because I knew that it is not good to be transferred under Dublin, but I could not get a clear answer which country is responsible. I have also met many people who for example stayed and work in one country for seven years and after that they were transferred back under Dublin to the country where they asked for asylum seven years ago. I believe that Dublin Regulation is not applied correctly in all cases. I don't understand how they can transfer someone after seven years. For what serves the Dublin procedure, if you are transferred?"*
*"I don't think it is working properly. People are sent to countries where their situation will be worse and they will not get protection."*

Nearly 40% wished they had known about the hardships they would come to experience in Hungary and in Europe in general. "*I thought that the EU meant freedom and humanity, but now I know it does not. Hungary is not EU,"* said one.

Advice for other migrants includes choosing carefully which EU country to go to, to stick to the rules of Dublin or to stay at home, not to come to Europe at all.

According to the interviews, the three biggest problems that migrants are facing are:

- Detention – *"The fact that I will have to be detained for another seven months."*
- The lack of stability in their lives – *"Not having a safe country to settle. In Afghanistan is a terrible situation."*
- Getting asylum and access to medical care – *"Always negative decisions, no medical care, after all these problems my 'brain' is getting worse."*

The best solutions for them would be: to be free (36.7%), to obtain refugee status, or other legal status (26.7%), to have a 'normal life' (16.7%) or to stay in Hungary, to reunite with or start a family (a minority of persons).

## *DATA ANALYSIS*

From the data obtained in Hungary, a major theme emerged in common with the research findings in the other DIASP countries: **the Dublin Regulation does little more than severely disrupt people's lives rather than granting people access to asylum procedures and protection**. People interviewed in Hungary have been shipped around Europe several times in their search for protection. In the end they found themselves in Hungary, often in detention, with restricted access to asylum procedures, or to procedures that are not of a very high standard. Few respondents had families but those who did experienced a severe level of separation.

During the time of the research, access to the asylum procedure for Dublin returnees was problematic (see section 2.8 – *Asylum procedures*). As one of the interviewees put it: *"I did not have any chance to have my asylum claim examined on its merits in EU."* However, since January 2013, the practice has changed substantively in Hungary. Dublin returnees who never had their claims examined on merit are now granted access to the asylum procedure and are protected from expulsion until the procedure is over. Also, Serbia is no longer considered to be a safe third country. Access to the asylum procedure is therefore no longer problematic.

The data also reveals that the Dublin system, as it is organised, works very poorly. **This is because despite the transfers, people remain very determined to seek protection in a country of their own choosing**. Despite multiple

stays in detention, several trips between EU countries and many attempts to seek asylum, people persist until they reach breaking point (like one interviewee who attempted suicide).

The Dublin system does very little to provide people with protection. **Instead it merely shuffles people around the continent against their will and with severe negative impacts on their well-being**. The deficiencies in the Hungarian asylum system at the time of the research make this conclusion even stronger. People were sent to Hungary even though the vast majority had no connection to Hungary, and despite the country's poor asylum and reception standards. All returnees cited a gap in conditions in Hungary and the country that transferred them (see section 3.6 – *Personal wellbeing*).

**The use of detention is very negative**. Detention was identified as one of the main concerns of the persons interviewed. Returnees were detained for four months on average. The experiences in detention were very crippling, not least because **people reported ill treatment at the hands of detention centre staff**. The conditions were not good, food and medical care insufficient and of low quality. Recent changes, to the effect that asylum seekers with a "first asylum claim" (without a previous in-merit decision or a written withdrawal of their application) are no longer detained, are more than welcome. Additional guarantees have also been included in the law regulating immigration detention such as a transparent complaint system with complaint boxes in the corridors, direct access to phones, etc. However, another set of changes will be introduced in July 2013, when amendments to the Asylum Act will introduce grounds for the detention of asylum seekers. It remains to be seen what this will mean in practice (for example, how many asylum seekers will be detained).

**Interviewees' knowledge about the Dublin system seems to be low**. More specifically, most people seem to know only about one aspect of Dublin, which is clearly insufficient because Dublin is a very complex system. In the case of Hungary, the OIN information leaflet does not clearly indicate that there is a hierarchy of criteria within the Dublin Regulation and does not list all the criteria within the Regulation. The HHC's experience also reveals that the wording of these leaflets is too complicated and too official for average asylum seekers to comprehend. It seems that returnees, the majority in this sample, learned about Dublin from the states that transferred them but they could have been better informed. There is a contradiction in the findings, which show that while many people said they knew nothing or too little about Dublin, the majority said they understood the information that had been imparted to them. The reason for this discrepancy is that although the migrants had been informed and understand what they had been told, the information provided was insufficient.

**Knowledge about discretionary clauses and appealing Dublin transfers is very low**. This relates to people's general knowledge about Dublin: interviewees may have felt they were well informed but in fact they were not aware about very important specific points, like the discretionary clauses, which is knowledge that could really have impacted their case. Interviewees claimed not to know about the discretionary clauses although many had contact with lawyers, and said the lawyers were a significant source of information when it came to appeals. The research sample in Hungary consisted mainly of returnees so it is hard to judge whether asylum seekers in the Dublin procedure in Hungary are sufficiently informed about the discretionary clauses and possibilities to appeal. From the HHC's point of view, they are sufficiently informed about the appeal possibilities, since this information can be found in the information leaflets and in the transfer decision itself, which is verbally translated for the asylum seeker. However, information about discretionary clauses remains scarce.

**People are not well informed, or even misinformed, about Hungary's asylum system before being transferred there**. For example, some respondents said the transferring country assured them that they would not be detained upon return to Hungary, but once they were transferred, they were put in detention. However, since the situation in Hungary is changing quite rapidly, it is difficult to provide accurate information to potential Dublin returnees: for example, at the moment there is no detention for most asylum seekers, but new legislation set to enter into force in July 2013 allows for their detention.

**People are sent to Hungary though they have few to no connections in the country**. This has implications for how people can get protection in Hungary. More importantly, having fewer connections encourages people to continue travelling to other EU countries, despite being transferred back frequently.

**Dublin is very disruptive and does not add any benefit to people's lives**. People come to Europe with specific plans in mind, for example, to go to a certain EU country, to reunite with family, but the Dublin Regulation thwarts their plans. Despite this reality, people continue trying. They also resort to measures like absconding, not because they are trying to frustrate the system but because the system is not conforming to their personal need for protection.

### *CONCLUSIONS & RECOMMENDATIONS*

Some important changes in the asylum policy occurred in 2013: the restrictive detention policy towards asylum seekers ceased, Serbia is no longer considered a safe third country and Dublin returnees are guaranteed access to the asylum procedure and to a full examination of their asylum claim if this was not already examined on its merits before they left Hungary, if it was not rejected as manifestly ill-founded, or if they had not previously withdrawn it in writing.

These developments are more than welcome. However, the re-introduction of detention of asylum seekers is foreseen in the proposed amendments to the Asylum Act, entering into force in July 2013. The following recommendations should be considered:

- The OIN is urged to apply the new detention policy after carefully examining each individual case and not as a general rule for all asylum seekers entering or residing in the country illegally. Detention should be applied in accordance with the following principles: lawfulness, necessity and proportionality (detention should only be used as a measure of last resort if other less coercive measures cannot be applied). Children and persons with special needs should not be detained. Alternatives to detention should be put into practice;
- Effective, automatic and periodic judicial review is required to ensure consistent examination of the legal basis and conditions of detention on an individual basis. Such reviews should be carried out by a court specialized in reviewing administrative decisions and not by a criminal court.

At present, since asylum seekers are not detained, significantly less people are held in immigration jails. This means that there are fewer tensions and reports on verbal and psychical abuse by the security guards are scarce. Once asylum seekers are detained again, the authorities should make sure that the situation reported in the DIASP interviews, such as alleged violent treatment by the security staff, does not happen again. The following recommendations should be applied:

- Conditions in detention should be humane and appropriate mechanisms should be put in place to stop violence and verbal abuses by the security guards;
- The quality of and access to medical care services in immigration jails should be improved;
- Age assessment should be conducted properly, on a thorough scientific and methodological basis, and the benefit of the doubt should be applied in cases of alleged minors until such assessment is conducted. The principle of child's best interest should be respected in practice.

Other recommendations:

- The Hungarian authorities should establish an effective mechanism for early identification of persons with special needs amongst asylum seekers;
- Police should start family tracing when an unaccompanied minor apprehended at the border mentions that he has family members in the EU, instead of simply returning the minor under the readmission agreement with the neighbouring country;
- Guardians for unaccompanied minors should receive proper training and a mechanism of surveillance should be put in place to determine whether they are actually acting in the minor's best interest;
- The OIN must respect the duty to apply the sovereignty clause where a transfer would be incompatible with its obligations under international law;
- Asylum seekers should be regularly provided with information on the progress of their case within the Dublin procedure;
- The information brochure should explain the Dublin procedure in more detail. All the criteria should be mentioned, explaining the importance of the order in which they appear in the Regulation. The discretionary clauses should be explained as well.

# DIASP national report: ITALY

**Author: JRS Italy (Centro Astalli), www.centroastalli.it**

## *INTRODUCTION*

Centro Astalli conducted 30 interviews for the DIASP project, mostly at its outreach centre in Rome. Others were conducted at the Italian Language School of Centro Astalli.

The research was facilitated by: Mr Filippo Guidi and Ms Emanuela Ricci of the Centro Astalli outreach centre, the staff and volunteers of the Centro Astalli Italian Language School and a cultural mediator of Persian language who works for the outpatient clinic of Centre Astalli, Ms Parì Nayyereh.

Mr Mohamed Ali Korane, a Somali refugee who used to be supported by the Centro Astalli outreach centre, sought out a good number of Somalis who were Dublin cases and who were squatting in abandoned buildings. He was ready to take part in the project as an interpreter and accompanied them to the outreach centre to translate during the interviews.

With regard to Italy's practices as a member state, the research was facilitated by several organizations for asylum issues in Rome and elsewhere in Italy, namely the *Associazione Studi Giuridici sull'Immigrazione* (ASGI)[169], *Programma Integra*[170] and *FOCUS Casa dei Diritti Sociali*.[171]

## *MEMBER STATE PRACTICES*

The Dublin II Regulation concerns two categories of migrants: those who have been sent back to Italy as the responsible state to examine their application (returnees) and those who have to be transferred from Italy to another country in Europe, where they had been fingerprinted (transferees).

According to the data contained in two recent reports[172], most "Dublin cases" in Italy are people who were transferred to Italy from other member states. Some such transfers, in fact, concern people who have already completed the asylum procedure in Italy and who, after having obtained some form of protection, moved to another European country to find better opportunities for social inclusion. But since they are not Italian citizens (the process to obtain naturalization in Italy is very long, even for a refugee), people with protection are not allowed to work in other EU countries. In Italy, refugees do not receive any support to find work, and nor do they receive support from the state to improve their chances to find employment, such as learning Italian or even finding accommodation. This emerged very clearly from the interviews, especially those conducted with people who at the moment are living as squatters in Rome, in destitution and social exclusion.[173]

[169] http://www.asgi.it/home_asgi.php?
[170] http://www.programmaintegra.it/
[171] http://www.dirittisociali.org/
[172] ASGI "*Il Diritto alla protezione. La protezione Internationale in Italia quale futuro. Studio sullo stato del sistema di asilo in Italia e proposte per una sua evoluzione,"* the European Refugee Fund, Annual Programme 2009 and CIR, "*Dubliners project report*, 2010"
[173] The main problems concerning reception and integration of refugees in Italy have been highlighted in a report by Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, following his visit to Italy from 3 to 6 July 2012, CommDH (2012) 26 (https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2143096&SecMode=1&DocId=1926434&Usage=2). The report mentions the fact that the insufficiency of the Italian reception and integration system has led to legal challenges of Dublin transfers from several European countries to Italy: "The Commissioner observes that the problem of the living conditions of asylum seekers in Italy has been receiving increasing attention in other EU member states, due to the growing number of legal challenges by asylum seekers to their transfer to Italy under the Dublin Regulation. He notes that a series of judgments by different administrative courts in Germany have suspended such transfers, owing notably to the risk of homelessness and a life below minimum subsistence standards. The ECtHR has also been receiving applications alleging possible violations of Article 3 as a result of Dublin transfers to Italy. Recently communicated cases concern applications made against, among others, Sweden and Denmark. It is also worth noting that in two applications lodged against Austria, the ECtHR decided in early 2012 to apply the interim measure under Rule 39 and requested the Austrian government to stay the applicants' transfer to Italy until further notice" (§148). During his stay in Rome, the Commissioner visited an abandoned university building in the southeastern periphery of the city, occupied by recognised refugees or other beneficiaries of international protection from Sudan and the Horn of Africa, and denounced the shocking conditions in which they live (§159-162). Centro Astalli, in partnership with Caritas Roma and other NGOs based in Rome, Milan and Florence has published a research – financed by national ERF Fund (AP 2010) – on such occupied buildings (Mediazioni Metropolitane. *Studio e sperimentazione*

To better understand the concrete application of the Dublin II Regulation in Italy, it is necessary to analyse cases of transfers and returns separately.

## 1. Returns to Italy

The cases that are returned to Italy under the Dublin II Regulation may be asylum seekers or else they may have already been granted some kind of protection: refugee status, subsidiary or humanitarian protection. All these cases are usually returned to Italy by plane, mostly to Fiumicino Airport in Rome and Malpensa International Airport in Milan. When they arrive, the people head for the asylum desks run by the Italian Council for Refugees (CIR) and Caritas in Malpensa Airport and by the *Arciconfraternita del SS: Sacramento e S. Trifone* in Fiumicino Airport. These desks are a very important source of information for Dublin cases about the procedure in Italy, especially for asylum seekers.

Usually the Dublin Unit sends official notes to NGOs working at borders points regarding the arrival of Dublin cases in order to arrange their reception when possible, especially when they are somehow vulnerable, for example sick people.

At this point, there are two possibilities:

a) If the Dublin cases returned to Italy already have some sort of permit to stay as well as protection in Italy, they pass through the border police checkpoint to check their fingerprints but have no specific obligations. With regard to accommodation, their only option is to go to the Protection Service for Asylum Seekers and Refugees of the National Reception System (SPRAR) to find a place to stay, unless they have already resorted to this option during their previous sojourn in Italy.
b) If the returnees have already applied for asylum in Italy but were still in the process when they left, the border police fingerprint them and give them a letter of invitation to go to the competent *Questura*[174] within a set timeframe.

If the asylum seeker left Italy before the interview with the Territorial Commission charged with examining his asylum request, his asylum procedure is automatically reactivated by the competent *Questura*, to which the border police refer him. The *Questura* gives the asylum seeker a slip or temporary stay permit pending the date of the interview. Meanwhile, the person may benefit from the rights attached to asylum-seeker status, namely access to healthcare and to accommodation.

In Italy migrants in the Dublin system enjoy considerable access to the asylum procedures. This partly depends on the information provided at the border points by NGOs and by local associations where migrants go to ask for help.

With regard to the right to accommodation, there are no special rules for Dublin cases who have been returned to Italy and they are treated just as any other asylum seeker would be.

On the other hand, if the Dublin case transferred to Italy had left the country after having received a negative decision from the Territorial Commission, he receives a rejection paper from the *Questura* and has the right to lodge an appeal against it in court (*Tribunale Ordinario*), usually within 30 days and within 15 days if he stayed in an accommodation centre for asylum seekers during his previous sojourn in Italy.

The appeal does not always automatically have a suspensive effect and a motion has to be filed by the lawyer to ask for a suspension. The real problem is that in the period of time ranging from the suspension request to the decision, the person is undocumented and subject to deportation.

If the judge decides to suspend the measure, reception conditions continue to be provided; if the judge does not authorize this, the person loses all basic rights.

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*di un modello di dialogo e intervento a favore dei richiedenti e titolari di protezione internazionale in situazione di marginalità*: http://www.caritasroma.it/wp-content/uploads/2011/05/Mediazioni-Metropolitane-Rapporto-di-ricerca.pdf). The data in the research was the result of 520 interviews with asylum seekers and refugees living in these settlements. **43,4% of those interviewed, after their first arrival to Italy moved to other European countries** (mainly Sweden, Norway, Finland, Holland, United Kingdom, Germany and Switzerland). Their stay abroad in most cases lasted between 6 and 12 months and **most were forced to move back to Italy because of the Dublin II Regulation** (*Mediazioni Metropolitane*, p. 22).

[174] *Questura* is the Immigration Office of the territorial police.

## 2. Transfers from Italy

The second kind of Dublin cases in Italy are those facing a transfer from Italy to the first European country where they were fingerprinted or sought asylum (transferees).

When the police in the *Questura* take the fingerprints of such migrants and discover that they transited through another European country, they activate the Dublin Procedure by sending their files to the Dublin Unit (in the Department for Civil Liberties and Immigration of the Ministry of Interior). It is then up to the Dublin Unit to decide whether to send the person back to the responsible member state or let him stay in Italy to continue the asylum procedure. In the meantime the asylum seeker receives from the *Questura* a slip or a stay permit of one or three months.

Waiting for a decision from the Dublin Unit can take long, especially for those lodged in the main accommodation centres for asylum seekers (CARA), who can wait for up to seven or eight months. This is due to the fact that there is only one Dublin Unit, with one office tackling all the cases throughout the country.

When an asylum seeker receives a transfer order to go to another European country he has the right to lodge an appeal, within 60 days, with the Administrative Regional Court (TAR). In this kind of appeal there is no hearing, the time of waiting for the final decision is very long (up to three years) and the appeal has no suspensive effect. It's up to the lawyer to make a specific request to suspend the contested measure. If the judge does not authorize the asylum seeker to remain in Italy pending the final decision, he will not receive a permit to stay, will not be entitled to accommodation or other social benefits and could be subject to deportation. The migrant could be in such a situation for a long time, with neither accommodation nor the right to be treated in case of sickness.

The asylum seeker has the right to a *pro-bono* lawyer paid by the state but it's up to him to look for one. In the majority of cases, the asylum seeker turns to associations and NGOs dealing with the asylum procedure, which are in contact with lawyers competent in Dublin issues and in asylum and immigration law. The lawyer has the right to be present when the asylum seeker meets the authorities.

There are no statistics available on judicial remedies. The cost of possible translations of required documents, such as medical certificates, are covered entirely by the migrants themselves.

## 3. Provision of information

In Italy the police force (the Immigration Office, known as the *Questura*) is the authority responsible for providing official information about the Dublin II Regulation, since the Italian Dublin Unit **does not have a front office** accessible to asylum seekers.

It is a matter of fact that the Dublin II Regulation is complex and not always easy to understand and to interpret, especially for those asylum seekers whose level of education is low or who do not understand any European language. Hence associations and NGOs play a very important role in mediating between asylum seekers, the police and the Dublin Unit.

The Questura where the asylum seeker filed his application notifies him of his transfer order, which is translated in English but never in languages common among asylum seekers in Italy (such as French, Farsi, Kurdish, Amharic and Somali). In the *Questura* of Rome, official translators are provided by the state but, according to the asylum seekers' experiences, it can happen that the police just notifies them about the transfer order without giving a specific explanation.

Police officers do not have a specific duty, sanctioned by law, to give asylum seekers any contextual explanation about the transfer order or to give them a written explanation (like a pamphlet) about the Dublin II Regulation.

A recent project carried out by the Italian Council for Refugees and financed by the Ministry of Interior (Department of Civil Liberties and Immigration) and the European Union (European Refugee Fund), planned a campaign to inform asylum

seekers, refugees and people with subsidiary and humanitarian protection about the Dublin II Regulation, and their rights and obligations therein. The project includes:[175]

- a 30-second commercial broadcast in the main Italian train stations;
- a seven-minute video broadcast in the main accommodation centres for asylum seekers (CARA);
- 50,000 pamphlets printed in 10 languages and handed out in 500 strategic places like Immigration Offices, Immigration Border Services, accommodation centres and associations dealing with Dublin issues.

This is surely a positive tool that can help spread information about the Dublin II Regulation but it cannot guarantee adequate diffusion because of several factors: asylum seekers who are illiterate cannot read pamphlets even if they are written in their mother tongue; it is not certain that all Dublin cases will see or receive a pamphlet; and sooner or later the printed material will run out and no reprint is foreseen.

## 4. The Italian Dublin Unit and the use of the discretionary clauses

The Italian Dublin Unit is part of the Department of Civil Liberties and Immigration within the Ministry of Interior. There is only one office in Rome that is in charge of examining all Dublin cases throughout the country and this can lead to long delays in communicating the official transfer orders to asylum seekers.

The Dublin Unit has no website where it is possible to find data and statistics. These are published every year within the general statistics compendium of the Ministry of Interior. Asylum seekers who want to ask for information cannot contact the unit directly because it has no front office. Most asylum seekers need an intermediary and turn to local associations or NGOs for help.

NGOs or lawyers provide help in two ways: finding a *pro-bono* lawyer to appeal to the TAR against the transfer decision and contacting the Dublin Unit to ask for a revision of the transfer order on the basis of the discretionary clauses: the sovereignty clause and humanitarian clause.

It is difficult to establish how often the two clauses are applied: all those interviewed for this project, who work for associations and NGOs[176] dealing with Dublin issues, have noticed a change in the application of these clauses over the last year and a half. It seems that they were applied less frequently in this period than in the past, although there are no statistics available to verify this.

With regard to the criteria for the implementation of these clauses, the Dublin Unit mentions[177] a case-by-case analysis as the main one. According to the experiences of legal advisors, both discretionary clauses are applied in cases of family reunion and of vulnerable migrants.

It is persons affected by ***very serious*** psychological and psychiatric diseases who are considered to be vulnerable and the degree of vulnerability must be extremely severe, since it is assumed that almost all European countries have the same standard of medical care and so can receive people without any problems. A medical report is necessary to prove the asylum seeker's sickness.

In Italy the majority of Dublin cases are sent by other European countries; transfers from Italy to other countries are quite rare.

There is a gap between the requests for transfers and their actual implementation. This could be because most Dublin cases are able to find legal assistance and to lodge an appeal in court. On the basis of the statistics of 2008/2009[178], in 2009 there were 1,377 requests of transfer from Italy to other European countries of which 47 were implemented. For the actual implementation of transfers, the police usually give the asylum seeker a general description of a transfer order along with a written request to show up at the *Questura* on a particular date. If the asylum seeker shows up, he is taken to

[175] http://www.helpdubliners.it/images/pdf/inglese.pdf
[176] ASGI, "*Associazione Studi Giuridici sull'Immigrazione*", CDS "*Casa dei Diritti Sociali*", *Progetto Integra del Comune di Roma*, CIR, Italian Council for Refugees.
[177] Interview, 10 July 2012, with Antonella Dinacci, Assistant Prefect and head of the Italian Dublin Unit.
[178] ASGI, "*T*he right to protection," the European Refugee Fund, Annual Programme 2009 and CIR, "*Dubliners project report*, 2010," 36.

the airport to be transferred to the responsible country and there is no possibility of avoiding the transfer. For this reason, asylum seekers in such a predicament usually do not show up at the *Questura*.

The legal advisors interviewed said that in their experience there are no voluntary transfers: when they happen, all are forced, but there is no specific information on how they are actually implemented (if the transferees are provided with escorts or other details).

### 5. Reception conditions

When it comes to reception for Dublin cases, asylum seekers and those who already have a permit to stay, with some form of protection, are treated differently.

The first category are treated as an "ordinary" asylum seekers and have a better chance of being accepted in one of the accommodation centres, while the others are assumed to be already self-sufficient and may apply for a place in a reception centre only if they have not already used up this right during their previous sojourn in Italy.

In Rome there are four accommodation systems for Dublin cases:

- **The system of protection for asylum seekers and refugees (SPRAR)** is a network of projects managed by local authorities that was established by the so-called Bossi Fini Law. The system aims for "integrated reception", that is to say not only food and accommodation, but also concrete measures to further the social integration of residents. This system has places available everywhere in Italy however the supply is very limited compared to demand. In 2010, 30,324 applications were submitted in Italy[179] while only 3,000 places were available for 2009/2010 in the SPRAR.
- **Accommodation centres for asylum seekers (CARA)**: to be hosted in such a centre, the asylum seeker has to ask the *Questura* responsible for his asylum request. Most Dublin cases – both those who arrive at Fiumicino Airport and those who go to the *Questura* – are sent to the CARA of Castelnuovo of Porto. Situated some 40km out of Rome, this centre has a capacity of 650 places.
- **The Immigration Office of Rome (UI)** runs 21 centres in Italy with about 1300/1400 places in all. The waiting list is on average three to four months long.
- **ENEA** is an accommodation centre run by the *Arciconfraternita del S.S. Sacramento e S. Trifone* in Rome. There are 400 places available of which 80 are reserved for people in transit who come from Fiumicino Airport.

Returnees, who are asylum seekers, arriving to Fiumicino are usually referred to the ENEA centre and those who don't get a place may apply to go to a centre run by the Immigration Office. The real problem concerns those who are sent back to Italy and who already have some kind of protection. Probably they would have already stayed in at least one of the accommodation options available and, if they left the centre voluntarily before the established time, they have no right to go back to the accommodation system. Most people occupying abandoned buildings in Rome fall in this last category.

### 6. Detention

The Italian system does not stipulate detention for Dublin cases, neither for migrants who are sent back to Italy from other member states nor for those who have to be sent back to other countries, pending the transfer order of the Dublin Unit or the final decision of the TAR judge who is deciding their appeal.

## *DATA FINDINGS*

### 1. Basic information

Sixteen out of 30 interviews carried out were with returnees in particular Somali migrants: 13 had some kind of permit to stay (10 subsidiary protection; three refugee status).

[179] UNHCR, the data report in Caritas/Migrantes, *Immigration Statistical Dossier 2011, Rome,* October 2011, p 501.

The remaining Dublin cases interviewed were transferees, people who were supposed to be transferred to another member state: seven were awaiting a decision, three were challenging their transfer; four were in "other" situations.

The average time spent in Dublin procedures was 7.85 months, the longest 21 months. None of those interviewed was in detention.

The majority of those interviewed came from Somalia; many others were from Nigeria, Ivory Coast, Togo and Senegal. The rest came from Afghanistan, Iran and Turkey (Kurdish). All were men and the average age was 28: the youngest was 19 and the oldest 49. Ten were married, one was widowed, the rest were single. Eleven had siblings, cousins or uncles in other member states such as Austria, England, France, the Netherlands and Sweden.

With regard to languages spoken, 27 out of 30 spoke more than one language, the most common being English, French and Arabic. Although it was impossible to verify the level of knowledge, they would use the expression "a little bit" when referring to how well they knew a language.

Most said they could speak Italian at least to some extent, especially returnees who had spent some time in Italy before moving to another European country, from where they were sent back. The majority of those who did not speak Italian had not been in Italy before. A few spoke Kurdish, Pashtun, Swahili and Turkish.

## 2. Personal story

The interviewees tended to describe their entire journey since leaving their country of origin, not only from the time they arrived in the first European country they set foot in. The majority travelled extensively before coming to Italy, passing through three, four and even five African countries to reach Italy.

- "*I left Ivory Coast in 2005 and I passed through Mali and Algeria to reach Libya where I spent three years. From there I reached Malta by boat. I arrived in Malta in July 2008 and I spent three years there. (…), I arrived in Italy by boat on September 2011and I applied for political asylum."*

Most Somali returnees described a very long journey too:

- *"I left Somalia in March 2007 and I went to Eritrea, Sudan and Libya. In Libya I spent four months and then I came in Italy by boat."*
- *"I left Somalia in August 2008 and I travelled to Ethiopia, Sudan and Libya. In Libya I spent two weeks and then I came in Italy by boat."*
- *"I left Somalia in 2005, I went to Kenya, Ethiopia, Uganda, Sudan and finally to Libya. In Libya I spent one year in prison. From there I arrived in Italy by boat in 2008."*

When the asylum seekers were asked to gauge whether their chances of getting a positive reply to their application were better or worse because of Dublin II, some – mostly Somali returnees – remarked that they had no problem travelling to other EU countries because they already had subsidiary protection. In fact applying Dublin II to someone who has already successfully completed the asylum procedure is quite a paradox. All it does is prevent refugees and others with protection from integrating in Europe and making use of their family and friendship networks.

More than half the transferees interviewed said the Dublin transfer had worsened their chances of getting their asylum application accepted.

- "*The transfers between EU countries made my asylum application more and more complicated. Every time I applied for asylum in other EU countries, national authorities wanted to send me back to Italy. So the procedure become long and slow."*
- *"The transfer between countries made my situation worse because on the basis of the Dublin procedure, you cannot choose the place you want to live and I didn't expect that life in Belgium would have been so difficult."*

The interviewees frequently recounted their journey in terms of the number of times they've travelled to Italy: this was especially so in the case of Somalis, who received subsidiary protection in Italy and, despite being sent back here, continued travelling to other EU member states. They said they left Italy two, even three times within a few years because they wanted to find a job and to benefit from specific social support and integration measures as recognised refugees. This reveals a certain lack of information and knowledge gap about the EU asylum system and Dublin Regulation and maybe – at least in the case of several transferees – also the awareness that, considering their life in Italy, it was worth trying to go abroad.

### 3. Knowledge of Dublin procedures

Most interviewees (64%) said they knew two or more things about the Dublin system, mainly related to fingerprints and to the "first European country of arrival".

- "*The Dublin Regulation means that you have to seek asylum in the first European country where you arrive and where police takes your fingerprints. You cannot choose the European country where you want to live. The fingerprints are very important to understand where you have to apply for political asylum."*
- *"It means that the first European country where you arrive and you seek asylum, obtaining a stay permit, becomes the compulsory country where you have to stay for living. You are not allowed to go to another EU country to seek for asylum or to work there."*
- *"The Dublin procedure is a problem linked to the migrants' fingerprints. The place in Europe where police takes your fingerprints becomes the compulsory place where you have to stay."*

When interviewees were asked to rank their knowledge of the Dublin Regulation and its procedures, more than half said they were "in the middle of knowing and not knowing"; Just over one-third (36.4%) had "heard about Dublin but did not understand it because they lack information". Only one interviewee felt well informed, even if he was aware that there were still aspects he didn't know.

A link of direct proportionality came to light between the number of languages spoken and the level of education on the one hand, and the feeling of being more or less informed about the Dublin procedure on the other.

With respect to the source of information about the Dublin Regulation, half the interviewees said they had been informed by lawyers and somewhat less by NGOs (40.9%):

- *"A cultural mediator working for an NGO explained to me what it means Dublin II Regulation and the consequences of this law."*

Some (22.7%) interviewees said they had obtained information from fellow migrants:

- *"Some Iranian migrants explained to me that as I had sought asylum in Belgium, I could not seek it again in Italy. I met them in the soup kitchen of an NGO one month after my first appointment with the Immigration Office for asylum application and on that occasion they explained to me."*

The fact that only a small percentage of the interviewees obtained information from the Italian authorities bears out the fact that in Italy the Dublin Unit doesn't give information directly to asylum seekers because there is no front office.

Almost all interviewees were informed verbally and said they understood the information that was given to them because it was in their own language or in a language they knew, or because interpreters were present. Only two said they didn't understand the Dublin information because it wasn't given to them in a language they understood. Only one man got the information in writing and another obtained information by himself through the internet.

- "*In Malta the NGO that works inside the detention centre gave to me a pamphlet in English and I could read about the Dublin procedure."*
- *"I found information on the Dublin Regulation using internet by myself."*

The transferees said they had been informed about Dublin prior to receiving a transfer decision. But nearly half (47.6%) said they had received the information "late", especially those who went to another country and were sent back to Italy, because they learned about Dublin only after making one or more trips to other EU countries, or after already having received protection in Italy.

- *"When I arrived in Norway I thought I could apply again for political asylum but my asylum application was rejected because I already had a stay permit in Italy but I didn't know about the Dublin Regulation."*

**4. Appeals**

The questions about appeals were more relevant for transferees because only three returnees were asylum seekers in the procedure. The rest already had protection so didn't really need information on how to appeal. Fourteen out of 30 interviewees (mostly transferees) said they had been informed on how to challenge a transfer decision to another European country, with NGOs and lawyers mentioned as the most frequent source of information:

- *"They (NGO legal counsellor and lawyer) explained to me that in case of a transfer decision I have the right to appeal against this decision within 60 days in front of the TAR with a pro-bono lawyer."*
- *"My legal assistant (of the NGO) told me that probably I would have received a transfer order for going back to Germany but in this case we would have appealed in front of the TAR, the court competent for this kind of cases."*

Most of the 12 interviewees who had a lawyer said they were satisfied with the service rendered, saying the lawyer had taken good care of their case because of the amount of effort put into it.

More transferees than returnees said they had been in contact with lawyers. Five tried to challenge their transfer while the rest hadn't done so mostly because they hadn't received a formal decision about their transfer yet.

With regard to the discretionary clauses, there was a strong correlation between being a transferee or a returnee and knowing about them. Transferees were more likely to know these clauses than returnees. Nine transferees out of 14 said they didn't know about the discretionary clauses; the rest said they did. NGOs were cited as the top source of information about discretionary clauses.

- *"This is exactly my case because my legal assistant (of a NGO) explained to me that he would have written to the Italian Dublin Unit in order to ask to cancel my transfer order because of my psychological vulnerability. In fact I have been in therapy with a doctor since a few months ago."*

Half of those (four out of eight) who asked for the application of the discretionary clause said they had received positive results and their transfer order was cancelled.

**5. Knowledge about the asylum case**

Only three returnees out of 16 answered the questions in this section.[180] This is probably because many didn't really understand the questions and also because most of the returnees had a permit of stay and their asylum procedure had already been completed when they decided to leave Italy to go to another European country.

All three returnees who responded had questions about their asylum case and two said they didn't receive information about the Italian asylum system before they were transferred:

- *"When will I be interviewed by the Italian Commission for asylum? How long do I have to wait for this?"*
- *"I don't understand the reason why I have to wait so much time between the different steps of the procedure."*
- *"I would like to know: where am I with my asylum application? What can I do?"*

[180] All are asylum seekers.

They seemed to be very confused about what they know and don't know about their asylum case:

- *"In this moment I'm very confused. It's seems to me that I don't know anything."*
- *"I don't have a lot of information about it. The Immigration Office gave me a slip and I have appointment with them on 3 August 2012."*
- *"I don't have a lot of information about my case now."*

The most common difficulties faced by the asylum seekers in Italy were the big delay in the asylum procedure, the fact that they don't feel adequately informed step by step during the procedure and the problems to access linguistic services and free legal assistance.

With regard to the transferees, four out of 16 said they didn't know how to apply for asylum in the country they were being transferred to, while nine said they knew, thanks to information delivered verbally by NGOs and fellow migrants:

- "*They are lawyers who come to the detention centre to provide the detainees with legal information about the asylum procedure."*
- *"When I was in the detention centre, sometimes there were pro-bono lawyers who came to the centre and they explained to detainees their rights, duties and the asylum procedure. These lawyers work for an NGO but I don't remember the name."*
- *"Other asylum seekers who were with me in the detention centre and in the accommodation centre explained to me."*
- *"In Greece I met several Senegalese who explained the procedure to me."*

When asked what they intended to do after they were transferred, 11 transferees said they didn't have any plans and three declined to answer. Rather than a plan, what emerged were two sentiments: the fear of being transferred to another EU country and no desire to think about it:

- *"I hope to win the appeal, I don't want to go back to Malta because there I was in a detention centre and probably if the Italian Police sends me back to Malta they'll put me again in jail."*
- *"I don't want to think about Malta because I spent four months in a detention centre there and I hope God will help me to not go back there."*
- *"I don't want to think about it. I had nightmares…"*
- *"I don't even want to think about it, it hurts me a lot…"*
- *"I don't want to go back to Malta and I don't want to think about it."*

## 6. Personal well-being

In this section the questions took into account access to accommodation, work, education, medical care, food/clothing, any basic services and legal assistance. For some issues it is necessary to differentiate between the responses given by transferees and those given by returnees.

With regard to accommodation, most transferees either said they were staying in the CARA, a big accommodation centre for asylum seekers in Castelnuovo di Porto, a small village near Rome, or in accommodation centres provided by the authorities or the municipality. Most didn't comment about the quality although four did say it was poor.

- *"It's bad. I have been sleeping in an accommodation centre since my arrival in Italy. I share my room with five other people."*
- *"Very bad. I'm not allowed anymore to have a place to stay in one of the accommodation centres run by the Municipality of Rome because the police office doesn't give me the stay permit waiting for the last hearing of the appeal. The rule foresees that you have to have a document to enter in one of the accommodation centres."*

As for the returnees, their access to accommodation seemed to be limited; most were homeless, or staying with friends, not in an accommodation centre:

- *"Italy is the only country where I had to sleep on the streets because I could not find an accommodation place. In other EU countries I have always found a place to sleep."*
- *"I sleep in a public garden close to the train station."*
- *"I have been living in an occupied building with other Somali refugees for few months. The situation in Sweden was really better from this point of view."*

Many of the 13 Somalis interviewed said they were sleeping in an 'occupied building' in a neighbourhood in the south of Rome called Anagnina.[181] Most had subsidiary protection or were recognised refugees who didn't have access to the same conditions as asylum seekers, because prior to their departure for a third country, they had already benefited from accommodation in centres provided by the authorities or the municipality in Rome. Had this not been the case, they could have registered on a waiting list open to asylum seekers and holders of international and humanitarian protection.[182]

The interviewees experienced access to employment as the most problematic factor.
Only one returnee said he worked but he specified that his job, as a waiter in a restaurant, was in the black market A few other returnees said they had had jobs in the countries that transferred them (Finland, Norway, Holland).

Nearly all the transferees and returnees were attending, or had attended, Italian language courses, mostly at the Centro Astalli Italian Language School. There are other classes provided by Caritas and other organizations in Rome.

Half the interviewees (mostly transferees) said the state gave them assistance especially with housing, food and medical care. Most people had a positive opinion of the National Health Service in Italy especially because they had access to mental healthcare:

- *"It was very bad in Malta, it's very good here in Italy, I met a lot of kind doctors, also psychologists."*
- *"It's very good and I'm satisfied with this service. I also have a psychologist."*
- *"Very good. I have psychological and psychiatric assistance and they give me a lot of hope."*
- *"I have a good psychologist."*

But it is perhaps important to note that the interviewees were selected from among beneficiaries of Centro Astalli services in Rome: probably the answer to this particular question would have been different if the person interviewed had been selected differently.

Similarly, the majority of interviewees were getting food from the Centro Astalli, the Caritas soup kitchen or from the accommodation centre:

- "*Sometimes I go to eat at the Caritas or Centro Astalli soup kitchen."*
- *"In my accommodation centre I have special food because I have diabetes."*
- *"The food is not so bad and sometimes the staff of the centre gives us clothes."*
- *"I go to eat in the soup kitchen of Caritas and Centro Astalli."*

Almost all the interviewees had access to basic services, which usually meant access to public transport.

As for legal assistance, only two people (returnees) answered this question, remarking that the legal services were better in the countries that transferred them (Luxembourg and the Netherlands).

All the returnees said there were differences between Italy and the countries that transferred them, mostly linked to social assistance:

[181] This is the same place visited by the Commissioner for Human Rights of the Council of Europe, see footnote 5.
[182] According to the research conducted by Centro Astalli and Caritas on refugees living in such settlements (*Mediazioni Metropolitane*, pp. 22-23), 90% of interviewees had already lived in a shelter of the accommodation system (CARA, SPRAR or UI of Rome).

- *"In Italy there is not a real social assistance given by the government, there are some offices but they are not useful at all for your integration in the country. Here in Italy there are no real opportunities to work."*
- *"The social assistance is very good in Sweden. The style of life: in Sweden I had a job and more rights and possibilities than in Italy; the system of education in Sweden is really good."*

Other differences mentioned by several interviewees were access to accommodation, to education and to work:

- *"When I lived in Finland and I was an asylum seeker, they gave me a weekly budget, a house and the possibility to go to a school for learning the language."*

Nine interviewees, including one returnee, were in detention at some point and all were negative about their experience. One man detained in Malta said: *"It was a horrible experience because I imagined prison as a punishment for somebody who is guilty of something but I was innocent. I was just escaping from persecution in my country and I did not deserve to be put in jail."*

Here are some other comments:

- *"The detention guards were very bad in Malta. When they frisked me they took all my money and when I told them I was sick (diabetes), they didn't care about my delicate situation, and for this reason my health got worse."*
- *"The detention was a horrible experience in my life. I felt guilty because I was in a prison even if I didn't do anything wrong. This experience made me mentally sick."*
- *"The detention changed me and touched me a lot. I remember perfectly the fear I felt because I was sure that the Hungarian police would have sent me back to Iran."*

The vast majority of interviewees said they had no special connection with Italy. The presence of family seemed to be the biggest advantage, even if it was the case for just a few people.

Sixteen people said the Dublin Regulation had impacted their family in a negative way, with eight saying the impact was so bad that it had caused the family to separate:

- *"My sisters and my brother live in United Kingdom. I wished to reach them but now it's not possible anymore. It's very complicated because I obtained my stay permit here and I cannot go there to work."*
- *"My wife has been recognised as a refugee in Norway and we have two children, but I'm not authorized to go there and live with them, because I have been recognised as a refugee in Italy and I need a specific authorization."*

Prior to getting into the Dublin procedure, most (77%) of the interviewees said their plan had been to search for safety:

- "*I wanted to escape from my country and save my life. I knew that Italy was one safe European country, for this reason I wanted to go there."*
- *"I didn't have a specific plan I just wanted to come to Europe to seek asylum. I didn't know that I would have reached Greece."*
- *"I wanted to escape from Somalia and to come in Italy because I had a great idea of Italy and I thought the situation for migrants here was different."*

Nearly one-fifth (19%) said their plan was to reunite with their family and only one person said he had plans to enrol in some kind of education.

Two-thirds of the interviewees said the Dublin Regulation had disturbed their plans, especially their desire to work and to decide where they wanted to live. One reason why the Regulation disturbed their plans was that it made the asylum procedure longer:

- *"As Hungary was the first European country I entered, and police took my fingerprints there, now I'm not allowed to seek asylum in Italy or in Austria."*
- *"I would have liked to reach my uncle in Finland but I could not because the Italian police took my fingerprints and I have to complete here my asylum procedure according to the Dublin Regulation."*

Half of the interviewees said they had new plans, citing the desire to reunite with family, to learn Italian and to find a job.

- *"I would like to learn Italian and then I would like to help other Kurdish coming to Italy to save their lives."*
- *"Thank to the doctors and to my legal assistant I started to think about my future. I don't know exactly what but I think about it and for me it's enough for now."*

Those who said they had no new plans revealed confusion, sadness and unease. "In this moment I'm not able to think about the future," said one. And another: "I can say no [new plans] because I don't know exactly but I like Italy because I feel that here there is freedom."

Two-thirds said they had never absconded from the authorities because they never needed to or because they knew it was somehow wrong. For those who tried, it was mostly either because they were dissatisfied with the outcome of their procedure, or because they somehow feared the authorities, or because they wanted to be with their family.

- *"In Italy after having got a denial I escaped."*
- *"I escaped twice from the migrant jail in Hungary because I didn't want to stay there and when the police discovered me, they were very aggressive."*
- *"I ran away from the detention centre in Hungary and I was very afraid because I didn't have any kind of regular document with me but I had to if I wanted to save my life."*
- *"When police wanted to send me back to Italy from Finland, I escaped, because I didn't want and I went to Sweden. I was afraid but I had to do because I wanted to try to find a better life."*
- *"After the Italian police took my fingerprints, I escaped, and I didn't present myself to the appointment with the Immigration Office because I wanted to reach my uncle.*
- *"When I was in Sweden, after few months I discovered that I was not authorized to stay there to work, so I decided to hide myself in a friend's house not to be discovered by the police."*

## 7. Personal views about the Dublin Regulation

All the people interviewed had a negative opinion about the Dublin Regulation, considering it unfair, unjust or simply not good. For most the main reason was linked to the fact that it didn't allow them to go to the country they would prefer. The disappointment was particularly intense because of integration opportunities and their future life perspective, rather than the procedure itself: returnees especially felt they were stuck forever in a country where their rights were not fully respected. They felt as if the Dublin Regulation had defeated their freedom of choice and destroyed the positive image of Europe they had as a model of society.

- *"Dublin is very negative because it makes you prisoner: you cannot chose where you want to build a new life after having escaped from the war as in my case."*
- *"I think the Dublin Procedure is negative because it does not let you the possibility to choose where you want a second life. It's against freedom of choice."*

Some interviewees said the Dublin Regulation prevented people from having a second chance in Europe if things didn't work out in one country:

- *"The Dublin Procedure is very negative. If you escape from your country because you have problems there, and you arrive in an EU country like Greece, for example, to seek asylum but you find an horrible situation against the human rights, according to the Dublin system you have not the possibility to go to another country because of your fingerprints and you are stuck."*

- *"It's very bad because if a person arrives in a European country, where he seeks asylum and he gets a denial, he should have a second possibility in another country but on the basis of this law it's not possible."*

Most of the interviewees said they did not know about the Dublin Regulation before coming to Europe and wished they had.

- "*The Dublin procedure; I didn't know anything about it. When I arrived in Malta I was sure that after reaching Italy, I would seek asylum there without any problems, my only problem was to find money to escape from Malta."*

When asked if they had any advice to give other migrants who might come to Europe, half of the interviewees said they would advise people to "carefully choose the EU country you want to go to":

- *"I would like to advise them to choose, since the beginning, the European country where they want to go and stay for seeking asylum because after having reached the place they cannot change anymore."*
- *"It's difficult. I would like to advise them to choose very well the country where they want to go and avoid some EU countries that I considered racist or where the life is very difficult. But I also know very well that very often, when you have to leave your country, the travel is organized by the trafficking man who chooses the place to go."*
- *"I would like to advise them not to come to Italy but to go to other Europe countries especially in the north of Europe where life is better."*

When asked if they had advice for other migrants, just over a quarter said they had none.

The most significant problems the interviewees said they have had to face were, it would seem, primarily access to housing and finding a job. Access to accommodation was especially problematic for returnees for the reasons mentioned above. The lack of stability in their lives emerged as another problem followed by, for the transferees, the anxiety about being transferred to another EU country.

The best solution to resolve their problems would be to have a normal life: this would mean protection for transferees and finding a job and staying with family for returnees:

- *"To be interviewed by the Territorial Commission as soon as possible and to be recognized refugee."*
- *"...to find a job, to rent a house, to be able to do the family reunification."*

## *DATA ANALYSIS*

**A. Application of Dublin II to people who have already successfully completed their procedure in Italy**

The Dublin Regulation was intended to determine, as quickly as possible, which member state is responsible for examining an asylum request. Its application to people who have already successfully completed the asylum procedure (and who have refugee or another status granting protection) is a paradox and only serves to prevent them from integrating in Europe and from making use of their family and friendship networks. In some cases, it even prevents family reunification (between brothers or between husband and wife).

The assumption that the quality of the asylum procedure is the same, or at least similar, in all member states, which is the premise underlying the transfers of asylum seekers, should imply that the international protection granted by a member state is valid and recognised all over Europe.

The interviewees' personal views on Dublin II make it clear that the fact that the Regulation forces people to stay forever in a specific member state, after having obtained protection, actually *encourages* asylum shopping rather than prevents it. The interviewees would in fact advise their fellow migrants to *"choose, from the beginning, the European country where they want to go and stay to seek asylum because, after having reached the place, they cannot change anymore".*

Naturalisation procedures in Italy are very long and uncertain. Those with refugee status may apply after five years but the process normally lasts several years and a positive outcome is not automatic.

**B. Problems and differences in reception conditions as possible cause of destitution**

Most of the people interviewed said they didn't have accommodation in Italy. The findings show that the lack of places to stay is a big problem especially for returnees who are, in most cases, holders of international or humanitarian protection. Almost all the Somali returnees were squatting in neglected buildings and had difficulty to access accommodation.

On the basis of our experience, this problem seems to be rooted in serious gaps in the Italian reception system, which are linked to the insufficiency of places available, the fragmentation caused by the existence of different types of centres and the variability of standards. An integrated, unified reception system, which is capable of responding to fluctuating needs and of affording the same quality of protection throughout Italy, and which is backed by clear national standards and independent monitoring is still lacking. Quite evidently the capacity of the SPRAR network is not adapted to current needs. Furthermore the near absence of an integration framework, for refugees and other beneficiaries of protection, has created a serious human rights problem in Italy.[183]

All returnees seemed unhappy with the reception conditions in Italy and constantly compared them with those they found in the mostly northern European countries that transferred them, citing especially differences in accommodation and social assistance.

Once back in Italy, the returnees often found themselves in a situation of destitution. They had no connections in Italy and didn't really want to stay here because of the poor accommodation and because any integration measures (if any) they had resorted to had failed. So they kept trying to go to other European countries and kept being sent back, with a waste of resources and rising frustration and trauma (including, in some cases, detention with all its negative impacts).

**C. Lack of uniformity in information access**

According to this data, people seemed to be relatively well informed about Dublin procedures, but very often the information was incomplete or relayed to them too late.

The findings showed that lawyers and NGOs played a key role in transmitting information. On the contrary, the administrative authorities, such as the Dublin Unit, played a minor role.

The findings confirmed what we have observed in our experience at Centro Astalli: the Italian authorities rarely provide Dublin cases with written information (such as pamphlets or brochures). In most cases it is NGOs or lawyers that give relevant information to people verbally. Therefore, access to information relies completely on networking among migrants, which enables individuals to turn to NGOs.

**D. Lack of information as an obstacle to a fair procedure**

The data shows that some transferees were able to take advantage of the discretionary clauses. Access to correct and comprehensive information allowed them to use the discretionary clauses and therefore to have access to a fair asylum procedure.

Conversely, lack of information had a negative impact on the mental health of some, producing frustration, depression and a deep sense of precariousness and insecurity, because people were left in a state of juridical limbo. This also undermined trust between the migrants and national authorities, making the path towards social inclusion and integration much harder.

**E. The duration of the procedure and the lack of information as a consequence of a structural problem**

All the returnees who were still in the asylum procedure said they didn't know anything about their case and were very confused as to how to proceed. This confirms our experience: the Dublin procedure can last a long time, due to the fact that the Dublin Unit consists of just one office in Rome that is in charge of all the cases in Italy. The migrant has no chance of being aware of the progress and steps of his application, neither through the non-existent front office nor through means such as an online system or the front office of other national authorities, such as local migration desks.

183 See Comm DH (2012)26, III. 2-3.

## *CONCLUSIONS & RECOMMENDATIONS*

**The Dublin II Regulation should not apply to people who already have successfully completed the asylum procedure**. Refugees and subsidiary protection holders should be allowed to make use of their family and social networks in order to plan their path of integration in Europe. Family union, in particular, should be assured in every case. A first step could be the transposition into national law of the relevant EU Directive extending the status of long-term residency to refugees and other beneficiaries of international protection.

**The Italian authorities should establish an integrated, unified reception system that is capable of responding to fluctuating needs and affords the same quality of protection throughout Italy**. Such a system should be underpinned by clear national standards and independent monitoring. The authorities should also take positive measures to counteract the considerable disadvantages that refugees and other international protection holders face in the labour market, including widespread discrimination and the risk of exploitation. Relevant laws and regulations should be reviewed and the numerous administrative obstacles to the implementation of refugees' rights should be removed. Such improvements would considerably reduce the number of asylum seekers and refugees who move from Italy to other European countries before or after the end of their asylum procedure.

**The Dublin Unit should improve its internal structure in order to assure quick and effective management of Dublin cases as well as full and transparent access to relevant information by migrants in the procedure, both directly and through NGOs and lawyers**. A sufficient number of front offices should be established together with an online system that allows migrants to check where their procedure is at, as already happens with other migration-related procedures, such as the renewal of one's permit to stay.

**The Dublin Unit should evaluate carefully, on a case-by-case basis, the possibility of applying the sovereignty clause to fragile and vulnerable asylum seekers**. Such an assessment should be fully transparent and the asylum seekers, personally or through NGOs and lawyers, should be able to submit relevant documents to attest to the particular conditions of vulnerability and/or to prove their grounds for avoiding the transfer.

**The Italian authorities, in particularly police offices in charge of the asylum procedure, should provide Dublin cases with proper and complete information pamphlets translated in their language or, at least, in the main languages spoken by asylum seekers in Italy**. At the moment, asylum seekers are not sufficiently informed about Dublin procedures by the Italian authorities and the main sources of information cited are NGOs and lawyers.

**For transferees, information should include details about the procedure and the reception system in the country to where they will be transferred, including the contacts of relevant NGOs**.

**Dublin cases should be fully informed about the discretionary clauses, because when they are aware of them and take action, their appeal often has positive results**. This highly relevant information has to be given by the police offices and administrative authorities, not only by NGOs, in order to be sure that every asylum seeker all over the country is aware of it.

**The Dublin Procedure should fall under the jurisdiction of the ordinary court instead of the TAR, the Regional Administrative Court, because the duration of such appeals is very long and they cost more**.

**An appeal against a transfer order should have an immediate suspensive effect so that asylum seekers will not lose the opportunity to access all their rights to accommodation, healthcare and other social services**. The non-suspensive effect means Dublin cases do not have a permit of stay, which is required to access services that attempt to meet basic rights.

# DIASP national report: MALTA

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## *INTRODUCTION*

This report was prepared by JRS Malta as part of the DIASP project.[184] The objective of this project, coordinated by JRS Europe, was to study the level of fundamental rights protection asylum seekers have access to under the Dublin Regulation and to examine the implementation of the Regulation at national level. This took place through listening to migrants who have experienced Dublin procedures, by obtaining information from the authorities involved in implementation at national level and from practitioners at JRS Malta engaged in providing legal and psychosocial assistance to migrants within Dublin procedures.[185]

As part of this project, research was conducted in 10 EU Member States.[186] The outcome of this project was '*Protection Interrupted*' – a European wide report, incorporating national reports from 10 Member States, a comparative analysis of the results obtained through the research conducted and recommendations for improved practices and procedures with proper guarantees of protection.

The national report presents the results of the research conducted in Malta. The first part of the report outlines the law and practice relating to the implementation of the Dublin Regulation at national level by outlining and examining the procedure through which migrants are transferred to and from other EU Member States, in terms of the Regulation. The second part of the report outlines the experience of migrants, who had, at one point or another, been subject to the terms of the Regulation. The report then analyses the data findings and contains recommendations for improved practices and procedures with proper guarantees of protection, at national level.

*Methodology*

Research was conducted by project partners according to a common methodology, consisting of a mixed qualitative and quantitative questionnaire, used to interview migrants subject to Dublin procedures, and through meetings with national authorities involved in the operation of the Dublin procedure at a local level. The questionnaire used to interview the migrants was divided into two sub-categories with a questionnaire targeting persons who were awaiting transfer (transferees) and another questionnaire specifically for persons who had been returned (returnees).

Partners were instructed to carry out between thirty and forty interviews with a mixture of returnees and transferees at different stages of the Dublin procedures, where possible. Partners were also instructed that in cases where the Dublin procedure had already been concluded, the interviewing pool was to include only those in respect of whom the procedure had been concluded within established time-frames.

In Malta, interviews were carried out with 23 migrants who had been returned to Malta from other Member States. One of these interviews was considered as not falling within the criteria for the project and was not used to compile the data findings. No interviews were carried out with migrants awaiting transfer to another Member State. This is due, in part, to the low number of migrants in respect of whom a request may be made to another Member State to take charge. In 2012, 15 such transfer requests were made as opposed to the 186 individuals who were actually transferred to Malta from other Member States. Moreover, the few individuals JRS Malta was in contact with who were pending the determination of an outgoing request were unwilling to be interviewed. All information regarding transferees contained in this report was provided by national authorities and professionals providing them with services.

The interviewee sample included beneficiaries of international protection who had nonetheless been returned in terms of the Dublin Regulation. Of the 22 interviewees whose data was taken into consideration, 12 were beneficiaries of

[184] Dublin's Impact on Asylum Seekers' Protection.
[185] JRS Malta is the only NGO providing these services to migrants in detention, in addition to providing services to migrants in the community.
[186] The research was also conducted in the following Member States: Belgium, France, Germany, Hungary, Italy, Poland, Romania, Sweden and the United Kingdom.

subsidiary protection, 5 were asylum seekers awaiting a final determination of their application and another 5 were failed asylum seekers, whose application had already been finally determined.

Data was collected from both men and women, all of adult age. Migrants eligible to be interviewed were selected from among migrants in detention, from among those who were receiving a service, or who requested a service, from JRS Malta, and from among contacts which JRS Malta has with the local migrant community. We did not invite migrants who we deemed unfit to be interviewed as a consequence of physical or mental health problems to be part of this study. Their needs are therefore not reflected in the project findings.

Of the 23 people interviewed, 17 were male and 6 were female. Interviewees hailed from 6 different African countries: Eritrea, Somalia, Ethiopia, Nigeria, Guinea and Ivory Coast. The average age of interviewees was 30 years, with the youngest interviewee being 21 years old and the oldest being 47 years old. The composition of the interviewing sample reflects the nature of the migrant population in Malta, in terms of age, gender and nationality/ethnicity.

Migrant interviews took place at the JRS Malta office, in Birkirkara, with the exception of two interviews which took place with two migrants detained in B Block, Safi Barracks. As a number of respondents could not speak English, cultural mediators provided interpreting services and facilitated communication. The interviewees' consent to participate in the project and for the use of a particular interpreter was always requested at the beginning of the interview. The data collected was recorded on the questionnaires themselves. No recording equipment was used.

The second part of the project focused on data collection regarding the workings of the Dublin procedure as employed in the national context. Meetings were held with national authorities who are in charge of the Dublin procedure as well as with those authorities who come into contact with migrants who have been through the procedure. Three meetings were set. The first of the three interviews took place with the Refugee Commissioner, who, in addition to being the entity authorised to receive and examine applications for international protection, is the designated head of the local Dublin Unit.[187] The Chief Executive Officer of the Agency for the Welfare of Asylum Seekers [AWAS] was also interviewed with a view to obtaining information about the social situation, entitlements and practice relating to those migrants who fall under Dublin procedures.[188] The third and final interview took place with the Immigration Police who are entrusted with operating the Dublin procedure; in practice they are responsible for filing and answering inter-state requests pertaining to the Regulation and for eventual migrant transfers.

## *MEMBER STATE PRACTICES*

Immigration into Malta is regulated by the Immigration Act of 1970, Chapter 217 of the Laws of Malta, and the subsidiary legislation enacted thereunder. The treatment of asylum seekers is regulated by the Refugees Act 2000, Chapter 420 of the Laws of Malta, and related subsidiary legislation, in particular the Reception of Asylum Seekers (Minimum Standards) Regulations (S.L. 420.06 of 22 November 2005).[189]

There is no specific legislative instrument which transposes the provisions of the Dublin II Regulation into national legislation. The procedure relating to the transfers of asylum seekers in terms of the Regulation is an administrative procedure, with reference to the text of the Regulation itself. The Refugee Commissioner is the designated head of the Dublin Unit with the Immigration Police implementing the procedure in practice. It is to be noted that the number of people assigned to work in these departments is very small and during the interview both agencies raised the issue of the lack of resources made available to fulfil the tasks entrusted to them.

All migrants apprehended for irregular entry and stay, or refused admission into Malta, are immediately taken into the custody of the Immigration authorities. All those who apply for asylum are systematically fingerprinted and photographed by the Immigration authorities for insertion into the EURODAC database. Asylum seekers, who are either residing regularly in Malta or who apply for international protection prior to being apprehended by the Immigration authorities, are

[187] The *Refugees Act* (2000), Chapter 420 of the Laws of Malta empowers the Refugee Commissioner to examine and determine asylum applications. His role as head of the Dublin Unit is not stated in law.
[188] AWAS is set up by law in terms of *the Agency for the Welfare of Asylum Seekers* Regulations, Subsidiary Legislation 217.11 of the Laws of Malta.
[189] Hereinafter referred to as the 'Reception Regulations'.

also sent to the Immigration authorities to be fingerprinted and photographed immediately after their desire to apply for asylum is registered. The Dublin procedure is then applied in the same way regardless of whether an asylum seeker is detained or is living in the community.

**1. Establishing eligibility for a Dublin transfer**

*The Role of the Refugee Commissioner*
Shortly after arrival, detainees are visited by members of the Office of the Refugee Commissioner [RefCom] who provide information about the asylum procedure in Malta and on the rights and obligations of asylum seekers within the asylum procedure. Detainees also receive a leaflet entitled – *"Your entitlements, responsibilities and obligations while in detention"*– which makes reference to the possibility that their asylum application will be processed in another Member State upon the fulfilling of certain criteria.[190] This leaflet is however only available in English, Arabic and French.

The information given by the Office of the Refugee Commissioner is provided with the help of cultural mediators and through audio-visual and written material available in eleven languages. RefCom staff is present at this point to answer questions and clarify matters raised by the asylum seekers. It is at this point that those who express a desire to apply for asylum fill in what is known as the Dublin II questionnaire, wherein they are asked about the presence of family members in other EU Member States. Individuals then also fill in a Preliminary Questionnaire [PQ], a form through which they register their desire to apply for asylum.

The information collected in the PQ, which among other things includes information as to marital status and information about other family members, is then processed at RefCom. If the asylum seeker mentions information which renders him eligible for a Dublin transfer in terms of the Regulation, the processing of the asylum application is suspended and the details forwarded to the Immigration Police. These are, in turn, responsible for following up with the asylum seeker and the authorities of the Member State being requested to take charge of the asylum seeker.

Although the examination of the asylum application is supposed to be suspended pending the outcome of the Dublin procedure, in many cases where the procedure is not concluded within a short amount of time, the Refugee Commissioner may nonetheless decide to proceed with the examination of the application.

The Refugee Commissioner specified that he may call upon the asylum seeker for the asylum determination interview at a stage where he considers that too much time has elapsed from the time of referral to the Immigration Police for follow-up. Cases documented by JRS Malta corroborate this information as a number of asylum seekers over the past year were called up for their status determination interview prior to a final answer being given on their eligibility for a transfer. Consequently they were precluded from benefitting from the provisions of the Dublin Regulation and remained separated from their family members. Although those granted international protection were subsequently able to travel to the other Member States, to visit and not to stay, on the basis of regularly obtained travel documents, the Dublin procedure was cut short as they were effectively no longer asylum seekers.

*The Role of the Immigration Police*
The Immigration Police process the information that is passed on to them by the Refugee Commissioner at the initial stages of the procedure. They are then expected to call the asylum seeker for a Dublin interview, where the asylum seeker is informed about the possibility that his or her asylum application is processed by another Member State. This meeting takes place at the Police General Headquarters without the assistance of interpreters or cultural mediators. At most, another detainee, or a fellow migrant, if on the outside, might be asked to accompany the asylum seeker to provide interpreting services. This interview is not recorded nor is a transcript available.

Asylum seekers are asked to provide documentation in support of their statements which will then be attached to the request sent by the Maltese authorities. The 'take charge request' is only submitted once the necessary documentation is obtained. It is the asylum seeker who is expected to provide the documentation in support of his claim. This raises obvious difficulties when the migrant is detained with limited access to communication facilities. Consequently, detainees undergoing the Dublin procedure rely on NGOs to facilitate communication and assist with the provision of documents.

[190] Available at: http://www.cpt.coe.int/documents/mlt/2007-38-inf-eng.htm

The Immigration Police specified that documents so provided are not translated but are sent to the Member State requested to take charge, annexed to the outgoing request.

**2. Detention and the Dublin Regulation**

National law did not place a time-limit on detention prior to 2011.[191] Detention lasts until an asylum application is determined, in the case of those granted some form of protection. Since June 2005, asylum seekers whose application is still pending after the lapse of 12 months are released to await the outcome of their asylum application in the community. When the asylum application is finally rejected before the lapse of twelve months, or in the case of those who do not apply for asylum, detention lasts for a maximum of 18 months, unless removal to the country of origin is effected in the meantime. The only exceptions are unaccompanied minors, whose claim to be under eighteen years of age is accepted and those who are found to be vulnerable, after an individual assessment of their situation, as in terms of government policy vulnerable immigrants are not detained.[192]

For migrants in Dublin procedures, detention would last until the transfer is effected or until the lapse of twelve months in detention as an asylum seeker, whichever is the earliest, unless the Refugee Commissioner decides to process the application or to grant provisional protection to secure release pending a final determination of the application.[193] If the requested Member State rejects the request, the asylum procedure is no longer suspended and the asylum seeker's application is then examined and determined.[194]

Although fifteen (15) outgoing requests were submitted by Maltese authorities in 2012 during that year there were only two (2) transfers. Cases from 2012 indicate the existence of a lengthy Dublin procedure with few ensuing transfers. Moreover, Dublin transferees are liable to spend more time in detention than other asylum seekers granted protection who would have arrived at the same time, as the latter would have had their asylum application examined and processed immediately.

Two examples from 2012 highlight the impact of the Dublin procedure on detention. An Eritrean asylum seeker who arrived in Malta in June 2012 declared upon arrival that his wife and child were in Italy, where they had been since 2011. Due to the difficulty in obtaining documentation proving family links, the request to take charge was only submitted in October 2012. The Italian authorities accepted responsibility for the asylum seeker in February 2012 with the transfer taking place two weeks after this acceptance was communicated to the Maltese authorities. During the eight months that the transferee spent in detention, all of those who had arrived in Malta on the same day had had their application examined at first-instance with a large number being granted protection and released from detention within three months of their arrival in Malta.

In another case, a Somali woman who arrived in Malta in August 2012 declared that she had been told that her husband and two children were in residing in the Netherlands where they had been granted international protection. She was unsure where they were currently residing as she had lost all contact with them and had only heard the news through other Somalis back in Somalia. The Somali applicant managed to re-establish contact with her husband in November 2012 who proceeded to forward all available documents in proof of their statements. The request to take charge was submitted in December 2012. In the meantime, the asylum seeker remained in detention, pending the possibility of a Dublin transfer, even though prior to re-establishing contact with her husband and obtaining knowledge of his actual whereabouts there was no real possibility that a request could be filed. Consequently, a request was submitted to the

[191] Regulation 11(14) and (15) of the Common Standards for Return of Illegally Staying Third Country Nationals Regulations, which transposed the Return Directive into national law, places a 6 month time limit on detention, which may be extended for a further 12 months up to a maximum of 18 months. It is unclear whether this time limit applies to all categories of detainees, as regulation 11(1) states that the safeguards do not apply to third country nationals who are "*subject to a refusal of entry*" or "*who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta*".

[192] This time limit was established by a government policy document published in January 2005 entitled *'Irregular Immigrants, Refugees and Integration'*, Ministry for Justice and Home Affairs & Ministry for Family and Social Solidarity, available at http://www.enaro.eu/documents/immigration-English.pdf at page 13.

[193] Article 10 of the Reception Regulations provides for access to the labour market after 12 months from the date of an application for protection. Maltese authorities use this as the basis for release arguing that detainees are unable to obtain access to the labour market while in detention.

[194] See *Becoming Vulnerable in Detention – Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the EU*, a 2010 report following a project coordinated by JRS Europe which findings illustrated that detention is in itself causing vulnerability, especially with regards to mental ill-health. The national report, drawn up by JRS Malta, is available at: http://www.jesuit.org.mt/files/634311314406818750.pdf and contains further information about the law, policy and practice regarding detention in Malta.

Refugee Commissioner regarding the possibility that notwithstanding that a full and final examination could not be carried out of her eligibility for international protection, the applicant could be considered for a provisional form of protection on account of her prima facie need for international protection. Documents substantiating applicant's protection needs were forwarded to the Refugee Commissioner who in turn granted the applicant Provisional Humanitarian Protection thereby securing her release from detention. Throughout this time, other Somali asylum seekers who had arrived on the same boat as the applicant had been released from detention within a few months of their arrival, after being granted international protection.

### 3. Information & Legal assistance during the procedure

During the time that the asylum seeker is pending the outcome of the Dublin procedure requests for information can be made to the Immigration Police regarding the status of the procedure. In practice, this is possible when asylum seekers are able to set up an appointment with the authorities in question. Where an applicant is detained, it is inherently more difficult for the individual to follow up on the Dublin request due to the restrictions in directly contacting the police for follow-up and obtain information. When they do manage to establish contact, information is usually forthcoming. The main problem with obtaining information is that detainees do not know who to ask to obtain the information in question. Detainees are effectively precluded from obtaining regular information and updates about their case.
Local legislation does not provide for the possibility of free legal assistance during the Dublin procedure. Legal assistance is provided either by independent lawyers, against payment, or by lawyers working with NGOs regularly present in detention. Information about the stage of the proceedings is usually provided to the lawyer representing the applicant upon request. In practice, lawyers working with JRS Malta are actively engaged in providing assistance to a large number of detained asylum seekers pending the outcome of a request for an outgoing transfer.

### 4. Transfers & their execution

When a Member State accepts responsibility for an asylum seeker, transfer takes place as soon as possible or if the asylum seeker appeals, after the appeal is determined. No official statistics are available regarding the length of time it takes for a transfer to be effected once responsibility has been accepted by the other Member State. Recent examples however illustrate that the transfer is sought to be effected within days of the date of acceptance by the responsible Member State with the Immigration authorities purchasing the flight ticket as soon as practicable.

The decision to transfer an asylum seeker to another Member State may be appealed through the filing of an appeal to the Immigration Appeals Board.[195] In 2012, the Board's jurisdiction, previously limited to hearing and determining appeals against decisions taken in terms of the Immigration Act, was widened to deal with appeals from decisions taken within the Dublin framework.[196] The provisions indicate that an appeal to the Board must be filed within three working days from the decision subject to appeal.[197]

National law does not make any provision regarding the procedure to be followed in the case of an appeal. There is no obligation to inform the asylum seeker, either orally or in writing, about the outcome of the Dublin request. Notwithstanding this, the law specifies the three-day time-period from date of the decision within which migrants are to appeal. In practice, migrants are not systematically informed of the outcome of the request, making it very difficult for them to appeal the decision within the stipulated time-period. It must be recalled that both the Police and the Refugee Commissioner are administrative authorities, legally-bound to observe the rules of good administrative practice, as is the duty to provide reasons for an administrative decision. According to the Immigration Police, if an appeal is filed, it has suspensive effect although this is not specified in law.[198]

The authorities note that the asylum seeker is informed in person about the transfer and the date when it will take place. If the asylum seeker assents to the transfer, this is carried out without the presence of police escorts. The transfer is only carried out under escort if the asylum seeker demonstrates an unwillingness to be transferred. In all cases, the asylum

[195] Immigration Appeals Board (Additional Jurisdiction) Regulations, Subsidiary Legislation 217.16 of the Laws of Malta.
[196] Ibid., regulation 3.
[197] Immigration Act (1970), article 25A
[198] This is the official information provided by the Immigration Police. The information in the leaflet provided to migrants upon arrival contains contradictory information noting that '*You [asylum-seeker] must leave Malta during the appeal process.'*

seeker is provided with a letter explaining that he is a transferee, which he is expected to present to the Immigration authorities upon arrival in the accepting Member State.

Maltese authorities transfer asylum seekers to all Member States with the exception of Greece. In cases where the application of the Dublin Regulation would imply that Greece bears responsibility for the examination of the asylum seeker's application, Malta assumes responsibility and the asylum application is examined by the Refugee Commissioner. In cases where the asylum seeker nonetheless wants to be transferred to Greece, this possibility will also be considered,

**5. Returnees**

In practice, few asylum seekers are eligible for a transfer to another Member State, as Malta would be the first point of entry into the EU for the majority of asylum seekers who enter irregularly. This is also reflected in the statistics available for 2012 which indicate that there were 15 outgoing requests, where another Member State was asked to take charge, as opposed to 1003 incoming requests, whereby Malta was asked to accept responsibility for the asylum seeker by another Member State.[199] There is no information available on the use of the humanitarian or the sovereignty clauses, although the Refugee Commissioner indicated that there are cases where the humanitarian clause is used and Malta takes charge of the applicant on account of health reasons.

*Return, Imprisonment and Detention*

No asylum seeker is detained or imprisoned simply because he is a Dublin returnee. The treatment of Dublin returnees with respect to administrative detention, in terms of the Immigration Act, relates to the manner in which the asylum seeker would have left detention in the first place.

Migrants who would have left Malta in breach of the Immigration Act, as in the case of those who travelled without the requisite travel documents, using false documents or using documents issued to someone else, are liable to being arraigned in court and charged with committing an offence carrying a maximum of two years imprisonment, upon return.[200] Moreover, if the migrant would have escaped from detention prior to leaving the island, he may also be charged with escaping and breaching a place of custody, an additional criminal charge, which carries a possible term of imprisonment of a minimum of six months and a maximum of four years.[201]

Although these provisions are not foreseen to apply solely to Dublin returnees, it is nonetheless true that as asylum seekers are only entitled to be issued with travel documents in very exceptional cases, enabling them to leave and return to Malta[202], with failed asylum seekers not being entitled to any travel documents, the majority of returnees within this category are subject to prosecution and imprisonment. Moreover, the Court of Appeal (Criminal) has emphasised that these are serious offences which merit a sentence of effective imprisonment, laying to rest the previous practice of granting suspended sentences to those found guilty of the above-mentioned offences. In practice, asylum seekers and rejected asylum seekers returned to Malta face a very real possibility of prosecution and imprisonment for leaving the country in breach of criminal law provisions. This is obviously inapplicable to all those who would have managed to travel regularly.

Return does not put those who travel regularly at any risk of being prosecuted or detained. A substantial number of returnees are beneficiaries of international protection who are eligible to be issued with a travel document. There have been instances where beneficiaries of international protection chose nonetheless to travel irregularly, and were prosecuted and imprisoned upon return due to this violation.

With respect to returnees being detained again, this applies solely to those who were asylum seekers or failed asylum seekers, and who were not released regularly from detention prior to their departure from Malta. These individuals who would have absconded from detention are, in addition to facing prosecution and imprisonment, subject to being detained again as they are expected to complete the time period in detention that they would have had to spend had they not left

[199] Information provided by Immigration Police.
[200] Immigration Act, art. 32.
[201] Criminal Code, Chapter 9 of the Laws of Malta, arts.151 & 152.
[202] The Reception Regulations specify in article 5 that asylum seekers may only be issued with a travel document '*when serious humanitarian reasons arise that require their presence in another State*.'.

irregularly. In practice, these returnees are returned to detention, after serving a sentence of imprisonment, to pick up where they left off.
Moreover, due to the impact that return has on the asylum procedure, if their asylum application would have been closed, they return to face a period of detention lasting up to eighteen months in total, unless they are readmitted into the procedure during this time.

*Returnees and the Asylum Procedure*
The treatment of Dublin returnees within the context of the asylum procedure is, to a large extent, dependent on the legal status they held prior to their departure from Malta.

Migrants, who are beneficiaries of international protection, are returned to Malta with no further action to be taken as they have already been through the procedure and their asylum application fully examined.

Asylum seekers, in respect of whom a decision had been issued at first-instance but who were pending the outcome of an appeal, return and continue awaiting the outcome of the appeal. However, if during their time away from Malta the Refugee Appeals Board attempted to contact the appellant and this was not possible due to the departure from Malta, then the appeal may be held to have been implicitly withdrawn with the Board declaring the appeal abandoned with no examination on the merits.[203]

The main impact of the transfer on the asylum procedure relates to the difficulties in accessing the asylum procedure faced by those who leave Malta prior to being interviewed at first-instance. If an asylum seeker leaves Malta without permission of the Immigration authorities, either by escaping from detention or by leaving the country irregularly, the Refugee Commissioner will consider the application for asylum to have been implicitly withdrawn, without a decision being taken on the merits of the application.[204]

Consequently, an asylum seeker whose application had not yet been determined at first-instance and who is returned to Malta will, in almost all cases, find that his asylum application has been declared implicitly withdrawn, leaving him susceptible to return by the Immigration authorities. Although the individuals in question may ask for a reopening of their case, considered as a subsequent application if they provide reasons which are considered justifiable by the Refugee Commissioner, they may, in the interim, be removed to their countries of origin. The time taken by the Refugee Commissioner to decide on whether to readmit the individual into the asylum procedure is entirely discretionary, with no time-limit specified in law.

Although Maltese authorities accept responsibility for the examination of the asylum application, upon return returnees are not systematically informed about the status of their application. They are only informed of the status of their application for international protection after an enquiry is made with the Refugee Commissioner. Prior to this, the returnee is not given any information in writing specifying the status of his asylum application. In many cases, this information is obtained only after the asylum seeker would have sought legal assistance. The use of the implicitly withdrawn provision came into being following the promulgation of the Procedural Regulations, in 2008, before which escape from detention was not construed as an abandonment of the asylum application. Asylum seekers, who left Malta before this time, or before 2009, which is when information about the asylum procedure started being given by the Refugee Commissioner, will in most cases return to detention expecting to be eventually called for their asylum determination interview. It is only upon obtaining access to legal assistance that they are informed about the situation and the required follow-up action to obtain access to the procedure. As these individuals are detained, communication with the Refugee Commissioner is even more limited and primarily facilitated through the provision of legal services by JRS Malta, which is still the only NGO regularly present in detention centres providing free legal assistance.

[203] Refugees Act, art. 7.
[204] The Refugee Commissioner exercises the discretion provided to him in Regulation 13 of the Procedural Regulations, which transpose the provisions of the Asylum Procedures Directive.

## 6. Reception Conditions - Law and policy regulating the reception of asylum seekers in Malta[205]

*Detention as the initial reception*

The reception of asylum seekers is regulated by the Refugees Act (Chapter 420 of the Laws of Malta) and the Reception of Asylum Seekers (Minimum Standards) Regulations (S.L. 420.06). The treatment of irregular or 'prohibited' immigrants and persons refused admission into Malta is governed by the Immigration Act (Chapter 217 of the Laws of Malta) and related subsidiary legislation.

In practice, both the reception of asylum seekers arriving by boat and the length of their detention are governed by a complex mix of law and policy, which developed over time in a somewhat piecemeal manner in response to particular situations that arose as the local authorities struggled to deal with the challenge of receiving and providing for the arrivals. Detention is the main form of reception provided to asylum seekers who enter Malta irregularly and are classified as prohibited immigrants, who are by far in the majority. Asylum seekers falling within the Dublin framework experience the same form of reception as other asylum seekers with no distinction made between the services provided to asylum seekers awaiting a Dublin transfer and other asylum seekers.

Although the Dublin II Regulation is concerned with asylum seekers, as a number of persons returned to Malta are beneficiaries of international protection who were nonetheless channelled through the Dublin procedure for return, with the request to the Maltese authorities being submitted as a Dublin request to take back, the following also looks into the rights and entitlements of beneficiaries of international protection.

*Accommodation in the community*

Following release from detention, all migrants are provided with accommodation in an Open Centre regardless of their legal status. Asylum seekers who are never detained, i.e. those who arrive in Malta legally or who apply for asylum before they have been apprehended for illegal entry or stay, would also be accommodated in an Open Centre if they do not have alternative accommodation. The Open Centre system is administered by AWAS; however, some centres are run by NGOs.

The government provides a per diem allowance to those residing in the centre, to cover food and transport. The daily amount provided depends on legal status, with beneficiaries of subsidiary protection and asylum seekers receiving €4.66 per day and rejected asylum seekers €3.49 per day.[206] Migrants released from detention receive the allowance automatically; whether or not other categories of residents, e.g. asylum seekers who arrived in Malta legally and are never detained, will receive a per diem allowance is determined after an assessment of their individual circumstances. This provision of basic financial support is not regulated by law.[207]

In addition to the basic per diem allowance, the rights of Open Centre residents to access employment or basic services, such as healthcare or education, are dependent on their legal status.

In terms of the Reception Regulations, which transposed the Reception Directive into national law, asylum seekers are entitled to 'material reception conditions', which include: "*housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance*."[208]

They are also entitled to free state medical care, education up to the compulsory school age limit and to be allowed access to the labour market if a decision on their application has not been taken within 12 months.[209] In practice, asylum

[205] For an in-depth description of the reception system in Malta refer to the JRS Malta June 2012 report: *'Bridging Borders – Report on a project to provide sheltered accommodation and psychosocial support to vulnerable asylum seekers to whom such services are not otherwise available.'* Available at www.jrsmalta.org

[206] This information is correct as at the time of the interview with the AWAS CEO, which took place in October 2012.

[207] For further information regarding the per diem allowance refer to the JRS Malta Report - *'Report on a pilot study on destitution amongst the migrant community in Malta*' (2010) pg. 13. This report was part of the ANDES (Advocacy Network on Destitution) Project coordinated by JRS Europe in 2009 and 2010. National report available at: http://jrsmalta.jesuit.org.mt/wp-content/uploads/downloads/2011/08/1-ANDES_Malta_Pilot_Study.pdf

[208] Reception Regulations, reg 2.

[209] Reception Regulations, regs 9, 10 & 11.

seekers who are not in detention are provided only with accommodation in an open centre and the *per diem* allowance. They are also issued with a renewable work permit, which is valid for 6 months, if they find work.

The rights of beneficiaries of international protection are regulated by the Procedural Standards in Examining Applications for Refugee Status Regulations (S.L.420.07). In terms of this law, refugees and beneficiaries of subsidiary protection have a number of rights: rights related to their entitlement to stay in Malta and that of their family, rights related to the possibility of travel and socio-economic entitlements, such as employment, education, healthcare and social welfare.[210]

Both in law and in practice there are a number of differences between the entitlements of these two categories of migrants. Both are entitled to remain in Malta with freedom of movement and to be granted personal documents and a residence permit: in the case of refugees the permit is valid for 3 years, in the case of persons with subsidiary protection for one. Dependent members of their family who are in Malta with them when they apply for asylum are granted the same rights, but only recognised refugees have the right to family re-unification – i.e. to bring dependent members of their family to Malta after they have been granted protection. Both categories of migrants may obtain a permit to work in Malta and both are entitled to access state education and medical care. Although all beneficiaries of international protection are entitled to some degree of social welfare support, there are significant differences in the level of entitlement of the two categories. Moreover, in terms of current policy they cannot receive these benefits for as long as they are resident in an Open Centre.

The quality of accommodation in the different Open Centres varies considerably, ranging from large centres where conditions are extremely basic and the staff to resident ratio is very low to smaller centres, targeting mostly families with children and unaccompanied minors, where conditions are far better and the support provided is greater.

The conditions of residence in Open Centres are regulated by a Service Agreement between centre management and resident. Breach of the Open Centre rules could result in termination of the Service Agreement, which could mean either that the service user is asked to find his/her own accommodation or that s/he is asked to move to another centre, depending on the particular circumstances of the case. Service Agreements usually last for a maximum of one year, after which time residents are expected to be ready to move into independent accommodation; it is not unusual for residents to be allowed to remain in the centre longer. As a rule, once residents leave the Open Centre they are no longer entitled to receive the *per diem* allowance. Whether or not they are entitled to receive other benefits will depend on their legal status. Unemployed residents in Open Centres only receive a small *per diem* allowance, which is nowhere near enough to provide for the basic necessities of life.[211] Beneficiaries of international protection living in independent accommodation who are unemployed would, as a rule, be entitled to social welfare benefits, but other categories of migrants, such as asylum seekers, and rejected asylum seekers would not be entitled to any form of income support.

The per diem food and transport allowance provided to Open Centre residents is minimal and far from sufficient to allow residents to meet their basic needs, even in terms of food and transport. The lack of financial support makes it practically impossible for some people, particularly those who cannot work, either because of their physical or mental health problems or because they have children for whom they are wholly responsible, to ever move out of the Open Centres. For the latter category the situation is compounded by the lack of affordable childcare.

With respect to employment, asylum seekers may work regularly, yet this necessitates finding an employer who is willing to apply for a licence to employ them to undertake a particular job. The employment licence so issued is only valid for the particular job applied for. Should the asylum seeker find another job, another employment licence has to be obtained through the new employer. Refugees and beneficiaries of subsidiary protection are given a permit to work in Malta which allows them to take up any job they find.

## 7. Migrants in Dublin procedures

[210] Procedural Regulations, reg 14.

[211] The Caritas Malta study, A Minimum Budget for a Decent Living (16 March 2012), concluded that 'the minimum essential budged for a household of two adults and two children is estimated at €10,634, a lone parent and two children at €8,581 and for two older persons at €6,328', maintaining that this is only a minimum acceptable standard below which a household's income should not fall for an individual to live with dignity. Available at: http://www.caritasmalta.org/AMinimumBudgetforaDecentLiving_McKay_Sammut_Farrugia_Piscopo(MinimumSize).pdf

Transferees, who are released from detention prior to a decision being taken as to whether they will be transferred to another Member State, are treated in the same way as other asylum seekers living in the community. They are entitled to accommodation in an Open Centre and will receive the same €4.66 per diem allowance as all other asylum seekers. Moreover, they may work regularly should they find an employer willing to apply for a licence for them.

In the case of transferees who are never detained, i.e. those who arrive in Malta legally or who apply for asylum before they have been apprehended for illegal entry or stay, would also be accommodated in an Open Centre if they do not have alternative accommodation. Whether or not residents falling within this category would receive a *per diem* allowance is determined after an assessment of their individual circumstances. Once again, the possibility of working regularly is linked to obtaining an employer willing to apply for an employment licence for them.

The distinction between asylum seekers in general and those who are within Dublin procedures arises in the context of returnees, as their treatment differs with respect to the financial assistance provided.

Returnees are accommodated in Open Centres upon return, according to the availability of places in the Centres. AWAS maintain that, although up till the time of interview, returnees are provided with a place in the Open Centre upon return, it is linked to the availability in the Centres and in cases where space is limited, priority will be given to other migrants being released from detention rather than returnees.

Returnees are not met at the airport upon arrival. To obtain a place in the Open Centre and to resume receiving the per diem allowance, they must make their way to the AWAS headquarters and provide proof that they are returnees, usually by providing their flight boarding pass and letters provided by the sending country. Although this state of affairs is known by many migrants who are returned, as they would have picked up the information from others, the system raises obvious difficulties for those who are unaware of the system in place, as is the case with a number of people in a particularly vulnerable situation.

On occasion, migrants have shown up at JRS Malta stating that they have been returned on the day with no information as to how to proceed to re-access basic services. Moreover, AWAS offices are only staffed during working hours, raising difficulties for those who are returned on weekends or outside of office hours. JRS Malta has recorded cases of migrants who were rendered homeless due to this situation, and who had to rely on friends or homeless shelters to provide them with temporary accommodation until the situation was sorted out.

AWAS operates a policy whereby the amount of per diem allowance provided to returnees is reduced from the €4.66 given to asylum seekers and persons with protection, to €2.91 per day. This reduction in allowance is specifically linked to the migrant having been returned from another Member State in terms of the Regulation, and is applied as a blanket provision with no assessment of the particular needs of the returnees in question.

Asylum seekers transferred to Malta, for whom Malta would not have been their first entry point into the EU, but who are nonetheless transferred on the basis of the presence of family members in Malta or on account of their Schengen visa having been issued by Maltese authorities, find themselves transferred to Malta without any information as to the procedure they should follow. JRS Malta have assisted individuals and families who had no record of prior stay in Malta but who were transferred in terms of the Regulation.

In these cases, no provision is made for accommodation or financial assistance prior to their arrival. Although accommodation in an Open Centre is subsequently provided, the per diem allowance is not granted automatically to those who do not arrive irregularly by boat but is instead considered on a case-by-case basis. No formal policy is in place to cater for the needs of these individuals. In the interim, no financial assistance is provided and no consideration is made for food and transport costs.

Although these cases are few and far between, when they do arise they also raise significant difficulties in accessing the asylum procedure. Authorities maintain that upon arrival, migrants are given very basic instructions by immigration authorities at the airport, about the need to visit the offices of the Refugee Commissioner, AWAS and the Police Headquarters. Information is not provided in writing and is provided without the use of an interpreter.

Individuals transferred to Malta who are considered as prohibited immigrants in terms of the Immigration Act are detained upon transfer. This means that they are detained and subject to the same detention policy as any other asylum seeker who entered Malta irregularly. In these cases, access to the procedure, is dependent upon the Refugee Commissioner being informed by the Immigration authorities of their desire to apply for asylum.

## *NATIONAL DATA FINDINGS*

The data in this section was obtained from the interviews carried out as part of this project. In all a total of 23 interviews were carried out although the findings presented below represent the data which emerged from 22 of the interviews held. All migrants interviewed had been returned from another EU Member State in terms of the Dublin II Regulation. Of the interviewees, 12 were beneficiaries of subsidiary protection, 4 were asylum seekers pending a final determination of their claim and 5 were failed asylum seekers.

### 1. Personal Story

All interviewees were asked to speak about their personal story, documenting the experiences they had been through since arriving in the EU. Respondents spoke about their arrival in Malta and their travels across the EU, particularly the number of times they had been detained throughout this journey. They also highlighted the number of times they had applied for asylum, in different countries. This was not restricted solely to asylum seekers but was also the case among those who had already been granted subsidiary protection in Malta.

> I came to Malta in 2007. I applied for asylum. I got a reject. After this reject I travelled to Norway in 2010. I went to Italy by Boat, after that I went to Germany by train, after that I went to Sweden by train, after that I went to Norway by train. I lived in Norway for 1 year and 6 months. When I arrived in Norway I first asked the authorities for asylum. I told the authorities, that I have a wife living in Norway, so I got permission to live with her in a flat. After 1 year and 6 months the Dublin Regulation "sent" me back to Malta. When I was back in Malta I lived here for 4 months in prison. After they released me I went to Sweden in 2011. I crossed Holland and Denmark. There I lived 11 months in detention. I asked for asylum and the Dublin Regulation sent me back to Malta. I came back to Malta in 2012 where I was put in prison for another 2 months. Now I live in Hal Far Hangar.
>
> *An Eritrean failed asylum seeker describes his travels across the EU*

Like many of the other interviewees, this Eritrean man emphasises how his travels in search of protection and where he could be with his family took him across different EU Member States. The interviewees' testimonies illustrate the pervasive use of detention across Member States, with several migrants being detained over and over again. Moreover, the stories indicate that notwithstanding that the asylum application would have been examined in Malta, migrants still submitted asylum applications in the states they travelled to, in the hope that they would get protection and a right to stay in that particular Member State.

### 2. Knowledge of Dublin Procedures

*What do people know about Dublin?*

When asked what they know about the Dublin Regulation, only 12 of the interviewees chose to answer this question. 5 of these claimed to have advanced knowledge of the Regulation, meaning that they knew two or more things about the Regulation. These migrants mentioned that the Regulation is the reason why asylum seekers' fingerprints are registered and specified that the state responsible for the examination of the asylum application is the country of first arrival. 1 interviewee described the Regulation solely by reference to *'fingerprinting'*. Another 6 people defined their knowledge of the Dublin Regulation in terms of the Regulation determining the responsible state for the examination of the asylum application stating:

> In the first EU country you enter you are bound to stay. The country in which you land must issue you documents…something which did not happen to me. This is stipulated in the Dublin convention.
>
> *An Ivorian male rejected asylum seeker detained in Safi Barracks*

After interviewees were asked what they know about the Dublin Regulation, they were then asked to specify how well-informed they are about Dublin procedures. 30% claimed that they feel they fully understand Dublin, with another 15% feeling well-informed albeit there still being aspects they don't know about the Regulation. In contrast, 20% claim to know nothing about Dublin and another 25% have heard about Dublin but do not understand it because they lack information. 10% remained non-committal claiming they are in the middle of knowing and not knowing.

*Who informed them and how?*

Administrative authorities were the greatest sources of Dublin information for the people who were interviewed, as 30% of those asked if they were given information by administrative authorities replied in the affirmative. NGOs and fellow migrants were the secondary sources of information with the percentage this time standing at 20%.

30% of those who were given information, by any source, claimed to have received this information orally as opposed to the 15% who said they were only given this information in writing. The majority, standing at 53.8%, were given information both orally and in writing. However, only 13 of the 23 migrants chose to reply to this question.

The large majority, standing at 88%, felt that they were given information early enough in the procedures, meaning that they were either informed about Dublin prior to receiving the transfer decision, at the first interview with the Dublin Unit or upon arrival in Malta the first time round. The rest of the interviewees felt that they had received this information late in the procedure.

Those who understood the information that was given to them by state authorities (77%) claimed that this was due to the information being given in the right language, with a number specifying that this was also because the information was thoroughly explained to them. One of those who claimed not to have understood the information given, attributed this to his state of mind, claiming that he was too stressed at the time. The majority also found this information provided by the state to be helpful.

### 3. **Appeals**

Slightly more than half of those interviewed (56%) claimed that they had been informed how to appeal a Dublin decision with the greatest sources of information being lawyers (42%). Administrative authorities (33%) and NGOs (8%) then follow as providing information about the possibility to appeal Dublin transfer decisions. This information was mostly provided orally (57%) as opposed to the 43% who received the information in writing.

When asked as to whether they had tried to appeal the transfer decision the majority replied in the negative (58%), claiming this was due to their understanding that there was no chance of success. Some others also attributed this to the lack of information provided.

*Contacts with lawyers*

90% of the interviewees had contact with a lawyer, with the majority having been provided with legal assistance by the state (77%). NGOs were next in line with respect to the provision of legal assistance by NGO lawyers standing at 18%.

Interviewees were asked for their perspective regarding the care the lawyer took of their case. 60% were positive about the legal assistance provided, claiming the lawyer took care of their case. Interviewees judged the lawyers' performance based on the effort they put into the case.

*Discretionary clauses*

Slightly more than half of those interviewed knew about the discretionary clauses listing administrative authorities, lawyers and migrants as their sources of information. Notwithstanding, only 2 people tried to take action on the discretionary clauses, to no avail.

### 4. **Knowledge about asylum case**

When asked what they know about their asylum case, 40% claimed they know nothing as opposed to the 15% who feel they are fully informed about their asylum case. A further 10% claimed that although they have heard about asylum procedures they do not understand them because they lack information. Moreover, 74% of interviewees had not been given information about Malta's asylum system prior to being transferred to Malta.

During the interview, 55% claimed they had questions about their asylum claims, as they wanted to know more about asylum procedures and how to get refugee status, in addition to wanting to know what was going to happen to them in general.

Half of those interviewed claimed to have experienced difficulties applying for asylum in Malta citing procedural difficulties related to the length of the asylum procedure, quality of translation during their interview and not getting the right documents after their release from detention.

**5. Personal Well-Being**

Interviewees were then asked about their experience of reception conditions in Malta, primarily relating to their experiences of housing, work, education, medical care, food/clothing and legal services.

*Housing*

An overwhelming majority, 65.2% complained that notwithstanding that they were provided with housing, this was of a bad quality. Only 17% had positive things to say about their housing with the rest just making neutral statements.

A female Somali beneficiary of subsidiary protection described how she lives in a container and *'…in summer it gets really hot. Also it is infested with cockroaches and rats. Because men and women's restroom facilities are in the same area and not controlled I am scared to walk there alone.'*

Her complaints were echoed by an Ethiopian asylum seeker who claimed that although he was living in proper accommodation in the Netherlands, '*here I am living in a metal container.*' Others claimed that although the accommodation provided was in an open centre, '*it felt more like a jail'*.

*Work*

Interviewees were overall more positive about the availability of work in Malta, with 55% claiming that they had work. Some did describe work in negative terms, but most used neutral statements. Migrants were also quick to compare the limitations of the job market in different Member States, claiming that *'it's easier to find work in Malta, than in Switzerland, for example'*.

*Education*

Interviewees were nearly evenly split about their access to education, with the main concern being that even though in theory there might be access to education, '*there is no way to enrol in courses if you cannot finance them*'. Others compared their experience in other Member States where they were provided with financial assistance and made to learn the official language of the state they were in. As one migrant noted, studying was never a requirement in Malta and he was not provided with sufficient financial assistance. Consequently he did not take the initiative to enrol in any courses as his '*first priority was to earn money*' to survive and meet his basic needs.

*Medical Care*

The majority of respondents specified that medical care is provided although some complained about the quality of care provided. Others however expressed mostly neutral statements.

*Food & Clothing*

Most people said that these are provided although this is because they work and are able to finance these material items themselves. They were quick to compare the differences between Member States as although in Malta '*they give you like one t-shirt and one pair of shorts'*, in Norway he was provided with jackets and shoes in addition to financial assistance on a fortnightly basis, so that he could meet his own needs. In contrast '*in Malta I was given money after I came out of detention'*.

*Legal Services*

Nearly everyone said they have access to legal services with many claiming that these were only provided by JRS.

*Reception Conditions in different Member States*

Interviewees were then asked to highlight any differences between the reception conditions provided in Malta and the state they were transferred from. This prompted an overwhelming majority (91%) claiming that there are differences in conditions between the Member States with the biggest differences pertaining to legal assistance, medical care, food and clothing, housing and education. The majority claimed that Maltese authorities had provided them with assistance relating to housing, food, clothing and medical care. Concerns were raised regarding the quality of assistance and services provided.

An Eritrean beneficiary of subsidiary protection explained that in Norway, they were '*overall better at everything … Detention centres in Norway were different to Malta. In no way did they come as close to a prison'.* Migrants were mostly concerned that in Malta they were not treated with the *'privacy and dignity*' they experienced in other countries.

> Human rights are respected in Switzerland. When you ask the authorities for help they treat you with respect despite your legal status. When in need of assistance with regards to any service be it legal or social a reply is given within a short time in Switzerland.
>
> *An Eritrean asylum seeker returned from Switzerland*

*Detention*

All of the respondents had experienced detention, with some being re-detained in multiple Member States, at times solely due to their status as migrants in the Dublin procedure. When asked if detention had affected them in any way, many of the respondents claimed this had negatively impacted them.

> Detention ruined my life. It closed my mind. You can't read and write inside here. No opportunity to learn the Maltese language except for some rude words. In Holland detainees can learn Dutch.
>
> *Ivorian male rejected asylum seeker detained in Safi Barracks*

> In Holland I was treated well, in Malta it is very difficult. In Malta I am locked and have no access to the fresh air and the outside. Place is not clean and too crowded.
>
> *A female Somali beneficiary of subsidiary protection returned from Holland*

Moreover, respondents highlight their surprise that in Europe they were met by detention instead of the safety and protection they were expecting to receive.

> Detention is not a nice place. It's like you escape from one prison (Africa) to another' It is not the ideas that you have when you escape from Africa to Europe. You suffer in there.
>
> *Male Eritrean asylum seeker returned from Norway*

*Special connection to Malta*

Slightly more than half of those interviewed claimed that they don't have a special connection to Malta. Those who do, attribute this to the presence of family members, availability of work opportunity and the presence of compatriots.

*Impact on family life*

By far, the biggest impact that the Dublin Regulation has had on people's lives is the disruption of family life with the separation of families being reported as a major consequence of the application of the Regulation.

An Ivorian national speaks about his partner, an EU national, who was pregnant at the time he was returned to Malta: *'It had effects on my partner. She is pregnant at the moment and I cannot be by her side whilst she gives birth'.*

Others noted how they ended up separated from their spouses and children: *'My wife is in the Netherlands because she was rejected in Malta. We couldn't stay together.'*

> My wife and child are still in Norway whilst I was sent back to Malta.
>
> *An Eritrean asylum seeker returned from Norway*

Other beneficiaries of subsidiary and temporary humanitarian protection noted that their motivations for leaving Malta were to go to a Member State which granted them the right to family re-unification, a right which in Malta is restricted to recognised refugees.

> If I was granted protection in Switzerland I would have been allowed to apply for family reunification and bring my family over from Eritrea, but since I was returned to Malta due to Dublin Regulation I could never apply for it and my family is still in Eritrea.
>
> *An Eritrean beneficiary of international protection returned from Switzerland*

*Personal Planning*

Family reunification was a recurrent theme, also mentioned as being the plan held by interviewees prior to their Dublin transfer. Others also mentioned that they were somehow searching for safety. A few others listed work and education opportunities as their previous plans.

An overwhelming majority of respondents, standing at 91%, claimed that the Dublin Regulation disrupted their plans, primarily by preventing them from reuniting with their family members.

> I was sent back to a country where my asylum claim is rejected. Because of Dublin I will not be able to see my daughter, get protection and education. I cannot go to Ethiopia to see my daughter.
>
> *An Ethiopian asylum seeker, whose claim was rejected at first instance*

A third of respondents claimed that the transfer process itself was the most disruptive with the rest blaming Dublin for the disruption in their search for safety and education plans.

Moreover, more than half of respondents claimed that they have new plans for their life, with a large number claiming that they will try again to go to a different EU country. The rest mentioned that they will try to reunite with family, continue searching for safety and educational opportunities.

*Absconding from authorities*

A majority of respondents (74%) specified that they have never absconded from the authorities, with the main reasons being that they know that this is illegal and did not have the will to do so.

> It is better not to. But instead better to try learning a language or finding work within the country you are in. Oblige to the law and use your time purposefully.
>
> *A Somali beneficiary of subsidiary protection returned from Germany*

> Because I do not want to break rules. I want to abide by the rules of the country.
>
> *An Eritrean beneficiary of subsidiary protection returned from Switzerland*

> There was no reason for me to run away. I am not a criminal.
>
> *An Eritrean beneficiary of subsidiary protection returned from Norway*

## 6. Personal Views about the Dublin Regulation

The majority of interviewees feel that the Dublin system is unjust, unfair or just not good, with others calling for the system to be reviewed. A minority of respondents are resigned that this is the law and so it should be accepted as it is. Those who question the fairness of the Regulation do so citing the lack of level-playing field they have experienced among the Member States and feel that states should be more involved in understanding and accepting of the reasons why they require protection in that specific Member State. They feel that Dublin is unfair because it prevents them from choosing which EU country they can seek protection in.

> The Dublin Regulation and its procedures should be terminated if not entirely, at least in smaller countries such as Malta, Greece or Portugal. The Dublin Regulation and its procedures is not applicable everywhere with the same results.
>
> *A male Ivorian asylum seeker returned from Norway*

> I do not think that the law is fair. I feel that they should ask more questions such as why you do not want to go back to Malta.
>
> *An Eritrean male asylum seeker returned from Norway*

Interviewees were asked what information they wished they had in hand prior to their arrival in Europe. Migrants noted that they wished they had known about the hardships they would come to experience in Malta and in Europe, with others specifying that they wished they had more knowledge about the Dublin Regulation. Nonetheless, several respondents noted that as their departure from their country of origin was motivated by their need for safety, staying at home was not an option. They note however that knowing more about the hardships they would come to endure in Europe would have left them better prepared to cope with these situations.

> When I left my country I did so because I had a problem. When I arrived in Malta also problems appeared even though there is no war. Mentally I have been affected greatly by the whole situation in Malta (detention etc). I wish I had known about these problems before because I knew about the Italian refugees and although they are not given money, they could still bring their families with them (through family reunification). Here it is not like that.
>
> *An Eritrean beneficiary of temporary humanitarian protection*

Respondents were asked if they had any advice for other migrants prompting a different set of responses, with the majority advising others not to come to Europe or else to carefully choose carefully the EU state they go to.

Somalis were a notable subset in advising their compatriots not to come to Europe, telling them to *'stay at home with your family'*. Others specifically caution migrants against making the journey to Europe as life here *'is not as good as we think'*. A quarter of interviewees stressed the importance of carefully choosing which EU country they arrive in as the Dublin Regulation would preclude them from travelling after arrival. They advise them to be careful and not choose Malta even if they *'come legally by boat, they should not arrive to Malta*'. Others note that they should '*bypass Malta and go to Italy'*.

The minority of interviewees who would advise other migrants to stick to the rules of the Dublin Regulation do so noting that *'trying to go somewhere else is a waste of money, valuable time and may be a problem for your case'*. Moreover, migrants should better inform themselves prior to departure so that they can evaluate if the journey to Europe is a risk worth taking.

Respondents were asked to name their three biggest problems. These were the problems in finding accommodation and work, the lack of stability in their lives and once again, the absence of family members. Interviewees spoke of the consequences that delays in procedures and policies related to family re-unification have on their mental health. As a rejected Eritrean asylum seeker said:

> 'I am suffering from depression because the government took too much time to consider my case. The fact that I couldn't see and get my daughter. The fact that I can only get a work permit if I find employment and the employer is then willing to sign for my work permit. I would like to work and support myself and this is a huge barrier.'

When asked what the best solution in the circumstances would be for them, interviewees gave different responses which however have a recurring theme of a need and desire for safety, protection, a normal life and the presence of family members. They noted that they want '*to be free'*, '*to have a protection status'*, '*to reunify'* with children and '*to go to a secure place where I can live, earn money and bring my family'*.

### *DATA ANALYSIS*

The research findings are clear in highlighting that the Dublin Regulation is doing little other than severely disrupting people's lives. It falls short of meeting its stated aim of speedily determining the Member State responsible for examining an asylum application while preventing the submission of multiple applications in different Member States. This is borne out by the migrants' testimonies that notwithstanding the filing of an application in Malta, a large number choose to then file another application in the state they go to, in the hope that they will be granted protection, or if they are already

beneficiaries of subsidiary protection, in the hope that this time they will be recognised as refugees. Moreover, it indicates that migrants are in search of fundamental protection which is not necessarily restricted to protection from forced return. Interviewees emphasised their need for protection of all fundamental rights, *inter alia*, the right to live free from serious harm in conditions respecting their dignity and their right to enjoy family life. This is amply illustrated in the high number of returnees, who notwithstanding being beneficiaries of international protection, chose to leave Malta and file another asylum application, hoping that this time round the rights attached to their protection status would address their needs more comprehensively.

Migrants are not only searching to become refugees and address their need to live without fear of persecution. They are also in need of family life, adequate housing, employment, medical assistance and other basic needs. The Dublin Regulation does not stop them from trying to fulfil these needs. It instead makes it a lengthier and more cumbersome process with serious repercussions to their familial ties, psychological well-being and morale. It precludes them from settling down and making attempts to continue their education, and integrate within the responsible Member State. From what the respondents described, this is to a large extent due to the lack of a level-playing field in the EU asylum system. This leaves migrants willing to repeatedly attempt to improve their chances of getting protection and a 'better deal' in another Member State, even more so where the other Member State offers them the possibility to reunite with their families through the right to family reunification.

**A) Impact on Protection**

In addition to the general shortcomings of the Dublin Regulation, migrants in Malta are at a further disadvantage due to the flawed implementation of the Regulation's provisions in the national context. The findings illustrate the absence of a clear procedure regulating the processing of Dublin requests and transfers. No central focal point, or state entity, assumes responsibility for the workings of the Regulation, and the procedure is instead split into different stages within different government departments. The different entities are hard-pressed to fulfil the obligations relating to their part of the procedure, mostly due to the lack of resources available to them. This, together with the fact that responsibility for the procedure is fragmented and split among different entities, leads to the creation of gaps which asylum seekers can easily fall through. There is no assiduous follow-up to ensure that migrants' fundamental rights are respected.

The result is a system whereby, in the case of transferees, asylum seekers are dealt with on a case-by-case basis, as exceptions to the rule, with no one entity responsible for ensuring that they are dealt with in accordance with the law. The chances that their cases will be followed up are dependent on their accessibility to NGOs who provide the link between the asylum seeker and the authorities, in an effort to make the system work. Returnees are, in turn, expected to fit into the system which they would have been previously subjected to, with no information as to changes in their legal status upon return. Their access to the asylum procedure is being undermined not only by their departure from Malta but by their return as Dublin returnees who are not informed about their current legal status and the way forward to obtain the protection they might need.

The piecemeal implementation of the Regulation is creating serious protection gaps and calls into question the state's adherence to fundamental rights norms. The right to a family life is that most cited by respondents as having been breached through the use of the Regulation's provisions. The findings also indicate shortcomings relating to the asylum procedure and the treatment which migrants are subjected to in different Member States, which leave them at risk of being subjected to cruel, inhuman or degrading treatment and punishment. The repeated use of detention raises concerns about the lawfulness of detention throughout migrants' entire periods of detention.

A main message emerging from the project relates to the separation of families due to the application of the Regulation. Families are separated on account of their arrival at different points in different Member States with reunification occurring after a lengthy period of time, if at all. The restrictive provisions of the Regulation fail to take into account close family ties which may exist among family members, notwithstanding that they are not spouses or in a parent-child relationship. Family unity is not adequately addressed by the Regulation, even more so in its' implementation.

In addition, recorded cases show that, at times, even where both asylum seekers, provide the necessary information for a Dublin request for transfer, the state fails to take the necessary steps to initiate a Dublin request, leading, in practice, to their separation.

The findings of the project illustrate that a primary motivating factor for migrants to leave Malta and move to another Member State is their desire to be with their family members, in particular, their spouses and children. The data indicates that notwithstanding the multiple times that some had been returned to Malta, they would nonetheless attempt to leave again, acknowledging that being with and supporting their family was their main aim which was not obviated by the stringent application of the Regulation's provisions.

**B) Dublin's Impact on the Asylum Procedure**

*Transferees*

The Refugee Commissioner's use of discretion, to examine and determine the asylum application of asylum seekers still awaiting an answer on their possible transfer to another Member State, precludes them from ever being transferred to the other Member State which might be responsible for them in terms of the Regulation.

Whilst it is true that the sovereignty clause permits national authorities to decide any and all asylum applications lodged on the territory, the use of this provision in a way which separates families and negates the possibility of transfer demonstrates a misuse of the afforded discretion.

Recorded cases illustrate that following the determination of the asylum seekers' applications in Malta, husbands were not allowed to join their wives and children were unable to join their parents, as the Member State requested to take charge rightly argued that as the request was no longer submitted by an asylum seeker it, did not fall within the terms of the Regulation. Whilst efficiency in the processing of asylum applications is a laudable achievement, this should not be achieved at the expense of the asylum seeker's rights, even more so where this constitutes a violation of the fundamental right to family life.

*Returnees*

In the case of returnees, the use of the implicitly withdrawn provision is leaving returnees susceptible to refoulement, with the very real possibility that their claim to protection is never assessed on the merits. Whilst this is the case with all asylum seekers in respect of whom the provision is applied, migrants with serious protection needs are left liable to being sent back to the persecution from which they are fleeing, as they might not even be aware that their departure from Malta has impacted the examination of their asylum application.

In practice, the decision to accept to examine a returnee's application may take several months to be taken. A number of individuals in this situation waited for months in detention pending an answer on their request prior to their case being reopened, after which they were recognised as refugees. It is pertinent to recall that during these months their legal status rendered them susceptible to removal.

**C) Knowledge of Dublin Procedures**

Respondents claimed to feel relatively well-informed about the Regulation, which is to be expected given that most of the interviewees had travelled extensively within the EU, undoubtedly picking up information about the Regulation from different sources in different Member States. The current scenario in Malta whereby asylum seekers are not provided with specific and detailed information, about the Dublin Regulation and its workings, indicate that the level of information which interviewees claimed to have was not provided by State authorities.

## *RECOMMENDATIONS*

The results of this research point to the need for a strengthened Dublin Unit and a clearer, more unified procedure for dealing with Dublin transfers, in order to ensure that protection needs are met, basic rights adequately safeguarded, while ensuring efficient processing of Dublin requests.

In view of this we strongly recommend:

1. **The establishment of a single dedicated unit, responsible for the administration and implementation of all aspects of the Dublin procedure, whose composition, responsibilities and functions are established by law.**

   *Responsibilities*

Its responsibilities should include:

- Receiving and processing requests from other Member States;
- Providing information to asylum seekers both about the Dublin system generally and the procedure to be followed, as well as about the documentary and other requirements in their particular case;
- Assisting and supporting asylum seekers to obtain the necessary documentation, if required;
- Making arrangements for the transfer and/or reception of asylum seekers and other migrants subject to Dublin procedures.

*Composition*

The unit should be adequately staffed by trained, culturally-competent personnel who are well-versed in the workings of the Dublin Regulation and have an in-depth understanding of both immigration law and the asylum procedure.

Whilst knowledge of immigration rules is indispensable, it is recommended that the Dublin Unit is not inextricably tied to the workings of the Immigration Police. The current situation whereby asylum seekers are questioned by Police with a view to establishing their eligibility for Dublin transfers is self-defeating as asylum seekers are often distrustful and apprehensive of the manner in which the information they provide will be processed, largely due to the negative experiences they may have had with disciplined forces in their countries of origin.[212]

2. **Significantly increasing the resources currently allocated to deal with Dublin requests in order to ensure that they are dealt with promptly and efficiently.**

3. **Establishing clear, written and publicly available rules on the procedure for dealing with Dublin requests which should include:**

*Rules on provision of information*

As a basic minimum, these rules should provide that:

- Information about the workings of the Dublin procedure is to be provided to asylum seekers as soon as their possible eligibility for a Dublin transfer is identified through the information they provide to the Refugee Commissioner.
- The information is to be provided orally and in writing, in a language which the asylum seeker actually understands, through the use of an interpreter/cultural mediator where necessary.
- The asylum seekers is to be provided with clear information regarding the documentation required to substantiate the request for a transfer

*Rules on provision of assistance*

The procedure should provide for the provision of basic assistance and support throughout the procedure, particularly in cases of outgoing requests and/or where the individual concerned is in detention, including:

- Assistance to contact family members;
- Assistance to bring over documentation.

*Rules on processing of requests*

The rules on the procedure for processing of requests should include:

- The obligation to carry out a Dublin interview, which provides the asylum seeker with the possibility to explain his situation in-depth and clarify his eligibility for a transfer; particular attention should be made of the possible qualification for the use of the discretionary clause;
- Rules regulating the use of the sovereignty clause, particularly in cases involving requests for transfer based on family unity – we believe that in such cases, in view of the overriding nature of the right to family life and the importance of family unity, the discretion of the Refugee Commissioner to examine asylum seekers' applications before a decision is received regarding the Dublin request is dispensed with and the examination of the application is automatically suspended throughout the entirety of the Dublin procedure;

[212] Hathaway J., The Law of Refugee Status (Butterworths) 1991.

- The establishment of a single focal point responsible for receiving and responding to *ad hoc* queries from migrants about their cases;
- A clear obligation to provide regular information and updates to all migrants subject to Dublin procedures, at regular intervals throughout the process, in a language they understand, and rules regulating how the said information is to be provided;
- In cases where asylum seekers are to be transferred, provision for advance information on the date and manner in which a transfer will take place, the procedure to be followed for registration in the responsible Member State and information about how to access the asylum procedure there;
- The obligation to give the individual concerned a decision in writing, supported by the reasons for the decision and information on the time limit and procedures that need to be followed to appeal the said decision.

*Rules establishing a clear appeal procedure*

It is imperative that a clear appeals procedure is established by law; the rules regulating such procedure should provide for:

- The establishment of a procedure for appealing decisions taken in terms of the Dublin Regulation;
- Clear rules on which decisions are subject to appeal;
- Clear rules on the time limits to be followed and on the ways in which an appeal may be lodged – we recommend that the current time-limit of 3 working days is reviewed to ensure that all asylum seekers are provided with the effective possibility to lodge an appeal.
- The provision of free legal assistance to asylum seekers who choose to appeal a transfer decision.

4. **The establishment of clear rules regulating the treatment of migrants who are subject to Dublin procedures, in order to ensure they are able to live with dignity, in particular:**

*Rules regulating the treatment of asylum seekers awaiting the outcome of a Dublin request*

As a minimum, these rules should:

- Formalise and enshrine current good practice, which provides equal access to reception conditions for all asylum seekers living in the community, whether or not they are subject to Dublin procedures, into law;
- Allow for the early release of detained asylum seekers awaiting the outcome of an outgoing Dublin request, on a case by case basis after an individual assessment of their situation, in view of current policy which dictates that asylum seekers are to be detained until their application is determined.

*Rules relating to reception upon transfer from another Member State*

It is fundamental that basic standards are established for the initial reception of migrants and asylum seekers transferred to Malta from another Member State, with a view to ensuring that:

- Returnees are notified of the steps they need to take to be re-admitted into the accommodation system and the asylum procedure, if necessary, with indications of the offices they need to visit and procedures to follow;
- Asylum seekers transferred to Malta with no record of prior stay here are received in person and prior arrangements made for accommodation and financial assistance. They are also to be systematically provided with clear information about the asylum procedure and the steps they need to take to access the procedure;
- All arrivals in a particularly vulnerable situation, such as families with minor children, unaccompanied minors, those experiencing mental ill-health, and persons with disabilities are received in person and provided with the necessary psychosocial follow-up and assistance.

# DIASP national report: POLAND

**Author: Halina Nieć Legal Aid Centre, www.pomocprawna.org**

## *INTRODUCTION*

This report is the outcome of the *Halina Nieć* Legal Aid Centre's (HNLAC) research into national law, policy and practices regarding the implementation of the Dublin II Regulation in Poland, as well as analysis of 30 interviews with Dublin asylum seekers (eight transferees and 22 returnees). The interviews focused on the Regulation's impact on their lives, covering issues such as access to medical care, age determination procedures, vulnerability/special needs assessments, legal assistance, judicial oversight, the impact of detention and the impact of the Regulation on family connections and reunification.

Before collecting the information required for the report and carrying out individual interviews with asylum seekers, the HNLAC received the necessary consent from the Office for Foreigners and the Border Guard Headquarters' Department for Foreigners. The former is in charge of centres for asylum seekers and the latter of migration detention facilities.

The interviews were conducted from January to June 2012 in the 'guarded centres' for foreigners (detention facilities) in Krosno Odrzańskie, Biała Podlaska, Kętrzyn and in the centres for asylum seekers (open reception centres) in Dębak, Linin, Czerwony Bór, Grupa and Łuków. The interviewer was assisted by interpreters where needed. The interviews were carried out in Polish, English, Russian and French in a manner adjusted to the migrant's age and health, in respect of dignity and confidentiality. The interviewees were all informed beforehand about the goal of the DIASP project, their participation in the study was voluntary and their personal data was not recorded. We thank them for participating in this study.

The information on implementation practices of the Dublin II Regulation was gathered with the help of employees of the Dublin Unit of the Office for Foreigners and officers of the Dublin Unit of the Border Guard Headquarters. The HNLAC wishes to thank them for their contribution and openness in providing information for this report. Other relevant sources of information include: analysis of legal acts, additional statistics available online (Office for Foreigners, www.udsc.gov.pl), the UNHCR office in Warsaw and HNLAC's own practice and experience in the field of asylum dating from 2003.

## *MEMBER STATE PRACTICES*

### 1. Provision of information

In conformity with article 10 (guarantees for asylum applicants) of the Council Directive 2005/85/EC on minimum standards governing procedures in member states for granting and withdrawing refugee status, Border Guard officers, who are competent to receive asylum applications, inform all foreigners who apply for refugee status at the Polish border about their rights and obligations and about the refugee status determination (RSD) procedure. There are two standard information forms: one on the Dublin Regulation and another on EURODAC. These information forms are available in a number of foreign languages. Each asylum applicant is provided with these forms in a language that he understands and, after reading it, he is asked to confirm in writing that he received this information.

Foreigners who apply for refugee status in detention facilities receive written information in languages they understand about their rights and obligations, regulations of stay in the centre and also about Dublin procedures (including EURODAC). They are also provided with leaflets prepared by NGOs.

Throughout their stay in Poland, asylum seekers are constantly provided with information on the Dublin procedure, either by Border Guard officers while in detention, or by the employees of open reception centres. If they need more detailed information, they can write to the Headquarters of the Border Guard, specifically the department dealing with foreigners, and learn more about the procedure and about the stage their own case is at. They can also contact departments within the Office for Foreigners dealing with refugee proceedings or the Dublin Regulation and receive information about their

case by phone directly from the person who is taking care of their Dublin case. They may also call for more general information on Dublin II.

Written information is provided in the following languages: English, Georgian, Persian, Hindi, Armenian, Mongolian, Urdu, Vietnamese, Romanian, Punjabi, French, Somali, Arabic, Belarusian, Tamil, Turkish, Ukrainian, Spanish, Chinese, Dari and Farsi.

Moreover asylum seekers in detention or in open reception centres can get information on Dublin from the lawyers of the *Halina Nieć* Legal Aid Centre or any other NGOs providing legal aid and information – by phone, fax, e-mail, letter or during NGO visits to the centres.

**2. Linguistic assistance**

During the asylum procedure as well as the Dublin procedure, the relevant state authorities provide interpreters when required. Written information is available in the languages noted above. If the migrant doesn't understand any of them, the Border Guards provide an interpreter who translates documents into a language he can understand.

The costs of both verbal and written translations are covered by the state. If the migrant is held in detention, the responsibility for providing translation lies with the Border Guards; for others, it is the Office for Foreigners that provides interpreters. The interpreter is present when the migrant files his asylum application and during all subsequent interviews. The application for asylum is recorded in a standard questionnaire filled by a Border Guard officer during a preliminary interview. It should be stressed that a considerable number of asylum seekers coming to Poland don't need a translator during the preliminary interview because most are Russian-speaking and many Border Guards are fluent in Russian.

Once his application is filed, the asylum seeker waits for the asylum interview, which is carried out by an official from the Office for Foreigners. In the majority of cases, no separate interview on Dublin-related issues is scheduled. Such an interview is only made when there are doubts or inconsistencies relating to the facts and/or documents concerning a possible Dublin transfer.

Interpreters are also available for the reception of Dublin returnees if needed. During the Dublin procedures, all information necessary for the proceedings is translated, including medical matters. All decisions communicated to the migrant are translated, as well as information on legal remedies. The reasons justifying the decision are not translated however.

**3. Legal assistance, access and quality**

There is no state-sponsored system of free legal aid that caters to asylum seekers in Poland. Free legal assistance is provided exclusively by specialised NGOs. However, when there are court proceedings – including those dealing with a migrant's placement, prolonged stay or release from detention – migrants may apply for a state-appointed lawyer to represent them according to the general principles of Polish law. The same goes for the judicial review of the asylum procedure in the Regional Administrative Court. It should be noted however that state-provided lawyers usually do not have adequate training and expertise in asylum and migration law. The main NGOs providing legal aid to asylum seekers in Poland are: the *Halina Niec* Legal Aid Centre, the Helsinki Foundation for Human Rights and the Association for Legal Intervention. The HNLAC regularly visits all guarded centres for foreigners and the majority of reception centres for asylum seekers as well as the Polish-Belarussian border crossing, where the vast majority of asylum applications in Poland are lodged.

As mentioned above, there is no separate "Dublin interview" in Poland. Information relevant to Dublin is gathered throughout the asylum procedure. Such an interview is only made when there are doubts concerning a possible transfer. Lawyers and country officials in general may be present during such an interview according to the rules on representation in the administrative procedure.

**4. Level of transparency**

Statistical information on Dublin procedures is available on the Office for Foreigners' website.[213] This website also contains information on the rules of Dublin and relevant procedures, on the asylum procedure as well as legalization procedures, visas, ID documents, reception conditions and more in Polish, Russian and English.

## 5. Use of discretionary clauses (articles 3 and 15 of the Regulation)

Article 3.2 of the Dublin Regulation, which stipulates that each member state may examine an application for asylum even if such examination is not its responsibility under the criteria laid down in the Regulation, is applied in all cases concerning transfer to Greece. Based on this clause and in line with UNHCR recommendations, since 1 February 2011, all transfers from Poland to Greece have been cancelled. Before this date, in practice, article 3.2 was applied in cases concerning vulnerable migrants. Poland still decides to take on the asylum applications filed by pregnant women or seriously ill persons, even if it is not technically responsible to do so. All such cases are decided individually, based on the asylum seeker's situation, evidence, family and health situation.

The humanitarian clause is implemented if an asylum seeker fulfils the conditions provided in article 15 of the Dublin Regulation and wishes to be transferred to another country. Asylum seekers and their representatives have the right to file such a motion to the Department for Refugee Proceedings of the Office for Foreigners. If such an application fulfils the article 15 criteria, a request is sent to the other country.

The motions under the humanitarian clause addressed to Poland are sporadic. If an asylum seeker fulfils conditions provided in article 15, Poland agrees to the transfer, using as criteria the rules laid down in the Commission Regulations that establish the criteria and mechanisms for determining the member state responsible for examining an asylum application (articles 11 - 13).

Migrants as well as their representatives may participate in the Dublin proceedings: they may file motions to the Dublin Department, present relevant evidence, contact the department directly by phone or in person and, if they receive a negative decision, they have the right to appeal and later to request a judicial review of the procedure by the Regional Administrative Court.

In the case of a negative decision from the member state approached, the Polish side may appeal within three weeks. The statistics on implementation of the discretionary clauses are not publicly available.

## 6. Judicial remedies

If an asylum seeker disagrees with the transfer decision issued by the head of the Office for Foreigners (the first-instance decision-maker in the refugee proceedings) he has the right to challenge it. The appeal should be submitted within 14 days of the decision (in a language the migrant can understand) and should be addressed to the Refugee Board, which is the second-instance decision-maker. Lodging the appeal has a suspensive effect. The decision of the Refugee Board is final, and can be executed; however there is the possibility to file a claim with the Regional Administrative Court for judicial review of the whole procedure. Lodging such a claim does not prevent implementation of the final decision on appeal unless the court rules otherwise. In order to prevent transfer/deportation, the migrant needs to submit a motion for suspension of the second-instance decision together with a claim to the Regional Administrative Court. The deadline for submitting this claim is 30 days.

All migrants placed in detention centres in Poland have the right to challenge their detention. There is no special appeals process for Dublin detainees. To apply for release, migrants have to file a motion in a court in the area where the detention centre is located. Generally migrants are released if staying in detention may cause a serious threat to their life or health. Such motions can be submitted any time and more than once.

The statistics on numbers of challenges to detention and their outcomes are not publicly available.

[213] See, http://www.udsc.gov.pl/Zestawienie,tygodniowe,231.html; statistics on Dublin are in section three of the document; accessed on 15 May 2013.

## 7. Reception conditions

The EU Reception Conditions Directive laying down minimum standards for the reception of asylum seekers is implemented in Poland.

As explained above, migrants in the Dublin system are provided with information about their rights and obligations, about the RSD procedure and the Dublin Regulation. In line with an Act passed in 13 June 2003 about granting protection to migrants in Poland, the authority that receives the asylum application issues a temporary identity certificate for the applicant, which is valid for **30 days**. The first certificate is issued ex-officio. Subsequent certificates may be issued at the request of the asylum seeker and are valid for a period not exceeding six months.

Migrants in the Dublin system are generally accommodated in one of 12 centres for asylum seekers in Poland. Families stay together. Unaccompanied minors are accommodated in one of the children's homes in Warsaw. Asylum seekers can move freely within Poland. However if an asylum seeker leaves the centre for more than seven days his RSD procedure is discontinued unless he provides justified reasons for his disappearance.

The education of minors staying in centres for asylum seekers is fully provided for. All children under 18 years of age have the right to free public education. Asylum-seeker children attend school together with Polish children. Access to education is also ensured in detention facilities. Classes are organized in guarded centres and cover the school curriculum with qualified teachers provided by the education authorities.

According to the asylum law, vulnerable asylum seekers (unaccompanied minors, disabled people and victims of violence) cannot be placed in detention. However the definition of "vulnerable persons" in the act is not sufficient and in some parts vague. So those who are vulnerable are not always properly identified and end up in detention.

The Border Guard provides special treatment for vulnerable migrants transferred to Poland under the Dublin Regulation. If asylum seekers are disabled, sick or minors who are unaccompanied, they are received at the Warsaw Okęcie Airport by an employee of the Office for Foreigners and accompanied to the reception centre in Dębak – Podkowa Leśna, which is located near the airport.

## 8. Asylum procedures

There are no differences in the rules of and access to asylum procedures for Dublin transferees. If the migrant leaves Poland before his asylum procedure is finalized, his procedure is discontinued. If transferred back to Poland he may reopen his procedure if less than two years have elapsed. If they have elapsed, the asylum seeker may file a new application any time, there is no deadline. Migrants sent back to Poland are always asked by the Border Guards whether they would like to reopen their procedure or file a new application for asylum.

The Polish asylum procedure fulfils all the criteria set out in the EU Procedures Directive. The only deficiency is the lack of a state-sponsored legal aid system (see above).

## 9. Verification of information

Information relevant to Dublin is gathered throughout the asylum procedure. Basic information concerning the migrant's travel route, asylum applications filed in other countries, family members in other EU countries and so on, is collected during the preliminary interview and the filing of the asylum application. This information is verified in a number of ways. The credibility of the testimony of the asylum seeker is checked by inspecting his documents, visas and tickets, and by consulting EURODAC. Moreover the Office for Foreigners, Dublin Unit, also consults the Division of Country of Origin Information in the same office. The latter division verifies whether the documents from the country of origin submitted as evidence are genuine and offers information concerning the country of origin. If needed, the Office for Foreigners consults Polish diplomatic representations in the countries of origin, the Ministry for Foreign Affairs, the Border Guards, the Police and other relevant institutions.

## 10. Detention

According to the 2003 act about granting protection to migrants in Poland, asylum seekers can be detained only under the circumstances indicated therein. Article 87 of the act stipulates “the applicant or a person on whose behalf the application is made by the applicant have illegally crossed or attempted to cross the border, unless they arrive directly from the territory on which exist any of circumstances justifying their threat of persecutions or suffering serious injury and entered the territory of the Republic of Poland or stay on this territory without permission, provided that the application for granting the refugee status shall be submitted immediately and the foreigner shall present reliable reasons of his/her illegal entry or stay”.

Migrants returned to Poland on the grounds of the Dublin Regulation are usually not placed in detention. In cases where there is a risk of abusing the RSD procedure, the head of the Office for Foreigners may request that the asylum seeker be placed in detention; the decision to detain is issued by the court and the asylum seeker has the right to challenge it within seven days.

In such a situation, detention may be ordered for a maximum of three months but may be extended until the asylum seeker’s case is decided. The absolute maximum period of detention is one year and cannot be prolonged under any circumstances.

Migrants have the right to appeal against all decisions that prolong their stay in detention within seven days of receiving the decision; moreover they can repeatedly file motions for release to the court.

## 11. Implementation

Transfers from Poland are implemented when the final decision about the transfer is issued or when the migrant doesn’t want to challenge the first-instance decision and confirms this in writing.

If the migrant is ill, his medical documentation is sent to the receiving country. There is a mandatory medical check before the transfer takes place. Additionally, right before the transfer, the Border Guards ask asylum seekers how they feel. This is a mandatory precaution aimed at eliminating any threats to the migrant’s health during the transfer. If any problems are reported, a doctor re-examines the migrant to assess whether he is fit to travel or not.

If the migrants are transferred by plane, they always travel on a commercial flight. They are escorted to the airport and travel alone after check-in, unless they are transiting through another country, in which case an escort is obligatory. Unaccompanied children are accompanied by a court-appointed adult guardian. All migrants transferred from Poland are provided with a *laissez-passer.*

Voluntary transfers are always prioritized. In such cases, the Office for Foreigners closely cooperates with the migrant and a convenient transfer date is set. The Office’s Social Assistance Department is informed about the transfer, helps to book and buy the ticket and accompanies the migrant to the airport. Most transfers from Poland are in fact voluntary, because the migrants want to travel to the country designated as responsible for their claim.

An annual average of about 100 migrants are transferred from Poland. The majority of Dublin cases are transfers to Poland. If Poland takes responsibility for an asylum application, the requesting country is informed in writing and contacts the Border Guard about the planned transfer, to determine the timing, the personal information of the transferee as well as the legal basis for admission, including whether the migrant in question had applied for refugee status in Poland before and, if so, where the procedure is at.

There is a set guideline that all transferred migrants should arrive to Poland before 2pm to avoid late arrivals and difficulties to get transport from the airport. The admission procedure usually takes about two or three hours and then the migrants may reach the reception centre in Dębak the same day.

Unless the Office for Foreigners demands the detention of a returnee, he is released. Until the end of 2011, most migrants returned to Poland were placed in detention. At the time, the Border Guard had the authority to apply to the court for the

detention of migrants and it upheld the provision that migrants who had illegally crossed the border might abuse the procedure and hence should be detained. The HNLAC noticed considerable differences in the detention rate from one Border Guard division to another, differences that were never officially explained. Since 1 January 2012, due to an amendment in the law, it is the head of the Office for Foreigners who is vested with the authority to apply for detention. The practice so far shows that such applications are not usually made and so Dublin returnees are not detained once back in Poland.

If upon arrival in Poland, the migrant reopens his asylum case or files a new asylum application, he is accommodated in one of the open centres for asylum seekers. The returnee should first travel to the central reception centre for asylum seekers in Debak, near Warsaw, where he will undergo a medical check-up, and be accommodated either in Debak itself or in another centre. Migrants should travel to Debak using their own means, as the Border Guard has no budget covering their travel costs, although guards sometimes do buy tickets for the most vulnerable migrants, paying out of their own pocket or using the money provided by NGOs.

The general practice of the Dublin Unit is therefore to receive Dublin returnees at the Warsaw Okecie Airport, and this is especially important for vulnerable migrants, who are taken to Debak by car. However, the Border Guard complains that sometimes the sending country does not inform about the planned transfer time beforehand, which creates logistical difficulties to offer appropriate care to the migrants.

Statistics from 1 January to 21 June 2012:

- Persons transferred from Poland to other countries under the Dublin Regulation:
  - Applications sent to other countries: 71
  - Positive decisions on transfer issued: 58
  - Persons transferred from Poland: 39
  - Persons transferred to Poland from other countries under the Dublin Regulation:
  - Applications sent to Poland: 1887
  - Positive decisions on transfer issued: 1698
  - Persons transferred to Poland: 468

## *DATA FINDINGS*

### 1. Basic information

Nearly three-quarters of the migrants interviewed were transferred to Poland under the Dublin II Regulation. The rest were awaiting a transfer to the so-called responsible EU country.

Again, nearly three-quarters of the interviewees were men. The average age was 28 years with the youngest respondent being 20 and the oldest 43.

The interviewees came from different parts of the world, mostly from the Russian Federation, followed by Asian countries (Pakistan, India, Kyrgyzstan, Afghanistan), west and central Africa (Nigeria, Cameroon, Congo), the south Caucasus (Georgia, Armenia) and Belarus. Most said they spoke more than one language, with English and Russian most frequently reported as the second languages.

While 60% of the interviewees were in Poland alone, the rest were with families (usually this meant spouse and children). And 20% had relatives in other European countries: Italy, France, Austria, Belgium and Germany.

All returnees included in the study were asylum seekers in the RSD procedure: three-quarters had reapplied again for asylum upon their return.

The interviewees spent an average of two months in the Dublin procedure, the longest reported period being nine months. The same timing applied to detention stays: two months on average, nine the longest time spent inside.

## 2. Personal Story

Poland was the country of the returnees' first entry to Europe – they applied there for asylum but later, instead of waiting for a decision, they left for other EU countries. The main reason given for leaving Poland was to try to obtain better social assistance including medical services. A 23-year-old Chechen man said:

> *I left the Chechen Republic in 2011 after having received death threats aimed at my entire family, especially my parents and sister. When living conditions and security concerns in my country became unbearable, my parents decided that me and my sister should leave our home in order to get refugee status in one of the European countries. In April 2011, we reached Poland, where we asked for refugee protection for the first time. After applying for refugee status we decided to leave Poland to obtain better medical services. My sister was suffering from contagious diseases. We did not know that we couldn't go abroad. We went to Belgium and applied for refugee status there. Then we obtained the transfer decision under the Dublin II Regulation and in March 2012 we were handed over to the Polish Border Guards.*

Some asylum seekers left Poland in pursuit of work opportunities even though they knew this move might ultimately decrease their chances of a positive decision. Quite surprisingly, only one said he believed that his chances of being granted asylum had increased when he left Poland and tried to apply for asylum in other country. Other interviewees said their chances took a blow once they moved to another EU state. A 20-year-old Belarusian man said:

> *I arrived in Sweden on 7 July 2011. I went there because my friends had told me it was easier to get asylum in Sweden. I applied for asylum in Sweden, but Sweden transferred me back to Poland, since in my passport they had found a Polish visa.*

This is interesting because it is commonly believed that asylum seekers leave Poland primarily because they hope they will receive a positive decision on their status somewhere else. Many interviewees were ready to leave Poland shortly after filing an asylum application, without even waiting for a first-instance decision. Since three-quarters of the interviewees were sent back to Poland, we may suppose that their views changed considerably upon return, after their attempts to get protection elsewhere failed. Moreover, some of the migrants, while telling their personal stories, emphasized the fact that they did not know about the Dublin II Regulation and that they would not be allowed to go to another European country. A 28-year-old Belarusian man said*:*

> *In September 2011 I reached Poland. I left everything I had behind. I didn't even know in which European country I would end up and what would happen to me and my family. We left our country of origin because I couldn't live peacefully there, and I had to escape. One of the reasons why I left was that I refused to cooperate with the so-called 'investigative body' and I was involved in political activities. My family and I applied for refugee status on the border crossing with Polish territory. I did not know that once you submit an application for getting refugee status in Poland you are not able to go to another European country. Therefore, I went to Denmark and I tried to obtain the refugee status there. After three months I was transferred to Poland under the Dublin II Regulation.*

As for the transferees, some had already applied for asylum in another EU state but they came here because they heard about the Abolition Act coming into force in Poland and they mistakenly thought this act would make it easier for them to legalize their stay in Europe. It is probable that false rumours about this act were spread on purpose and some migrants living in other EU states paid smugglers to transport them to Poland especially to receive stay permits on the basis of the act. After realizing that the act applied only to people who have lived in Poland for several years, they wanted to go back to the country where they had applied for asylum but were detained and issued transfer decisions.

A 33-year-old Pakistani man said: *"In 2011, I left my country with my life in danger, passing few foreign territories to get to Italy. I have a brother in Sweden, but I knew I couldn't claim refugee status in Sweden, because I had already been fingerprinted in Italy, so I decided to stay in Italy. I have stayed in Italy for one year, waiting for the decision in my refugee case. Nevertheless, finding no work (no work, no house, nothing), I decided to travel on to Poland and try to legalize my stay here. When I came to Poland I realized that abolition act which came into force in 2011 covers only foreigners who have lived in Poland for several years. In June 2012, I obtained the transfer decision."*

Most of the interviewees spent periods ranging from a few months to a few years in orbit, undergoing the stressful experience of dealing with complicated procedures in EU states, encountering cultural differences and being forced to live in a state of legal limbo for a long time. Almost half of the interviewees applied for asylum many times and failed to obtain it.

### 3. Knowledge of Dublin Procedures

Awareness and knowledge of the Dublin procedure varied. Twenty-eight per cent of the interviewees admitted knowing nothing while the same amount reckoned that they knew some general rules of how Dublin II was applied. Meanwhile 24% said they had heard about the Dublin mechanism but did not understand it due to lack of information. The vast majority (83%) said they had been informed about Dublin only verbally, either by the administrative authorities (39%) or by NGOs (21%), or by border guards (18%). The man from Pakistan said: "*They* (Border Guard officers) *gave me a paper as well as verbal information on the Dublin II Regulation."*

Nearly all felt they understood the information provided but most were of the opinion that they received it too late for it to be of any use. Another man from Pakistan said: *"I feel that I can't decide about my life on my own. Migrants don't know this regulation before coming to the EU and afterwards they can't realize their plans."* The migrants understood the information either because it was in a language they could speak – a quarter of them – or because it was explained to them – just over half.

Nearly two-thirds of the interviewees (63%) said they did not ask the state for information; as for the rest, most of those who did ask for and received the information said it was not helpful.

### 4. Appeals

The majority of interviewees had no prior information about the possibility of lodging an appeal against their transfer decision. Just over a quarter were aware they could mount a legal challenge. Most had been informed verbally, largely by the administrative authorities, followed by NGOs and private lawyers.

Eighty per cent of the interviewees did not try to appeal against their transfer decision due to lack of or insufficient information. Those who tried did so because a lawyer took care of the procedure. A 29-year-old Pakistani man said: *"I'm satisfied with the legal assistance. While in the detention centre in Biała Podlaska, I called a lawyer from an NGO, I presented my story and sent to him my documents by fax. The lawyer contacted me back, explained my legal situation and answered my questions on the Dublin procedure. He informed me that I could challenge the transfer decision."*
A surprising majority of 83% had contact with a lawyer, usually an NGO lawyer, with only one-third turning to legal aid. However most were not satisfied with the lawyer's assistance. Less than a quarter (23%) had heard about the "humanitarian clause" and they got the relevant information mostly (56%) from NGOs. Did they get the information too late? Here the answers were equally divided between those who complained that they got the information too late and others who said they got it in good time. Nobody received information about appealing in writing.

As the outcome of the appeals was negative, the general feeling was that they had not even been considered; only one-third believed their requests had actually been pondered over.

### 5. Asylum Case

Asked how informed they felt about their asylum case, nearly two-fifths (39%) of the interviewed returnees said they knew nothing about it while the same percentage said they felt in the middle between knowing nothing and everything about it.
Nearly half of the returnees complained that they had received no prior information about Poland while 40% said the staff at the detention centre had given them information while they were waiting for their transfer. Three tenths of the returnees were informed when they were already in Poland – upon arrival.

Some said the information in the transferring country was not comprehensible, like a man from Chechnya in his thirties: "*I couldn't read the information about the asylum procedure in the receiving country because it was in German. Nobody helped me to translate it."*

However since most had already been in Poland before, they knew something about the asylum procedure and rules. An overwhelming majority said they knew how to apply for asylum in Poland, with most having been told either by other migrants (50%) or by the authorities or lawyers.

Nevertheless, nearly half of the returnees said they still had unanswered questions about their cases: either about asylum procedures, or about their situation, or about what would happen to them next. One-fifth wanted to know how to get refugee status. The words of this Chechen man reflect their confusion: "*I would like to know how long I have to wait for decision? What should I do later? When I will be able to work in Poland?"*

A clear majority of 71% of the interviewees declared that they intended to return to the country that had transferred them. Only 14% thought of finding work, shelter or education and an equal number said they had no plans for the future.

## 6. Personal Well Being

Nearly two-thirds (64%) of the interviewees confirmed that they received medical care, social assistance, access to basic services and housing. A bit less than that said they were given access to work (59%) and had received legal assistance (55%) – this data concerns both the transferring and receiving countries.

As regards Poland, on average the interviewees felt well provided for in terms of legal assistance and education. They felt medical care and basic services were available however they did not assess them well. *"The doctor in the centre doesn't speak Russian well. He gives medicine and is responsible, but he doesn't always understand what we really want,"* said a young Chechen woman.

Some felt the accommodation was inadequate too, like this Chechen man: *"The housing is quite good but I don't have access to the internet and the mobile phones are out of range. In Austria there weren't such problems."*

As for work, food and clothing – the majority of migrants said they were insufficient, with 91% saying they couldn't work, a situation linked to Poland's legal framework. "*In Belgium asylum seekers have the right to work after their application has been received, and initial processing has been completed. I don't have the right to work in Poland,"* explained a young Afghan man.
The interviewees were asked to name the three biggest differences they noticed in their treatment in the transferring and receiving country.

Major disparities were found in the quality of medical care, food and clothing: around one-third said the biggest gap was in medical care while a quarter cited access to food and clothing. Others mentioned the same things but in reverse order while some also noted differences in the provision of legal assistance (42%) and access to work (25%).

One-third of the migrants said they received assistance from the state authorities; most (70%) said this consisted of housing while half mentioned food, clothing and work, and medical assistance.

When asked about the impact of detention, nearly one-third of the interviewees underlined their mental health:
*"I'm tired with being in the detention centre. I feel very bad in this place. I cannot freely decide what and when and what I should eat, I cannot work, I feel like a prisoner,"* said a 35-year-old Nigerian man.

A 30-year-old Pakistani man said: "*I have to wait for the transfer in detention centre. I would return to France faster on my own. I lose my time being here. I fall into apathy.*"

Nearly 70% said detention had an overall negative impact on them, without specifying exactly how.

Nearly half of the interviewees claimed to have a special connection to Poland. When asked what kind, they usually mentioned family (62%) and culture (46%). Seventy-one per cent of the interviewees waiting for a transfer said the primary advantage of this move would be better work options, while 38% mentioned family and 33% education.

Less than one-third of the interviewees felt the Dublin procedure had had an impact on their family but 13% said the transfer had separated them from relatives. A 21-year-old Chechen man said: "*I don't understand why I cannot be reunited with my family. I heard that I could stay in Belgium if I was under 18. But I am only 21 and I need my parents."*

Before the transfer, nearly half the interviewees had planned to search for safety and slightly less for work. Just over two-thirds (69%) believed that the Dublin procedure was disturbing their plans, largely because of the transfer. A 34-year-old Chechen man said: *"I wanted to organize the life of my family in Austria, I wanted to work there, and wanted my children to study there. Now I want to do that in Poland, but I'm sorry about wasting so much time."*

Slightly more than half the interviewees had no new post-transfer plans while the rest had new plans that usually consisted of finding work (38%), to continue searching for safety (23%), family plans (15%) or going to a different EU country (15%). Asked if they had ever absconded from the authorities, just over one-third of the interviewees admitted that they had. Nearly half of this number did so for family reasons, one-fifth because they were dissatisfied with the outcome of their case, and another fifth because of fear of authority.

As for the rest, two-thirds said they never tried to abscond either because it was illegal or not allowed (63%). "*I didn't want to come into collision with the law. I am in Europe with my family, I have two little daughters, and I am responsible for them*," said a 27-year-old Chechen man. The other third said they didn't want to or couldn't abscond due to their state of health.

### 7. Personal Views about the Dublin Regulation

The prevailing opinion of the Dublin Regulation was that it was unfair (68%) and that it should be reviewed (28%). A 33-year-old Pakistani man said: "*Asylum seekers, a big percentage of whom have suffered violence and persecution in their country of origin or on the journey – they are just pushed from one place to another like a package*."

And a 27-year-old Nigerian man: "*Member States have the duty to interpret and apply Regulation Dublin II in a manner consistent with fundamental rights, but Dublin II Regulation, in crux of its matter, infringes my fundamental right to free movement."*

The majority of the migrants (58%) believed asylum seekers should have the right to choose the country in which they want to seek protection.

One-third expressed regret that they had not known about the Dublin Regulation before. When asked what advice they would give to other migrants, nearly one-quarter of the interviewees (23%) said they should choose carefully which EU country they want to reach while nearly one-fifth (19%) said they should obey the Dublin procedure rules. A 30-year-old Chechen man said: "*I would advise them to be very careful in choosing the country they want to go to, and to apply for the asylum only in one country, because they can be transferred to the country they don't want to live in."*

When asked what their three biggest problems were, the interviewees singled out mostly accommodation and work: two-fifths ranked them as their biggest problem, one-fifth as their number-two problem, and the remaining two-fifths as their third biggest problem. One-fifth cited detention as their major problem. Medical issues were cited by two-fifths as their second biggest problem and fear of return to country of origin was mentioned by one-fifth in in third place.

Nearly one-third of the interviewees declared that the best solution for them would be to obtain refugee status while equal groups of one-fifth (21%) said the best solution would be to be free and to have a normal life. A 27-year-old Chechen man said: *"The best solution for me would be to receive a chance to have a life in Europe. To integrate with the society, find a job, a place to live. I pray for this every day."*

## *DATA ANALYSIS*

### A) Knowledge of the Dublin Procedure

The level of knowledge of the Dublin procedure varied among the interviewees. Equal shares of one-quarter each indicated various levels of understanding:

- One-quarter said they knew nothing;
- One-quarter said they had heard about the Dublin procedure but did not understand it because of a lack of information;
- One-quarter felt in the middle of knowing and not knowing.

Such a wide distribution of answers is worrying and may call into question the efficacy of information offered to persons in the Dublin procedure at various stages of the process. The answers suggest that migrants were usually quite confused about the modalities of the Dublin Regulation and even those who declared to be "in the middle of knowing and not knowing" only had a rather vague understanding of the legal provisions applicable in their situation. No one was confident about their knowledge and none of the interviewees felt well informed.

The general feeling of confusion concerning the Dublin provisions may be linked to the fact that the usual manner of imparting information is verbal. And even though verbal communication seems to be effective and the vast majority (95%) said they understood the information others told them, the lack of additional written material may explain the poor familiarity with detailed legal provisions. Most interviewees complained that even though they understood the information they received, usually from officials, they got it too late in the process.

When asked about the language in which information was provided, the migrants all claimed they understood it. Some added that in case of doubts they could easily ask other migrants with a better understanding of the procedure for further explanation. More than half of the interviewees said they understood the information when it was explained. The availability of translation seemed to be the decisive factor and primary reason why interviewees felt informed. This finding is corroborated by the *Halina Niec* Legal Aid Centre's long-standing practice in legal counselling for asylum seekers, including Dublin returnees and transferees, in reception centres as well as in detention. The overwhelming majority of all Border Guards in detention facilities and social workers in open centres speak both English and Russian, which are the most common languages known to asylum seekers in Poland. In case of more rare languages, interpreters are deployed for proceedings such as filing asylum applications, procedural hearings etc. While in detention, migrants speaking more rare languages may be in a more difficult position when requesting additional information or explanations. In such cases the importance of translation and quality legal aid cannot be overestimated.

Quite surprisingly nearly two-thirds said they did not ask state officials for information. It is difficult to provide a clear explanation for such a result. The reasons could be that they felt they did not need additional information, did not trust the authorities enough to ask or did not know they could ask them. Nevertheless three-fifths of those who did ask complained that the information they received in return was not helpful.

**B) Knowledge about appeals**

Only one-third of the interviewees said they received information on how to appeal a pending transfer. Officials told them this. Three-quarters did not even try to appeal due to lack of information. Those who appealed only did this with the help of a lawyer.

The majority admitted to benefiting from legal aid rendered by NGO or state lawyers during their Dublin procedure. The prevailing opinion of their services was not positive however. Only one-quarter knew about the possibility that the government may, under certain circumstances, decide to examine an asylum application itself or send the migrant to another European country. This lack of knowledge proves that the legal assistance they received was not effective. It should be stressed that the majority of those interviewed were returnees who referred to their past experience in the transferring country. Their mainly negative perception of their lawyers could be linked to the fact that their transfer to Poland was not prevented. Some only learnt about the legal remedies available to them while answering the DIASP study questionnaire, which in turn made them think they had lost their chance by not appealing.

**C) Asylum case**

The majority of the returnees – who made up most of the interview sample – claimed to know nothing about their asylum case. The information they received upon arrival concerned only the rules of the refugee procedure, no one was given prior information about the country itself. As for sources of information, the majority of the interviewees cited the staff in detention facilities. The asylum seekers expressed concerns about their future asylum procedure; they felt confused about some of its aspects and uncertain about their future. All underlined however that they knew how to apply for asylum as

other migrants, administrative authorities and lawyers had told them. In the experience of the HNLAC, especially when monitoring access to the RSD procedure and *non-refoulement*, it seems that there are no institutionalized or practical obstacles preventing Dublin returnees from accessing the asylum procedure. In most cases procedures are simply reopened (see also *Asylum procedure* in Section 2 above).

**D) Personal Well Being**

This part of the study is the most difficult to process because it tackles subjective feelings about basic services. The answers cover a wide range of attitudes from discontent to satisfaction. The worst assessment was reserved for work, food and clothing. The interviewees were neutral in their opinion about basic services and housing. Education-wise, they felt well provided for. There were mixed views about medical care. The returnees expressed their satisfaction with the legal service in Poland – in fact, it got top marks in this section.

When assessing the answers about connections in Poland and other countries, one should bear in mind that Poland remains to some extent a transit country. The overwhelming majority of Chechens and Georgians seeking asylum in Europe enter from the Polish-Belarusian border (specifically the railway border-crossing in Terespol) and want to join friends and relatives living in diaspora throughout western Europe – this despite the fact that Poland should offer a more favourable integration environment for both Chechens and Georgians, from linguistic and cultural points of view.

More than half the interviewees said the Dublin procedure had disturbed their original plans and a little more than half have failed to make new plans. The rest said they would stick to their prior plans. This finding is in line with a troubling trend that can be observed in Poland. The practice of HNLAC indicates that a considerable percentage of Dublin returnees are likely to leave Poland again. They often make new plans based on their own risk analysis. In 2011, there were 3,471 take-back requests to Poland, 3,379 of which were positively decided, but only 1,419 persons were transferred. In 2012, this disproportion was even more glaring with 4,690 applications, 4,428 positive decisions and only 1,220 persons transferred as a result. The ineffectiveness of Dublin, revealed by these discrepancies, is incitement enough for migrants to try to seek asylum elsewhere despite the risk of being caught. What's more, in the same year, there were 10,753 asylum applications filed in Poland while the procedure was discontinued for 8,753 persons, a vast number of whom were asylum seekers leaving Poland and travelling further west.

**E) Personal Views about the Dublin Regulation**

Personal opinions of the Dublin Regulation were unfavourable. Two-thirds said it is unfair; this may be linked to the fact that two-thirds of those interviewed were returnees, brought back by Dublin to a country where they did not wish to be; hence its impact was unequivocally negative.

## *CONCLUSIONS & RECOMMENDATIONS*

The data gathered in the interviews provides plenty of useful information about the factors conditioning asylum seekers' access to protection in the Dublin procedure. The primary notion is that the way in which migrants receive information may have long-reaching results, impacting not only their legal status in a given procedure, but also their future plans and choices. It seems that providing information in writing is not necessarily – contrary to common belief – the best method. The asylum seekers interviewed seemed to value verbal communication and the fact that important aspects could be explained in more detail. Language remains the most crucial and decisive factor that determines whether the migrant is effectively informed or not. Most of those interviewed said their primary sources of information were state officials, which means they trusted such information to be credible and relied on the state to guide them through the Dublin and asylum processes.

As Poland is primarily a Dublin-II receiving country, nearly three-quarters of the interviewees (73%) were returnees from other EU countries while the rest were awaiting transfer from Poland to another EU state. This disproportion influences to some extent the way in which the gathered data may be interpreted.

Although the majority of those interviewed claimed to be fairly well informed about Dublin, and to have received information from state officials in a understandable language, most were in fact referring to their current status as returnees and the impact of Dublin on their asylum procedure. To some degree their knowledge was based on and shaped by their practical experience as their transfer had already been carried out. So it could be that their knowledge was empirical rather than derived solely from information given by the state. It is very difficult to assess what part of the

information may be attributed to whom. More detailed questions showed that the migrants' knowledge of the Regulation was at most mediocre, as only a small number knew, for example, about the possibility to appeal their transfer. Once they realised that their lawyer either had not resorted to this legal remedy or had done so unsuccessfully, the migrants tended to express discontent with the legal services they had received.

Interestingly enough, however, most of those questioned were content with their lawyer in Poland, just as they were with education opportunities. On the other hand, food and clothing were not appreciated. It is important to note that the study in Poland included both asylum seekers in detention as well as those living in open centres. The access to services inevitably differs between one and the other, especially in relation to work opportunities. Education for children living in refugee centres, who attended regular public schools, differed from that available for children in detention with their parents, who could only go to a set of classes organized within the detention centres. The Polish government is currently working on a new law regarding migrants, which will change regulations concerning detention, introducing alternatives to the practice and eliminating detention of children under 13. In 2012, a group of Polish NGOs, including the *Halina Niec* Legal Aid Centre, formed a coalition calling for the absolute prohibition of detention of migrant children, so the final shape of detention practices is still under negotiation.

In spite of the fact that the Dublin procedure disturbed asylum seekers' original plans, the interviewees had a considerably high motivation for making new plans. It seems that the more informed they are, the more willing they are to think about the future: nearly all claimed to have understood the information they received. While on the one hand, it seems that this is an important prerequisite to making new plans, on the other hand nearly three-quarters of the interviewees expressed confusion, doubts and fear as to their future.

The biggest problems identified by the interviewees, accommodation and work, are often crucial in influencing their decision to travel further, because finding work and safety were the most commonly expressed goals that drove them to head for Europe. Nearly everyone thought that the Dublin Regulation is unfair and should be reviewed, disagreeing with the assumption that asylum seekers are not free to choose the country of their refuge. Once returned to a country they left willingly, they are often dissatisfied with the whole system and may even plan to try to leave again. The main goal for them is to receive refugee status in order to have a normal life and to be free.

We recommend:

1. Information on the modalities of Dublin procedure, asylum procedures and corresponding rights and obligations of asylum seekers should be provided both in writing and orally on all stages of such proceedings in a language the asylum seeker can understand.

2. Quality free legal aid should be guaranteed to all asylum seekers, including those in the transfer process and in detention. Such legal aid should be available in a language the asylum seeker can understand and should be rendered by a lawyer with adequate intercultural communication skills.

3. The use of detention in relation to asylum seekers should be seen as a measure of last resort; alternatives to detention should be always considered first.

4. Asylum seeking children and vulnerable persons should never be placed in detention. Effective methods of identification of vulnerable persons should be developed and applied.

5. The humanitarian clause and the sovereignty clause should be more frequently applied in Dublin cases, especially in cases of vulnerable persons and separated family members.

# DIASP national report: ROMANIA

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## *INTRODUCTION*

The main activities of JRS Romania are to provide services in immigrant detention centres (public custody centres) covering legal counselling, social assistance and emergency aid, and in open reception centres by offering integration assistance to persons with a form of protection. Close cooperation is maintained with UNHCR, the Romanian Immigration Office and national NGOs, while lawyers and judges are supported through the JRS Documentation Centre on country of return information. JRS Romania also provides temporary shelter to rejected asylum seekers who receive a 'toleration status' to stay in the country or ask for asylum anew; among these are Dublin returnees.

As part of its advocacy work, JRS Romania monitors reception conditions and detention conditions and practices by way of projects and research. We lobby the government for the improvement of legislative policies, including protection of tolerated persons, detainees, refugees and asylum seekers.

Within the DIASP project, we specifically targeted: returnees who are under a Dublin procedure and detained or with permission to stay in the territory; and transferees who are asylum seekers with a pending transfer to another EU country. The objective was to identify the impact of Dublin Regulation on the fundamental rights of asylum seekers in order to advocate for the improvement of conditions offered to them and more importantly, to advocate for stronger protection and alternatives to detention.

Two questionnaires were used to interview returnees and transferees. Topics addressed in these interviews included: individuals' personal stories, knowledge about Dublin system and asylum procedure, personal wellbeing and their views on the Dublin system. A legal questionnaire was used to research the existing national Dublin procedures. In Romania, 16 interviews were done in both open and closed detention centres as well as at the JRS *Pedro Arrupe Centre* between December 2011-2012. Written voluntary and informed consent of all interviewees was obtained. The JRS Romania legal counsellor was interviewed as well.

JRS Romania would like to express gratitude to the General Inspectorate for Immigration for its support for carrying out the interviews, access to the facilities and the overall activities under the DIASP project.

## *MEMBER STATE PRACTICES*

The General Inspectorate for Immigration (GII), within the Ministry of Administration and the Interior, is responsible for the Dublin Regulation. It has two directorates: the Directorate for Migration (DM) and the Directorate for Asylum and Integration (DAI), which as the Dublin Unit operating within it.

The responsible directorate depends on the legal status of the particular migrant. The DAI takes responsibility for asylum seekers and the DM for foreign nationals. As long as a Dublin procedure is pending, the Dublin Unit deals with all the situations of Dublin cases even if the foreigners are asylum seekers or migrants and no matter which of the two directorates is in charge.

### 1. Provision of information

One of the first pieces of information migrants receive is about the fact that information regarding their asylum application and personal data might be exchanged with other EU countries or countries who agreed to apply the Dublin Regulation. They are also informed about the fact that their fingerprints will be stored in a database and that they have the right to be informed with regard to the type of information stored. This information is provided to both asylum seekers and irregular migrants in a language they understand or are presumed to know; several languages are available (English, French, Arabic, Chinese, Russian, Somali, Turkish, Persan, Urdu.

More detailed information about Dublin procedures is provided orally and/or through leaflets translated in a language they are presumed to know, distributed by authorities and NGO's at the regional centres for accommodation and during procedures for asylum seekers. If assisted by an NGO or by lawyer, migrants are also informed and receive explanations about Dublin procedures during counselling sessions, with leaflets being provided.

**2. Linguistic assistance**

The asylum legislation foresees the right to have an interpreter during the entire procedure. Yet in practice, interpreters are used only for the preliminary interview and during the interview for determination of a form of protection. If the asylum procedure is suspended because a Dublin procedure is initiated, there are no interpreters used to communicate this. Asylum seekers receive written information when receiving a decision with suspensive effect on the access to the Romanian asylum procedure. The decision is communicated in Romanian only, with a communication document attached that briefly describes that the Romanian asylum procedure is suspended and the legal ways and terms to appeal it.

It is the asylum authority, the DAI, who ensures the use of an interpreter and supports the costs for the preliminary interview and during the interview for determination of a form of protection. There is no formal interview with the Dublin Unit but only with the officers of either the asylum or migration directorate.

The documents that an asylum seeker presents to support his claim must be translated into Romanian, this being under her charge.

**3. Legal assistance, access and quality**

Legal assistance is provided by the state with the help of NGOs during the administrative phase through European funds. Access to lawyers for asylum seekers and migrants is allowed but at their own expense of if an NGO supports the costs. In the judicial phase, access to lawyers is provided by courts, under request, and the costs are supported by the Ministry of Justice. Legal assistance is also provided by NGOs with both European and private funds and a limited number of cases are supported with lawyers paid through European funds as well.

A lawyer can be present at the stage when the authorities meet with the migrant to assess potential transfer but only if the lawyer was appointed by the migrant or a supporting NGO.

**4. Level of transparency**

Statistics, numbers and practices on Romania's implementation of the Dublin Regulation are not publicly accessible but can only be provided under specific request.

**5. Use of discretionary clauses (articles 3 and 15 of the Regulation)**

The national Dublin Unit began to use the sovereignty clause for cases with pending transfer to Greece. An official statement was published on the asylum directorate's website in February 2011 regarding the suspension of transfers to Greece due to the failings in the asylum system there. Transfers to Greece were suspended previously in 2009, by the Sector 4 Local Court who admitted the appeals in three cases. This was based on an evaluation of the asylum system in Greece, following the country of return information provided by JRS Romania and the Centre for Research and Documentation of Country of Return Information.

The humanitarian clause is applied for Dublin cases but only if the asylum seeker can prove their family connections. In one case, a Dublin returnee was sent from Austria to Romania and was taken into public custody upon return. Access to a new asylum procedure was granted on the presentation of proof of family links in Austria, and he stated that his family was not in Austria with him when he first submitted an asylum application in Romania. Later on, after getting access to the Romanian asylum procedure, he was transferred back to Austria to his wife and children, who had subsidiary protection.

## 6. Use of appeals, i.e. judicial remedies

The asylum seeker has the right to challenge a transfer decision within two days, personally or through the lawyer, in front of the asylum directorate or the Local Court, submitting a copy of the contested decision. The competent courts are the local courts in the area of the Regional Centres for Accommodation and Procedures, courts that are not specialised on asylum or Dublin procedures but deal with civil law in general.

The appeal does not automatically suspend the transfer, and must be judged within five days. Detainees in Dublin procedures have the right to challenge the detention under the same conditions as the other foreigners taken in detention, under national Aliens Law. Official statistics on judicial remedies, like number of challenge and outcomes are not publicly available.

## 7. Reception conditions

Migrants in the Dublin system benefit from the same conditions as asylum seekers or foreigners under Asylum Law or Aliens Law.

Asylum seekers under Dublin procedures have the right to be accommodated in open centres, if they don't have financial resources. There are six open centres across the country where they can be accommodated depending on the place where they submitted the asylum application and their procedure is assessed. The total accommodation capacity of the asylum directorate in its six regional centres is 920 places, divided as follows: Bucharest (320), Galati (250), Timisoara (50), Radauti (100), Somcuta Mare (100) and Giurgiu (100). Asylum applications are processed in each regional centre, with asylum directorate staff working in the RSD procedure (including decision-makers and legal counsellors).

Asylum seekers and refugees are able to access reception conditions of a decent standard, comparable with similar countries. Minimum European standards on reception conditions have been transposed into national law, but problems remain with legislation or limited financial resources. This leads to more serious challenges related to food, insufficient allowances and the lack of supplementary support for vulnerable persons (pregnant women, women who have just given birth, new-born babies, elderly persons, etc.) according to their specific needs.

Asylum seekers with special needs should have accommodation and assistance adapted to their special needs in the accommodation centres and they have the right to receive medical aid. They are evaluated by the asylum directorate in order to be included in the category of persons with special needs and may receive psychological assistance provided by specialised staff from the asylum directorate, if specialists are available. Persons typically considered vulnerable in practice include unaccompanied minors, minors with families, single mothers, pregnant women, elderly persons, persons with disabilities, persons with psychological/ psychiatric disorders and victims of trauma.

At the moment, none of the open centres have a psychologist. Attention is being paid to ensuring privacy and providing a separate space for vulnerable cases. However, the accommodation facilities are not always adapted to the specific needs of pregnant women or children. For instance, not all the open centres have children's room and special services provided for them. That depends on available funding. The asylum directorate may notify specialised institutions able to provide needed assistance and may collaborate with NGOs if needed.

In the case of unaccompanied minors who express the wish to obtain asylum, in writing or orally, in front of the competent authorities, they are registered as asylum seekers, with the asylum application being submitted as soon as a legal representative is named. If they have reached the age of 14 the asylum application can be submitted personally. Asylum Law is applied with due regard for the best interest of the child. If they are under 14, they are usually placed in centres for minors, run by the General Directorate for Social Assistance and Child Care. If they are older and they have family members (but who are not their representative) or community members in the open centres, they can be accommodated there. Doubts regarding the minor's age can be checked via medical opinion obtained by the authorities, with the written consent of the asylum seeking minor and their legal representative.

Minors are entitled to education as any other minor in Romania, but sometimes there are difficulties in accessing it because schools are situated far from the centres, or because teenagers prefer to work rather than attend school.

## 8. Asylum procedures

Dublin procedures follow the same pattern as the asylum procedure, with due respect of both civil law and the specified provision of Asylum Law. As long as a Dublin procedure is running, the asylum procedure is suspended, although it does not affects the rights and obligations of a migrant as an asylum seeker. Migrants in the Dublin system have the same access to asylum procedures like any other migrants. Dublin returnees can submit subsequent asylum applications in repetitive procedures under the same conditions as foreigners.

## 9. Verification of information

Dublin Units verify information given by migrants first with the EURODAC database. The fingerprints are the first aspect they verify. Other aspects, such as statements and proofs, are verified like the evaluation of one's credibility in the asylum procedure.

## 10. Detention

Individuals in Dublin procedures are not automatically detained. Romanian asylum legislation guarantees that asylum seekers are not detained (with the exception of foreigners convicted with expulsion for national offences or declared undesirable). Asylum seekers under Dublin procedures can be detained only to enforce a transfer decision, and if there is a risk of absconding. They can be detained until the transfer is made or if there is an appeal pending until the judge issues a decision granting them access to the territory and the Romanian asylum procedure.

Migrants returned to Romania under Dublin procedures might be detained if they had previously asked for asylum and their asylum procedure had ended. In this situation, upon return they are considered foreigners with an irregular status. The period of detention for all migrants is of maximum 18 months. The initial period of detention is of 30 days, this being prolonged afterwards up to a maximum of 18 months.

Alternatives to detention have been applied in cases of vulnerable persons. A 'toleration' status can be granted, permitting the person to stay in the territory, for those cases that are assisted by NGOs and provided with accommodation. Even if returnees are detained upon return, they can still benefit of the Assisted Voluntary Return programs of IOM and other NGO's.

Foreigners held in detention are entitled to legal, medical and social assistance, and respect for their religious, philosophical and cultural beliefs. There are two detention centres: one at Otopeni (near Bucharest) and at Arad (near the Western border).

Some problems have been identified during the last year with regards to detention:

- An increased number of rejected asylum seekers who did not follow the entire RSD procedure left the country, were finally rejected during their absconded and were retuned under Dublin II; upon return they were considered illegal migrants and ended up in detention;
- The increased detention of asylum seekers in accelerated procedures;
- Lack of information with regard to the previous asylum procedure(s) for detainees applying for asylum in a repetitive procedure, as they have left Romania without having an RSD interview or an appeal submitted at the competent court; usually after they left they are not in touch with the legal counsellor or lawyers who assisted them, if any, and do not keep the documents issued by Romanian authorities; upon return they are not aware of what happened with their file and asylum procedure in their absence and as detainees have difficulties in submitting substantiated new asylum application with a new element as requested by law ;
- Low standards in the detention regime (lack of recreational activities, security measures, a ban on getting food from outside etc.), as well as lack of proper communication with detainees;
- Lack of proper documentation with regard to Dublin transfers.

Despite the fact that separate rooms are allocated for vulnerable persons, limited facilities are available for those in public custody because the centres are not specially designed to provide separate facilities for vulnerable cases. In the experience of JRS Romania, for some vulnerable persons alternatives to detention are considered if such persons can prove they have a place to stay.

Unaccompanied minors can be detained as long as their age is not certified and there are serious doubts that the person is under age. Minors with families can be taken into detention, accompanying their family if it is considered that staying with the family rather than being separated is in their best interest. Despite the fact that separate rooms are allocated, there are no specific facilities for minors.

**11. Implementation of Dublin decisions**

Dublin transfers are implemented in accordance with the Asylum law and Dublin Regulation. As witnessed in practice and according to migrants' statements, voluntary transfers are the most frequent. Force is not used unless the migrant becomes violent.

Escorts are provided if the migrant opposes the transfer. In this situation, officers of the immigration directorate accompany them. According to JRS Romania's knowledge there were no complains so far with regard to the treatment of Romanian escorts. Sometimes returnees have complained about the treatment received from other national authorities, but no further investigation was made in this regard.

## *NATIONAL DATA FINDINGS*

JRS Romania interviewed 16 migrants under Dublin procedures (returnees and transferees). The interviews too place in both open and closed centres across the country, depending on the legal status of the persons under Dublin procedures. Thus, for the ones who were asylum seekers in their first asylum procedure, the interviews were conducted in the open centres (called Regional Centres for Procedures and Accommodation) in Bucharest and Radauti.

For the ones who were transferred to Romania from other countries, the "returnees", the interviews were conducted in the closed detented centres (called Centres for Public Custody of Foreigners) at Arad and Otopeni. Ten people were in detention, with an average time spent in detention at the moment of interview of three months. Six of them were either in open centres or at JRS *Pedro Arrupe Centre*.

As Romania is a country that mostly receives returnees, the majority of the interviewed persons were returnees (15 out of 16).

**1. Basic information**

All interviewees were male with an average age of 27 years, the youngest being 21 years old and the oldest being 33 years old. Most were single, and only two were married.

When asked if they have other family members in Europe, four people said they have relatives in countries like Belgium, France, Germany and the UK.

The main countries of origin of our sample were: Algeria (6), Libya (1), Morocco (2), Afghanistan (3), Pakistan (1), India (1) and Tibet (1). Six people said that they speak more than one language. Spoken languages include English, French, Punjabi and Greek. Romanian was listed as second language. It was impossible to assess at what level they speak these languages. Arabic was the most frequently reported mother tongue.

Most of the interviewees stated that they have been to Romania before, usually only once; two of them had not been in Romania before.

Of the returnees, three people were asylum seekers under procedure, four were refused asylum seekers and six were asylum seekers in a subsequent procedure. One of them had a 'toleration' status to remain in the territory, while another

one was undocumented. On average, returnees had spent three months in these legal statuses when we interviewed them for DIASP.

The *only transferee* in the sample had been in Dublin procedures for two months at the time of the interview.

## 2. Personal Dublin stories

Most people describe their 'Dublin journey' in Europe in terms of: multiple travels between EU countries, the countries of first entry and the number of times they have applied for asylum. Below are examples of what interviewees said:

- *"The first time I came to Romania on 13.05.2012 and asked for asylum at the border. I was sent to Timisoara, where I stayed for 17 days and then I was transferred to Baia Mare. I stayed there for 20 days and then I returned to Timisoara. I left Romania and went to Austria, because in Romania there are no conditions: nothing to eat, no jobs, everybody who comes here comes in order to go in another country. I was cached at the border in Hungary and I was retained for 12 hours for different procedures and then transferred to Romania."*

- *"I came to Romania and asked asylum in Timisoara. Then I left for Hungary because I wanted to reach France or Germany. I had two interviews with Romanian Immigration Office before I left for Hungary. I did not want to ask for asylum in Hungary because I knew I would be sent back to Romania. I was cached in the train station and taken in detention, where I stayed for 7 months. I was severely beaten there. Later on, I was transferred to Romania*."

- *"I left Afghanistan in 2008, through Pakistan, Iran, Turkey, Greece, Italy, France, England and Belgium. In Belgium I asked for asylum and stayed for one year, and then I was returned to Greece. I stayed three years in Greece, did not ask asylum and went to Macedonia, Serbia and Romania. I left Greece because there were problems, did not have accommodation. In Romania, I was told that I might be sent to Belgium and I didn't want to. Belgium did not accept me and Romania did not send me to Greece. I was not transferred; I got access to the asylum procedure in Romania. I was assisted by Romanian National Council for Refugees (CNRR) in the administrative phase, got a negative answer, and then made the appeal. I had a free judicial assistance lawyer whom I never meet. My appeal was rejected by the court. Later on, I asked the interpreter and CNRR when I had a term at Tribunal, because I did not knew or receive subpoena. In September I went to CNRR, who directed me to the archive of the Court and I find out that I was finally rejected and did not made the recourse. I stayed without VISA for one month and then the interpreter told me that I can go to JRS, where a lady will help me."*

Eight people said that the Dublin transfer process worsened the chances that their asylum application would be accepted upon return to Romania. When asked why they believe so, the majority could not provide an explanation.

## 3. Information about the Dublin system

When asked what they know about the Dublin Regulation, only six out of 16 interviewees responded, stating that they only knew about the fingerprinting aspects of Dublin procedures.

- *"I know about Dublin procedure. When EU created this law, it said that whoever has fingerprints in one country has to return in that country."*
- *"I don't know anything about Dublin procedure. I know that if I have fingerprints in Romania and I go to France, I will be sent here, it is the same in the entire EU*."
- *"If somebody has fingerprints in one country like Greece, he would be sent there".*

Nine people answered that they knew nothing about Dublin, while six answered that they have heard about it, but do not understand it because of lack of information. Only one felt well informed, but added that there are still aspects he does not know.

When asked who informed them about Dublin procedures, most of the interviewees answered that they had received information either from fellow migrants, administrative authorities or detention centre staff. Most were given information orally.

Three people considered that they were given Dublin information 'early enough'. In these cases this meant that they were informed about Dublin prior to receiving a transfer decision, at the first interview with the Dublin Unit, or after having first arrived to Romania, for example. Four people considered they were given the information late.

Five people answered that they understood the information that was given to them, either because it was in the right language or, as one person remarked, the information was thoroughly explained to them. Three people answered they did not understand the information, saying that it was too complicated.

With regard to information provided by the Romanian state, the answers vary from receiving only when they asked for it to having not asked. Thus, four peoples stated they received it when they asked for, six stated they did not receive, while five people never asked. Of these, five people said the information was helpful for them, while one said that it was not.

**4. Appeals**

With regard to the appeals, eight people answered that someone had informed them on how to appeal a Dublin decision by NGO's and lawyers, with most of the information being passed on orally. Seven people said they hadn't received this help.

Seven people stated they have tried to appeal a transfer, while another seven said they did not. Out of the ones who did not, five stated it was because they lacked of information.

Most people had contact with a lawyer, either state lawyer (five of them) or NGO lawyer (four of them) or private lawyer, in one case. The others did not meet with a lawyer. Six of the interviewees said the lawyer took good care of their case, while two stated the opposite. Most people attributed the lawyer's performance to the good/bad effort made by the lawyer.

When asked about the discretionary clause, five people answered they knew about it and have learned from the administrative authorities, while most of them (10 people) did not know about it.

**5. Knowledge about the personal asylum case**

This section of the questionnaire had separate questions for transferees and for returnees, although in the case of Romania all but one interviewee was a returnee.

When asked what they knew about their own asylum case, the returnees interviewed answered they knew nothing (four of them), have heard about asylum procedures but don't understand it because the lack of information (two of them), felt in the middle of knowing and not knowing about the asylum case (two of them) and only one considered he was fully informed about the asylum case.
Four people said they learned about Romania's asylum system before being transferred back to Romania and an equal number said they did not. For those who did get such information in advance, they said that it was about Romania's asylum procedures. They got the information from administrative authorities, detention centre staff and NGOs. Two of them said that the information they received matches the reality they faced in Romania.

Only four people had questions about their asylum cases and wanted to know more about asylum procedures and how to get refugee status, as well as what will happen with them in general, while two stated they did not have questions. One of the interviewees stated having experienced difficulties in applying for asylum in Romania, related to procedural difficulties: *"After I was returned, I asked twice for asylum, but did not have any answer until I had a lawyer. Only later I got an answer, a negative one, and JRS helped me with the appeal."*

Four other interviewees said they did not have difficulties in applying for asylum in Romania.

## 6. Personal well being

- *Housing*

When asked about their access to housing, interviewees' answers were positive in four cases, for example:

> *"In Hungary, I stayed in a deportation centre, but in Romania I stayed in detention and now I stay at the Pedro Arrupe Shelter and it is very good."*

Seven of the interviewees considered housing in Romania to be inadequate, for example:

> *"In Switzerland it was heaven. I was accommodated in an open centre. In Romania, I am in a closed centre where we are treated like animals."*
> *"In Austria, it was better than here, a thousand times; in Romania the conditions are not good."*

- *Work*

Most people stated that employment was not available to them in any of the countries they transited or applied for asylum.

- *Education*

A few people speak about going to language classes in Romania, but otherwise they do not report any access to other types of education.

- *Medical care*

People's opinions about medical care were mixed. Those who were transferred from Austria, Germany and Switzerland, described the medical care as being better in those countries.

> *"In Germany everything is covered but in Romania I had health problems, they took me to the doctor, but did not solve the problem."*
> *"In Switzerland it [medical care] was free of charge, I had a problem and I was helped. In Romania, I had a problem with my skin, they gave me something for this but it was not enough."*

Other comparisons were more favourable to Romania.

> *"In Belgium they had a clinic in the camp and if there was something they could not treat they send you to hospital; I even got surgery to my hand. In Romania the doctor is good, speaks English but the nurse/assistant is not respectful."*
> *"In Hungary, I had access to a doctor and it was ok; in Romania the doctor is very, very good."*

- *Food/clothing*

Most people seem to be more positive about the provision of food/clothing from other European countries.

> *"Switzerland: I received clothing and food; in Romania I only receive food."*
> *"Nobody provides food; we receive 50 lei every two weeks. We received some cloths last Friday."*
> *"Germany: I received 135 Euro and money every three months for clothing; in Romania, nothing."*

- *Basic services*

Most people did not answer this question, but one of the interviewees noted that: "In Austria, they ask you what you need and what problems you have. In Romania, you ask for help and nobody helps you."

- *Lawyer services*

Nine people stated that they had access to lawyers, but two of them criticised the quality of service, while five people stated that legal assistance was not provided.

With regard to the difference between the conditions in Romania and the country that transferred them to Romania, 11 people answered there is a difference mainly related to: access to legal assistance, medical care, social assistance, basic services and food/clothing provision, education, housing. There were also noted differences in access to work, social assistance and education.

Twelve people answered that the Romanian state has given them assistance with the above conditions, while two said they did not received assistance. Housing, food, clothing and medical care are the conditions interviewees say they received the most assistance for.

With regard to the impact of detention, nine people expressed having experienced negative impacts.

> *"I feel like I am getting crazy here; I wanted to speak with somebody but I couldn't; I tried to hurt myself; I wanted to speak with somebody who defends human rights and I could not do it: somebody from here told me that Arabs are like dogs."*
> *"It has mentally affected me very much. I keep thinking about the fact that I am not a criminal to be treated like this."*
> "*Here it is more difficult and I see no hope to get out of here. I talked with many people like Stefan (JRS legal counsellor) but nobody took me out of here."*
> *"I feel like my life stopped, I am dead."*

Questioned about the connections they had with Romania, 12 of the interviewees stated that they do not have a special connection to Romania, while three said that they have, due to the presence of family, availability of work opportunities and presence of compatriots.

With regard to the impact of Dublin Regulation on their families, four people said that it had an impact, while eight said it did not have. One of them confessed that his family was not even aware of his situation and of the fact that he was in detention, because he did not want to make them worry.

When asked about the plans they had prior to their current Dublin situation, eight people answered that they were "searching for safety", basically personal stability:

> *"When I was told that I will come to an open centre, I wanted to return and then later on to go back to Switzerland. I wanted to start up a new life in Switzerland and maybe later on in Canada."*
> *"I wanted to stay in Romania, have a life, get a wife here, but because I did not find anything, I left to Germany. I ran away from death in Afghanistan and wanted to have a new life."*
> *"I want to have a good life, without problems, no Taliban and be peaceful."*

Five others answered they were hoping to find work while they were trying to reunite with their families.

When asked if the Dublin Regulation disturbed their plans, the vast majority answered that it did. Of these, nine people stated 'the transfer' was the most disruptive feature about Dublin.

> *"I have health problems since I came to Europe; I can no longer follow my plan because I have to be transferred."*
> *"I cannot be peaceful in one country because of my fingerprints."*
> *"Because I was sent back here, is like my life has finished."*

With regard to the new plans they have for their life, 13 people said they have plans and some of these were: to go back to the country of origin, to continue their search for stability and safety, to reunite with family or to find work.

> *"If I would stay in Romania I would have plan for my life. If I am sent back to my country, my life is black there."*
> *"I tried to stay in Romania in freedom in order to succeed at one point to join my family. I rather return voluntary than to stay in prison."*

*"I want to go back to Pakistan, start my life and a business with cars and taxi, so that I can live. I also want to be a social worker, like the ones in Germany, and help others and tell to the boys not to come to Europe. I will have to share my time between work, social counselling and family."*

When asked if they have absconded from the authorities, seven people answered they have, while six people said they have not. Few people gave the reasons why they absconded; others felt the system was unfair, or they were simply looking out for themselves:

*"I left to a country where I believed my rights would be respected."*
*"Because they kicked me out in the street."*
*"In Bulgaria, I left and went to Greece. Life was beautiful there, but when we started to have problems (people become racist and we also could not work anymore) we left. If I find a country that is stable, I would stay there."*

The ones who did not abscond basically felt either they had no reason to, or they did not do it because they knew it to be against the law:

*"I want to respect the law."*
*"Because if they catch me it is not ok."*
*"I wanted to be correct and respect the law."*

## 7. Personal views about the Dublin Regulation

A special chapter was dedicated to people's personal views on the Dublin procedure. When asked what they think about the Dublin Regulation and its procedures, the majority of people stated that the Dublin system is "unjust", making people "unhappy" and "destroying" their lives":

*"Dublin procedure has destroyed the life of many people and made them unhappy. I talked with other people also and they told me that Dublin procedure caused them many problems. "*
*"It is very difficult. If one's gets to Belgium or Germany, the life is good, but once they are transferred, they are dead."*
*"I think that I gave my fingerprints and now I can't go anywhere now; I destroyed my life and made a big mistake."*
*"I am a human being; I am not someone to be used. I gave my fingerprints (forcibly) and hoped I will have my rights recognised."*
*"I think it is not good, it is a bad procedure. You come here, start building a life and then they just expulse you and destroy your life."*

Only four people stated that they wished they had known more about the Dublin Regulation before coming to Europe, while two said they wished they had known more about the hardships they would face.

*"I wish I knew more about human rights and about refugees."*
*"Maybe If I knew about all these complications I would not go/come to Europe."*

People were asked if they had advice for other migrants. The answers were varied, from advising those to carefully choose the EU country they go to, to stick to the rules of Dublin, and to simply better inform themselves. A few advised migrants not to come to Europe:

*"To don't go now to Europe, because it has a more difficult situation."*
*"To never come to Europe: the dogs on the street are better than refugees."*
*"Not to come to Europe! I lost 3 years of my life. For the ones who did not come here, it is better if they don't come so that they don't waste their lives here."*

The three biggest problems migrants considered they face were related to: detention, accommodation and work, fear of returning to their country of origin.

*"I am nervous; being in prison, closed; I can't stand being in prison"*
*"I am not asylum seeker at this moment, I am afraid of prison and Otopeni ; I cannot stay peaceful at home, I cannot sleep ; the winter is close and I don't have a house, money, I am afraid and I don't know what to do."*

We asked interviewees to finish the sentence, "the best solution for me would be to", to which most responded with statements under the heading of 'being free'.

*"To get out of here, receive asylum and go on with my life in the future."*
*"To get visa, get accommodation, then get a form of protection and a good life."*
*"That I get refugee, that I stay in Romania my whole life, I learn Romanian language and culture. I hope to find reconciliation and friends in Romania and to be able to help other people."*

## *DATA ANALYSIS*

From the data in Romania, a major theme emerges, one shared with the data collected from other DIASP countries: **the Dublin Regulation does little else other than to severely disrupt people's lives, rather than granting people access to asylum procedures and protection**.

The people interviewed in Romania, as those interviewed in other DIASP countries, are looking for a fundamental protection that covers all aspects of their lives. But this is particularly problematic for people who are returned to Romania and discover that their asylum procedure ended because they absconded. Upon return they are considered as irregular migrants and fall under the provision of the Aliens Law. Aside from being put into detention for removal from the territory, they can ask for toleration or submit a new asylum application in a subsequent asylum procedure.

Being allowed to live in Romania upon return with a toleration status, or while in a subsequent asylum procedure, is good in the short term. However, in the long term, they are prevented from accessing other fundamental rights: proper housing, education, access to employment and free movement, for example. Even if tolerated people have the right to work according to the law, the fact that this is just a permission to stay and the visa they get is for short periods of time (one-two months) prevents them from accessing a job. They also face difficulties in accessing housing and have no right or cases to education or medical care. Only if they are able to work legally, will they have a health insurance allowing them to receive medical care.

The ones who submit a subsequent asylum request are not considered asylum seekers if the request is not admitted at the administrative level, and if they submit appeal they will be in the same situation until the competent court issues a final decision granting access to a new asylum procedure or rejecting the appeal. Despite the fact that they can submit appeal and ask for permission to stay on the territory, they do not enjoy any other right, being in *de facto* destitution.

As for any other asylum-seeker, **people under Dublin procedure need to be informed about their legal status, procedures, rights and obligations**. Romanian asylum legislation has specific provisions related to the right to information under Dublin procedure, and in practice both authorities and NGO's have developed leaflets and offer information upon arrival or during the asylum procedure. Nevertheless, interviewees do not seem to be well informed about Dublin rules. They tended to only speak about the 'fingerprinting' element of the Dublin system, an element they have had frequent experience with because it is what got them sent back to Romania from other countries. Still, it does not seem that many other people – such as lawyers, NGOs, or administrative authorities – are providing them information about Dublin.

**Sources of information must be examined in order to ensure proper communication**. Legally speaking, the authorities are responsible for informing detainees on the reasons for their detention, their rights and obligations, their legal status and procedures to follow. This information needs to be communicated in all cases. However, several interviewees have stated that they received "information" from non-officials: community, NGOs, lawyers etc. – most probably they referred to explanations and details provided complementary to the authorised ones. Language is also to be considered in examining the complete picture.

**In order to be effective, there should be information about the legal ways of contesting administrative decisions.** As the interviewees from Romania were mainly returnees, the obligation of informing them was under the responsibility of both countries: the one where they first applied for asylum (namely Romania) and the one who transferred them, as the right to appeal against a transfer decision was effective only in the country that transfers them and was to be judged there. Information about possible outcomes and solutions upon return are also needed. Nearly half of the respondents did not seem to know much about their appeal rights and procedures. Many claimed not knowing about the discretionary clauses.

**Upon return to Romania, many of the returnees whose asylum procedure ended while they were absconding ask for asylum again in subsequent procedures**. As in these situations they are usually placed in detention as irregular migrants and do not have the same level of communication with the outside world like when they were in open centres, they tend to rely very much on the information received from other detainees. Applying for asylum again is easily made without going into details and elements required by law: a new element to be presented, proving that they were not able to present it before and supporting the application with evidence. Despite the fact that their right to apply in subsequent procedures is respected, people seem to not have much information on their asylum cases. Compared to samples from other countries, respondents here are clearly showing gaps of knowledge, which is evident by their lack of elaboration on their asylum cases or on Dublin procedures.

**Interviewees seem to think of Romania's living conditions as worse than other countries**. The differences do not seem to be large, but there is a sense that conditions across the board – medical care, housing, social services – are better elsewhere. The living conditions in Romania for asylum-seekers accommodated in open centres are difficult, especially as they must survive on a subsistence payment of 50 lei (10 euros) every two weeks.

**Few interviewees have a connection to Romania**. In the end it seems that most people would be happier in another European country. Romania seems to be a country that these people are forced to be in, rather than being there out of choice. This is a self-evident statement but it shows just how far the Dublin system breaches people's fundamental rights to movement and liberty.

**Many of those who absconded did so because they were not aware of the relevant legal provisions, and in other cases they absconded because they feel forced to**. People who absconded did so because they felt that they had no other choice. Faced with a situation of stagnation in Romania, some people decided to try their chance in another country. There is nothing inherently illegal about this. It is rather a consequence of a policy and asylum system that does not match with people's personal aspirations.

**Detention continues to negatively impact people's lives**. Detainees often felt like they cannot talk with anybody, that they do not have the information about the reasons they were transferred to Romania, the possibilities to contest this and what to do upon return so that they do not end up being sent in their countries of origin. Overall detention conditions seem to have had an important impact on the mental health of detainees and their negative self-perception, according to the findings. For most of them, these difficulties have not changed over time and life in the detention centre was considered hard.

## *CONCLUSIONS & RECOMMENDATIONS*

The data gathered for the project reveals information that is comparable with the findings of JRS Romania during the counselling sessions provided both in the centre and outside for those who experienced public custody.

As in other countries, Dublin transfers are very disruptive to people's lives. It thwarts their ambitions to work, find stability, a legal residence and refugee protection. Sadly, these interviewees, as well as most others, learn about the true nature of the European asylum system much too late: after journeys to several countries, multiple applications, repeated failed attempts to start a life for themselves. It is no wonder that people in this sample advise other migrants to forget about Europe altogether, or to carefully choose which EU country they first arrive to. It is very clear that the Dublin system does little else than complicate the lives of people rather than supporting their quest for protection.

***Policy recommendations***

Improve the provision of information

- The information provided to asylum seekers and migrants under Dublin procedures play a crucial role as they have to undergo various legal procedures and are usually in an unfamiliar country and society. The notion of information is very vast, covering official information (the obligation to have their fingerprints taken, the confidentiality and transfer of data, procedural steps and obligations to not leave the country of first entry etc.), and supportive information (NGO's, lawyers), which can play an important role in explaining the consequences of absconding and the procedural outcomes as well as the legal remedies in cases of transfer/return.

- Coming from various sources, information is filtered and assessed by each individual and sometimes misinterpreted. The complexity of legal procedures, foreign situations and compliance with deadlines should be taken into account in understanding why the findings reveal a desperate need for information.

- The lack of information as well as an improper understanding may force asylum seekers to the situation when they take the risk of crossing the border illegally, hoping to reunite with family members abroad or communities member or hoping to have a higher standard of living compared to the one offered by Romanian asylum system.

- The legal complexity of the domestic procedure and consideration of their insecure status may affect the effectiveness of exhausting all legal remedies in due manner. It should be mentioned that free legal aid is not available to all asylum seekers in the administrative procedures as of yet.

- Another issue of concern is related to respect of confidentiality: when returnees are applying for asylum in a subsequent procedure, they are considered as aliens and sometimes presented to their diplomatic missions for carrying out the removal procedure.

- Improving the system of both written and oral communication as well as empowering the actors involved in providing information should be a priority. Information provided to migrants should be done in a more protection oriented manner.

- The authorities and NGOs as well as lawyers and other service providers should better work together in providing asylum seekers and migrants with asylum and Dublin-related information, in writing and orally, in a language they can understand. This information should be repeatedly presented in all stages of the asylum procedure. Focus groups with asylum seekers should be organised by NGOs and UNHCR, in order to present them the same protection-oriented information and avoid the dissemination of distorted information.

Effective access to the asylum procedure

- Asylum seekers who had left Romania before having an interview or a final decision with regard to their asylum procedure, and are returned via Dublin procedures, should be re-admitted into the territory and continue the procedure where it was left at the moment they had left.

- To avoid situations in which people are never interviewed, neither in Romania nor in any other EU country, each individual should be interviewed and/or receive a judicial review of their decision if they received one.

- The material conditions offered by the asylum system and the need for free legal aid for asylum seekers in administrative procedures should be taken into account when assessing the reasons for why people leave the country before they receive a decision.

- Working groups on improvement of asylum related legislation should be established, with participation of all relevant actors (e.g. the authorities, NGOs, UNHCR, lawyers, judges, asylum seekers and their representatives representatives).

- Further amendments of the law should be considered by authorities to offer a guarantee and an effective access to the asylum procedure.

Alternatives to detention

- Detention should be used as a last resort for Dublin transferees who cannot be removed from the country within 24 hours; special attention must be paid to persons who have not exhausted their asylum procedure. A clear differentiation should be made between people who had effective access to an asylum procedure and people who did not, respecting for both cases the right to submit subsequent asylum applications.

- Competent authorities should establish by law a clear and specific mechanism and procedure to apply the concept of alternatives to detention. Funds should be made available so that the civil society and the state can offer basic support services, such as accommodation, to migrants in alternatives to detention.

- As an alternative to detention, people should instead receive a toleration status that permits them to stay in the territory that also entitles them to basic support services.

# DIASP national report: SWEDEN

**Author: JRS Sweden**

## *INTRODUCTION*

This national report is part of a larger project, "Assessing the Dublin Regulation's impact on asylum seeker's access to protection and identifying best practice implementation in the European Union", in short, "Dublin's impact on Asylum Seekers' Protection" (DIASP).

Some initial statistics regarding migration in Sweden, taken from the website of the Migration Board[214], will prove helpful to position Sweden in the European context. In 2012, Sweden received 43,887 asylum applications, an increase over 2011 when 29,648 asylum applications were filed. A rise was noted in applications (around 7,000) from Syria as well as in applications from other countries including Somalia, Bosnia-Herzegovina, Eritrea and Afghanistan.

In the same year, Sweden decided 36,526 asylum cases, granting status to 12,576 and rejecting 12,991**.** The remaining 4,803 absconded, withdrew their applications or did not have their application decided on other grounds.

A number of 6,156 migrants were transferred to another member state in accordance with the Dublin Regulation in 2012. Although not all this information is publicly available on the Migration Board's website, it is provided on request, as was the case with the following data: 5,981 people were given a transfer decision from Sweden while 3,684 were issued a transfer to the country. In total, 1,259 people within the Dublin process were detained during 2012. This total of Dublin cases, 9,665, combined with the number of people whose decision was made earlier but who were transferred or received in 2012, means that more than 10,000 people were in the Dublin process in Sweden in this year. Hence, out of the total number of asylum seekers in Sweden in 2012, around 25% where in the Dublin process.

During an interview with the Dublin Unit (16 May 2012), the officials interviewed maintained that approximately 90% off all asylum seekers arrived to Sweden without documents and 25% were established as Dublin cases. However, we spoke to personnel at the Dublin Unit who believe that as much as 80% of the asylum seekers in Sweden were Dublin cases, that is arriving from another EU member state.

*Method*

JRS Europe gave methodological guidelines for the implementation of the project. At the core of the project lie the interviews with migrants within the Dublin process: 28 were interviewed by JRS personnel and volunteers in the summer of 2012.

The initial plan was to interview 30-40 migrants. This proved to be difficult mainly due to issues with timing. Many of the transferees approached for an interview were transferred before the interview could take place. Since the interviews were performed under a tight time schedule, and at times depended on volunteers translating, we could not always find new interviewees within the set time schedules. However the interviews were conducted in different places, and with migrants who had been in contact with various reception offices, detention centres and migration offices. Thus the narratives revealing common traits are not merely anecdotal and unique personal stories, but rather findings that allow for general conclusions about practices.

In order to establish both good and improvable practices in the implementation of the Dublin Regulation in Sweden, three elements have been taken in to consideration. The first is Swedish law. The second is a set of interviews: an interview with the Dublin Unit of the Swedish Migration Board (*Migrationsverket*) and interviews with two NGOs, namely the Red Cross and the Swedish Refugee Advice Centre (*Rådgivningsbyrån*). The replies given in the Dublin Unit interview were contrasted with those given in the NGO interviews. The third element is the UNHCR 2011 report. Finally we have the data findings from the interviews with 28 asylum seekers within the Dublin process either as transferees or returnees.

[214] All statistics from the Migration Board, www.migrationsverket.se/info/5646.html

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## *MEMBER STATE PRACTICES*

The framework of the implementation of the Dublin Regulation in Sweden consists primarily of laws, courts and the Migration Board.

The Swedish Migration Board is a governmental body, which answers to the parliament and government. Its mandate with regard to the Dublin Regulation is to receive, examine and decide upon asylum applications. Consequently, this also means that it should determine, in accordance with the Dublin Regulation, whether an asylum seeker should be transferred to another member state or received from another member state.

Furthermore, the Migration Board administers legal aid, interpreters and housing for migrants while in the Dublin process or asylum process (organized and executed by the municipalities). The Migration Board decides upon detention and communicates transfer decisions (www.migrationsverket.se/info/200_en.html).

Appeals within Sweden about transfer decisions, for example, are made to migration courts and the Migration Court of Appeal (MiÖD, *Migrationsöverdomstolen*). The Migration Court of Appeal also rules how international, European and Swedish law shall be interpreted with regard to migration issues.

Besides international and European law, there are Swedish laws with direct relevance for migrants within the Dublin process in Sweden. They regulate, for example, when a person shall be detained, as well as reception conditions, material and medical support for asylum seekers. Swedish laws with direct relevance for the Migration Board's decisions with regard to migrants within the Dublin system are the Aliens Act (2005:716), the Reception of Asylum Seekers and Others Act (1994:137) and the Ordinance on State Compensation for Refugees and Others (1990:927).

The interview with the Dublin Unit took place on 16 May at the Swedish Migration Board. The interviews with the two NGOs took place at their respective offices, the Swedish Refugee Advice centre on 5 June 2012, and the Red Cross on 14 June 2012. The two NGOs were given the same set of questions as the Dublin Unit. However, the Dublin Unit was also given the opportunity to read my transcripts of the interview, to make comments and suggestions for corrections to the text.

The themes selected for the interviews aim to establish the extent of fundamental rights enjoyed by asylum seekers during the Dublin process. The purpose of comparing the results of the Dublin Unit and NGO interviews is to establish a second opinion, to give another point of view.

### 1. Provision of information and linguistic assistance

Asylum seekers receive information about the asylum procedure, migrant rights and the Dublin Regulation when they apply for asylum and when they are interviewed. One interview with the applicant is directly connected to the registration of his asylum application. If his asylum application is to be examined in Sweden another interview is scheduled.

According to the Dublin Unit, written information is provided in 12 different languages when the person applies for asylum. If the migrant does not understand any of those languages, he will be informed during the initial interview, where an interpreter is always present. The interpreter informs the migrant in his own language and checks whether the migrant has

understood the information. Information is also provided on the Migration Board's home page (http://www.migrationsverket.se/info/444.html).

If it can be established (on the basis of the EURODAC or VIS search, travel documents, visa etc.) that another member state is responsible for examining the asylum application, a second set of information is given, written and verbally, and the person can give his own view of the process and regarding possible transfers.

Information is given in the language the person wants/needs although information regarding the transfer decision is given in Swedish (due to formal legal reasons) but translated for the migrant.

Interpreters are provided and paid by the Swedish Migration Board, that is, the state. They are not employees of the Migration Board; often they are self-employed or employed by companies providing translation on contract for the board.

The Red Cross and Swedish Refugee Advice Centre said their impression is that the Migration Board provides information in a formally correct manner. Nonetheless, most migrants that the two NGOs come in contact with said they had not understood the information provided to them. The person I interviewed at the Red Cross said this was the case with approximately 70% of the migrants they met.

According to the Swedish Refugee Advice Centre, "the Dublin Unit informs but does not make sure that the information has 'landed' or been understood. It is a classic case of information provided on the terms of the informer. The migrants' ability to receive the information is not taken into account, they often arrive with strong views on what the regulations are, and are not able to understand that if they apply in Sweden they cannot move on to another country."

The Red Cross agrees with this and adds that in the forms provided, the communication of information is checked by boxes to be ticked, which is too formal and does not take into account whether migrants really have understood the information or not. "The communication of the information goes fast and the migrants often feel pressure to answer affirmatively, saying 'yes' when asked if they have understood. In other cases they feel that at the time of the interview, they might have understood."

Translation seems to be an issue too. According to the NGOs and JRS' own experience, migrants too often complain: "I did not understand the information given to me since I did not understand the interpreter."

Firstly, the interpreters' quality and training seem to differ. Not all the interpreters, or the institutes they work for, are approved by the Legal, Financial and Administrative Services Agency (*Kammarkollegiet*). This means that interpreters might not be trained in how to approach an interview situation, in legal terminology, in how to behave in dialogue with vulnerable and traumatized migrants. Secondly, their language skills might be wanting: their command of Swedish might not be up to standard and they might speak the "wrong" dialect of, for example, Arabic, which makes it difficult for the migrant to understand.[215]

The Migration Board seems to be aware that there is room for improvement in this area. The Migration Board's website has news about a newly initiated research project, with support from the European Refugee Fund, which aims to look into the above points of criticism. The project is called "Understand me correctly – improving the quality of meetings with the asylum seeker" *Tolka mig rätt – att öka kvaliteten i mötet med den sökande* (1 January 2012 to 30 June 2014). It remains to be seen what the result will be and how it will be implemented.

### 2. Legal assistance and quality

The Migration Board does not provide legal assistance for migrants within the Dublin process. The Migration Court of Appeal has ruled that the Dublin process is formal in the sense that its purpose is to decide, on purely formal grounds, in

[215] This information is based on the interviews and unanimous information given by the two NGOs, JRS Sweden's own experience and the UNHCR report, Liv Feijen and Emelia Frennmark, *Kvalitet i Svensk asylprövning, En studie av Migrationsverkets utredning av och beslut om internationellt skydd*, UNHCR och Migrationsverket 2011, pages 117-126.

which country an asylum application is to be tried. This entails establishing on the basis of the EURODAC or VIS search, travel documents, visa etc. whether a person has applied for asylum in another country.

This means that no discretionary decisions are to be taken and hence no legal assistance is needed during the process in Sweden. Legal assistance is only needed in the country where the asylum process is to take place. MiÖD has ruled, though, that legal assistance shall be provided (paid for by the Migration Board) to those who are in detention and for special reasons, such as vulnerability, minors etc.

Nonetheless, the migrant has the right to legal assistance during the Dublin process, to have a lawyer present during the interview, or in order to challenge the decision. Migrants within the Dublin process normally receive help with legal aid from NGOs.

The competence of the legal assistance provided by the Migration Board is secured through documented experience and knowledge of the legal system regarding the Dublin Regulation and migration.

**3. Transparency of the Dublin process and practices**

The guidelines and rulings by MiÖD and the guidelines, statistics and praxis of the Migration Board are provided at their respective websites. Data, statistics and numbers are publicly accessible on the website of the Migration Board and, if not found there, by contacting the Dublin Unit.

**4. Use of discretionary clauses (articles 3 and 15 of the Regulation)**

According to a ruling of the Migration Court of Appeal (e.g. MIG 2007:8), articles 3 and 15 are seldom used in Sweden. The reasons are that MiÖD apparently sees a risk of undermining or counteracting the purpose of the Regulation if the discretionary clauses are applied for other than special reasons.[216]

Article 15 is almost never applied. The implementation of this article depends on the reciprocity of two family members in different member states who wish to stay together and for this and similar reasons is almost never applied, according to the Dublin Unit. However the unit did not elaborate if this meant that Sweden is rarely contacted by another member state or vice-versa, or if people in Sweden apply for application of the article.

Article 3:2 is used more often, for medical reasons, family reasons or when Greece is deemed to be the first country. Sweden follows other member states in this and maintains that it cannot use a practice different from other member states.

Asylum seekers may argue for the use of the discretionary clauses but there are no statistics available on how often they are applied for or implemented. The two NGOs voiced a sharp criticism of Sweden's stance in this and claimed the clauses are almost never used. The Red Cross has successfully argued for the use of article 3:2 for a small number of cases of minors the last few years.

**5. Use of appeals; judicial remedies**

Migrants can challenge their transfer before a court within three weeks after the decision has been given. The challenge has no suspensive effect though. The reason is that the Dublin process is interpreted as a formal and not material process of deciding which country bears the responsibility for the asylum process. So even if the decision is challenged, it will be implemented. This was noted in the interview with the Red Cross. The person interviewed said that in some cases women coming from Africa were abused in Hungary. They came to Sweden where they were identified as Dublin cases and transferred back to Hungary, although an appeal was made on humanitarian grounds. "Back in Hungary they crashed into the abusive contexts again."

[216] "För att inte syftet med Dublinkonventionen skall motverkas är det av avgörande betydelse att det föreligger särskilda skäl för undantag från konventionens ansvarighetsregler", MIG 2007:8.

All statistics and judicial remedies are available on the website or via direct contact with the Dublin Unit.

## 6. Reception conditions

The same conditions apply to all asylum seekers in Sweden and Dublin cases are not offered different conditions from those within the asylum process. They are offered accommodation, a daily allowance and healthcare. These conditions are seen to be far above the minimum standards set in the EU Reception Conditions Directive.

Vulnerable persons and those with special needs are adequately looked after: the Migration Board pays the municipalities, which provide housing for migrants in need of protection, medical care or other special needs. This also goes for the care of unaccompanied minors.

The two NGOs agree on this and consider the reception conditions to be “pretty good”.

## 7. Asylum procedures

Asylum seekers in the Dublin procedure are treated in a formal process that does not take into account their reasons for seeking asylum.

Only migrants who have been in detention for three days or more have the right to the legal aid provided by the Migration Board, including the right to challenge their transfer.

Similarities between the asylum and Dublin processes are to be found in the reception conditions offered and the right to translation. The Swedish “*Utlänningslagen*” (Aliens Act) has been adjusted to be in line with EU law. For the most part the Swedish Aliens Act exceeds the minimum demands of, for example, the Asylum Procedures Directive.

## 8. Detention

As per the Aliens Act, migrants are not automatically detained and have the right to live with family or friends if they have the possibility to do so, otherwise the Migration Board provides for housing. Their living costs are covered by the Migration Board and they remain under supervision throughout the process.

Detention is ordered for two weeks at a time, with the possibility of prolonging for a further two weeks. Normally the Dublin process takes six to eight weeks and the transfer is to be implemented within two months of the decision. In total 1259 people within the Dublin process (1076 awaiting transfer and 183 returnees from other member states) were put in detention during 2012.

The two NGOs agree that migrants are detained only after a court decision has been taken and as an exception (incoming 6% and outgoing 15%, according to official statistics of the Migration Board, May 2012).

## 9. Implementation

Normally the transfer is carried out without the use of force and with the compliance of the migrant. Once the decision is communicated to the migrant, the transfer is planned together with him. The migrant is normally escorted by personnel from the Migration Board and handed over to the police for his departure. The escort accompanies the returnee to the first country only in very rare cases.

Physical force is not usually used and then only when it is deemed necessary because the migrant is violent or deemed to be dangerous to himself and others.

## *DATA FINDINGS*

### 1. Basic information

The Swedish Migration Board provided JRS with 40 contacts; however only 12 were interviewed. The rest either did not turn up for the interview or had already been transferred before the date set for the interview. Hence contact was established with 16 other migrants through the networks of the St Eugenia Catholic parish in Stockholm and of JRS and other NGOs. Twenty-eight people within the Dublin process were interviewed. The interviews took place at the reception centre in Flen and Märsta, at St Eugenia parish in the centre of Stockholm as well as in the detention centres of Märsta and Stockholm.

Twenty-three of the interviewees were awaiting transfer from Sweden to another member state. The same number was male. This may be compared to the overall statistics of 2012 for Sweden, where 63% of 43,887 asylum applicants were men. Half of the interviewees said they were single, while one-third said they were married and the rest were widowed or divorced. It seems only five had family with them while 12 people said they had family members living somewhere in the EU. However it was not easy to interpret the responses in this area.

The interviewees' countries of origin correspond roughly with the overall statistics from the Migration Board: one-third of the interviewees came from east Africa (Somalia, Eritrea), around a quarter came from the east (Iraq, Syria, Afghanistan), around one-tenth came from North Africa (Egypt) while the rest came from central and west Africa, south Asia, eastern Europe.

Nearly all the interviewees claimed they could speak more than one language, which was important when it came to their ability to receive information and communicate their asylum case. Most maintained that they could speak at least some English and several said they could also speak some Arabic.

Compared to the overall statistics for Sweden, more people were awaiting transfer to another member state than returning to Sweden. Nine people were awaiting a transfer decision; 13 people had received a transfer order and were waiting for it to be implemented. Only *one* person was challenging a transfer decision.

There were only five returnees: one was an asylum seeker in the procedure; four said they were refused asylum seekers.

The average time spent in the Dublin procedure by the interviewed transferees was 1.45 months. On average, returnees had been in their particular status for about 14 months at the time of the DIASP interview.

### 2. Personal stories

When asked about their personal story, for example, the narrative of their journey in Europe, people frequently focused on the number of countries they had travelled through and made asylum applications in, and how they had repeatedly been sent back to the country of entry, only to try to leave and make renewed applications in yet another country.

The story of a middle-aged single mother from the Democratic Republic of Congo reflects not only how families trying to enter Europe can be separated, but also how the system at times hinders and complicates family reunification, putting families in extremely vulnerable situations:

> "*It is all complicated. I came via Spain to Sweden; my children came directly to France. I want my children to come here, but migration says I have to go to Spain and then I can maybe go to France. It seems to be complicated to be reunited with my children. Three countries involved, complicated!"*

A Somali woman in her mid-20s told the story of her journey through several countries. Being a single Muslim woman in a context she experienced as xenophobic, she felt exposed and tried to reach Sweden, where she could live with her compatriots: "*I came to Austria in 2010 where I asked for asylum. It was rejected. I was really disappointed. I tried to get asylum and then they said no. Austria threatened to deport me therefore I went to Hungary, a very bad experience. People were very unfriendly and the state did not take care of me. Both in Hungary and Austria I felt uncomfortable. I am dressed*

*like a Muslim woman but that creates suspicion with people. Hungary wanted to send me back to Austria. Through a Somali network I managed to organise a trip to Sweden. The Swedish migration quickly realised that I was a person who had been to other EU countries. They check my data and fingerprints too. Now I stay with some people here in Flen. It is OK but what can I do?*"

A middle-aged man spoke of several repeated attempts to seek asylum in Finland and Sweden. "*I have over the last years several times taken myself to Finland to ask for asylum, from Ukraine, from Russia, from Belarus via Lithuania. Whenever Finland wanted to deport me, I went to Sweden. Three times I was deported from Sweden to Finland because they found my fingerprints. Tomorrow is the fourth time. They will put me on a boat from Stockholm to Finland. It is really difficult for me. Finnish authorities tried to deport me to Russia, to Belarus, to Ukraine. But none of these countries wants me. I only have old Soviet passport*."

A young man from Gambia spoke of his two-year-long journey throughout Europe. "*Since 2010, I have been to Italy, Germany, Belgium, Sweden, Norway etc. I have travelled around a lot.*"

## 3. Information about the Dublin system

The provision of information about the asylum process is a key element in the safeguarding of asylum seekers' legal rights in accordance with international, European and Swedish law. However, merely providing information does not necessarily imply this will happen. The informant can formally follow policies and regulations to the letter but the person receiving the information may still not understand it correctly. The informant might have failed to check that the information has been received and understood correctly. Even if the recipient replies in the affirmative when asked whether he has understood, this does not necessarily mean that he has really done so.

The results from the interviews with the Dublin Unit and the two NGOs confirm this discrepancy (as presented in section 2 above) and the answers of the 28 interviewees regarding their subjective experience of the provision of information follow the same trend. Information might have been given but generally does not seem to have been understood in a satisfactory manner.

When we tried to assess how well the interviewees had understood the Dublin System, the majority, 19 people, claimed that they had a rudimentary understanding of the system. Two people claimed that they knew nothing about the Dublin Regulation and only one person claimed to have "advanced" knowledge, meaning that he knew two or more things about Dublin. This person said he had been looking up information on the internet and had not only relied on the information given to him by others.

The most common 'definitions' given would be:

- "*A system which determines where to ask for asylum in Europe. Only one country*."
- "*The Dublin regulation organises where to ask for asylum*."
- "*I can only ask asylum in one country of the EU. I have been to Italy, so I have to go back there*."

Personnel from the Migration Board (administrative staff and detention centre staff) seemed to be the primary sources of information. All the interviewees had heard about the Dublin Regulation from them. In addition, a third said they had heard about the Regulation from NGOs while nearly one-fifth cited lawyers as their source of information; another fifth cited spiritual advisors.

Fourteen of the interviewees said the information was given to them verbally, three said they were informed in writing and 11 said they were informed both verbally and in writing. These numbers are somewhat surprising given the fact that the Migration Board claims (see section 2 above) to be giving the information in written form in 12 different languages together with oral information.

The vast majority said they were given Dublin information "early enough". These people were informed about Dublin prior to receiving a transfer decision, for example, during the first interview with the Dublin Unit. Three-quarters said they understood the information, which seemingly contradicts the impression of the Red Cross. Most understood the

information because it was relayed to them in their own language or in a language they knew, or because interpreters were present.

For those who didn't understand the Dublin information, they said it wasn't given to them in a language they understood, or the information was too complicated.

More than two-thirds maintained that the Swedish state gave them information when they asked for it and most said it was helpful.

## 4. Appeals

Having information about how to appeal a decision is a vital component of any legal process if the individual's right is to be respected. However our interviewees showed a remarkably low degree of knowledge about how to appeal a Dublin decision. Almost three-fifths (57.1%) claimed no one had informed them about how to appeal their Dublin decision. Obviously this does not necessarily mean that the information was not provided. It merely suggests that the migrant for some reason had not heard, understood or taken in the information and that the people giving the information had not made sure it was received and understood.

Nonetheless, three-fourths of those who had been informed about how to appeal said the information had been provided by the administrative staff; half cited NGOs as their source of information, one-third lawyers and five a spiritual advisor.

Twelve interviewees said they tried to appeal their transfer but it seems that most were either unsuccessful or were still waiting for a decision. Four people said they didn't have a lawyer to assist them. The number of those who filed an appeal – less than half the sample – tallies with the number of those who had been given and understood the information about how to appeal. The impression of JRS is also that although people said they understood the Dublin system, they did not know how to appeal or what to do.

Eight of the interviewees had contact with a lawyer – a state lawyer who they felt took good care of their case – whereas 20 claimed that they hadn't met one. That most interviewees did not have a lawyer is likely the result of Sweden's stance on not providing legal assistance to people within the Dublin process.

Since most of those who had a lawyer had one provided by the Migration Board, this means either that the lawyers must have taken the cases on a voluntary basis or that the migrants themselves paid them after that they were identified as Dublin cases.

Another discomforting result of the interviews was that 20 people said they didn't know about the discretionary clauses. The eight interviewees who had heard of them had been informed mostly by NGOs and lawyers. The Migration Board staff members do not seem to talk about the clauses when they give information about the Dublin Regulation. Those who did know about the clauses felt they had been informed '"early enough", that is before any decisions were taken on their Dublin case.

## 5. Knowledge about asylum case

Also significant for migrants and the respect of their rights is the level of understanding they have of their asylum case. The five returnees seemed to feel they understood their case. All said, "I think I fully understand my asylum case." For obvious reasons, however, it was difficult to establish what they understood and how well they really understood it.

The transferees were given a slightly different set of questions regarding their future after the transfer. About four-tenths seemed to have no plans for the future. Just over one-third spoke of finding work, shelter or education. A few said they would return to Sweden and only two said they would apply for asylum in the country they were transferred to.

The people who said they had "no plan" seemed to be too shocked or at a loss to know what to do. A 24-year-old single woman said: "*I honestly do not know. My relatives live here. I have no one in Italy.*" And a 46-year-old man: "*I am rather*

*shocked right now, I have to leave Sweden tomorrow. I do not know!*" A 22-year-old single woman echoed the uncertainty: "*I do not know. I am so scared!*"

Fourteen of the transferees said they knew how to apply for asylum in the country they were being transferred to. They had received their information mostly from NGOs, both verbally and in writing.

## 6. Personal well being

The reception conditions met with no complaints from the two NGOs. Neither did it seem to be an issue for the migrants interviewed.

Around half of the people interviewed said housing was provided by the state. Of the other half, a few were in detention while the others said they were living with friends. This fits with Sweden's policy that while the state provides accommodation, people are free to find their own with friends or family.

Most people said work and education were not provided. Asylum seekers do have the right to work but for people in the Dublin process it might be that they had not been in Sweden long enough to find a job. Most people said education was not provided although five said it was, usually because their children were going to school.

When asked about medical care, food, clothing and basic services, the interviewees were content and maintained that they had been given money for food, clothing and basic services.

Seven people had been in detention and all but one were detained in Sweden while awaiting a transfer. All felt that their time in detention made them depressed, sick and scared, and broke them down:

- "*I feel broken down and restricted in my freedom. Let me get out of here to decide my own life!"*
- "*I am depressed*."
- "*It is frustrating! And boring! I feel depressed. However, in my situation detention might even be better than living in a flat. I have food, clothing, everything.*"
- "*I feel broken down. I have my belongings in a flat in Stockholm. I could not fetch them. Who is going to take care of them?*"
- "*I am locked in*."
- "*I feel broken and sick, I am scared of my future. In detention I feel restricted, I cannot do much here*."
- "*I am just confused, I feel bad, have sleepless nights.*"

One crucial question is how the Dublin Regulation impact migrants' families. For obvious reasons worries about the welfare of loved ones have a major bearing on people's decisions, on their psychological wellbeing and on their ability to work, to integrate and deal with their own situation. Half of the group claimed that the Dublin Regulation had impacted their families. Four of those said the Regulation had split up their families and three said it had prevented them from caring for their families.

- *"My family lives in poverty, in Somalia there is conflict, in Kenya in a refugee camp, it is very miserable*."
- *"My family in Africa is dependent on my money. I want to send money to Africa but now, having been shipped around, I cannot do this, I have been prevented from working and earning money*."
- *'My wife and children live in Norway, I am in Sweden, we all have to go back to Italy where we, since 2008, only stayed very briefly. We are shipped around like packages."*
- *"My family in Somalia has been affected. They hoped I could get asylum in Europe and quickly a job in order to support them. My mother often phones me, she cries. All this has been a failure, I am a failure."*

We asked the migrants about their plans prior to their current Dublin situation. The majority expressed a wish to live in safety and lead a normal peaceful life with their families. The 27-year-old Somali woman, cited above, gave a representative and telling answer: "*I just wanted to come to Europe to live a good life, independently of the country. But no country wants me it seems."*

All respondents claimed that the Dublin Regulation had disrupted their plans and hindered their freedom to live their lives. A recurrent theme in their answers was that they felt they were wasting their lives and losing time.

- *"I have to go to Italy. Also, I feel that all this Dublin issue makes me lose a lot of time.*"
- *"I lost a lot of time in going to Germany, really a waste!*"
- *"Italy is no good! It is just bad! There is no hope and no services there!*"

**7. Personal views about the Dublin Regulation**

Not surprisingly everyone who answered this question (six people did not) felt that the Dublin Regulation was unfair, unjust or just simply not good.

A middle-aged Syrian man with a background as an engineer in the petrochemical industry wanted to make use of his qualifications and working experience in the oil industry of Norway. He expressed his frustration: "*I think it is not useful. Myself for example, I have fled from Syria, but I am a qualified professional. I can be of great use in the oil industry. A shame that Dublin makes it so complicated."*

A woman separated from her children said: "*It just creates chaos. Look how I live, my children, far away in France.*" A detained man in his thirties from Iraq added: "*It is a useless system, Europe is a fortress*."

The last example is telling when it comes to the impact of the Dublin Regulation on individuals. A man in his mid-twenties from Somalia applied for asylum in Italy and travelled throughout the country in an attempt to earn a living. He found the situation unendurable and felt that his asylum application would be declined. Through family and friends he managed to travel to Sweden from where he planned to go to his relatives in Norway, only to be identified through his fingerprints. "*It is just bad. I do not understand: Sweden is not Italy. Italy is not Norway. Why can I not ask asylum in each of these countries?*" Despite his experience and newly acquired knowledge of the Dublin Regulation, the young man's plan after being returned to Italy is to get back to Sweden or Norway as soon as possible.

Most people complained of not knowing about the Dublin Regulation before entering Europe. Some said that had they known, they would have gone directly to the country they wished to stay in. Others said they were misinformed by, for example, visa agencies. Most people just wanted to get on with their lives, get an education, earn money and raise a family.

## *DATA ANALYSIS*

**A) Good practices**

The migrants we interviewed did not seem to have any particular issues with Sweden and the way they were treated and received or how Sweden implemented the Dublin Regulation. Furthermore, when they compared Sweden to other countries, Sweden ranked high as a "good place" to seek asylum and start a new life. Some of the people in detention in Märsta were not satisfied with their conditions but that seems to be the only negative response about the situation in Sweden. This matches the statements about Sweden's reception conditions made by the two NGOs referred to earlier.

Other than the general negativity that comes with being detained, it is difficult to pinpoint detainees' concerns. It seems some people were discontented with the food, healthcare and the quality of legal assistance provided. However, we cannot from the interviews find a particular practice that would single out Märsta from other detention centres.

The main problems respondents faced seemed to stem from the Dublin Regulation itself and not the way Sweden implements it. The transfer process in and of itself seemed to be the biggest disrupting factor for people.

So we can conclude that the reception conditions were felt to be good. More specifically, it is reasonable to assume that this positive valuation derives from the fact that detention in Sweden is an exception; people are given money, healthcare and housing if needed**.**

If we stay with the interviewees' own experiences, the transfer process and the whole system was seen as disrupting. This general dissatisfaction stemmed from their first-hand experience of the implementation of the Regulation in Sweden. All this says something but not everything about whether Sweden safeguards migrant rights in its implementation of the Dublin system.

For example, if someone does not know his fundamental rights relating to a particular issue of the Dublin Regulation, then he will have difficulties with being specific about the reason for his frustration. Consequently, it becomes easier to maintain that "it is a stupid system" than to claim that "I should have been informed about my right to appeal within 21 days".

Although in many ways migrants appear to experience Sweden as a good country, it does not follow that Sweden safeguards their fundamental rights in all areas in its implementation of the Dublin Regulation. Below we will look into some areas where this was not the case, drawing upon the interviews. But first we will comment upon the question of "asylum shopping".

**B) "Asylum shopping"**

One central issue addressed by the introduction of the Dublin Regulation was so-called "asylum shopping". Already in the introduction of this national report, the issue came up as personnel from the Dublin Unit claimed that 80% of asylum seekers in Sweden most likely were "Dublin cases". This is impossible to verify. Nonetheless, it is an important statement because it implies that personnel at the Dublin Unit think the efficiency of the system is rather low.

That people are still "asylum shopping" was evident from our interviews with the migrants. The majority told us of travels throughout Europe with repeated asylum applications in more than one country. Some told us explicitly that the first thing they will do after the transfer is to leave and try again.

This also says something about the risks migrants are willing to take, not only in their journey to Europe, but also in travelling throughout Europe to settle wherever they desire to. A young Somali man (not part of our data) told about his constant anxiety after having arrived to Sweden from Italy, already having applied for asylum in the Netherlands and in Germany. Finally he tried in Sweden. Although he was 22, he claimed to be 13 years old, which meant that Sweden did not take his fingerprints and he was given asylum. He is now 25 and pretends to be 16, going to school with 16-year-old children, always worried that his fingerprints will somehow turn up, afraid to get a passport and afraid that the Migration Board will somehow find out and send him back to Italy.[217]

There is a question that comes to mind when hearing that a migrant plans to immediately leave the country he is to be transferred to: has this person understood the information about how the Dublin Regulation works? But on the other hand, he has first-hand knowledge about the Regulation and how it works. From our interviews we know that if there was one thing people understood, it was, "asylum application in only one country!"

So, why try again and again? It seems from the interviews that people are filled with the desire to live good lives, safe lives, lives where they hope for personal development, to study, work, contribute and raise children. People feel this is their right, just as it is their right to move and live in freedom. They seem to be prepared to risk a lot for this freedom.

From the interviews and the way people expressed themselves, it looks as if they felt that they have the right to live their lives in accordance with their own values, desires and hopes. Their frustration is that the Dublin Regulation hinders them.

It is not a farfetched idea that the migrants seem more liberal and adherent to the Universal Declaration of Human Rights than the member states of the European Union and the European Parliament. When it comes to fundamental human rights, the Dublin Regulation itself is the problem.

[217] Cf. Abdukar Albadri, "Migration mot alla odds", in: Benny Carlsson and Abdi-Noor Mohamed red, *Somalier i Sverige, mellan hopp och förtvivlan.* Fores, 2013, 52-77, 61f. This case of double identity is seen as a rather common feature with all the problems connected to this, cf. ibid., page 71f.

**C) Discretionary clauses, articles 3 and 15**

As mentioned above in section 2, Sweden is restrictive with its use of the discretionary clauses. The Red Cross reported that they recently (2012) had managed to argue for a few unaccompanied minors to stay in accordance with the two clauses. Sweden sees the Dublin process merely as a formal one of identifying whether or not someone has been registered as an asylum seeker in another country. In this interpretation there is little room for a judicial process with discretionary leeway to decide where an asylum application should be tried. The only grounds are fingerprints, visas and other hard evidence. The discretionary clauses pave the way precisely for this possibility, which arguably is their very purpose.

We have not found any reason for Sweden's restrictiveness other than the one given above, namely that Sweden does not want to "risk undermining or counteracting the purpose of the Regulation if the discretionary clauses are applied for other than special reasons".[218] Now, as we saw above in section 3, there were several cases where the discretionary clauses might have been applied. One such case is the woman from Kinshasa whose children were in France, while she was being transferred back to Spain. It remains a question why article 15 was not implemented in her case.

Likewise, in recent years, Swedish media reported quite a number of cases where minors were transferred to Italy and a couple of families were separated while being transferred from Sweden. No one ever mentioned the possibility of using the discretionary clauses in these cases. Furthermore, the Swedish government, together with a political party in the opposition, agreed in April 2013 to propose a reformulation of the wording in the Aliens Act so that unaccompanied minors will be able to get asylum more easily. But it was expressly stated that this would not include unaccompanied minors who arrive from another member state. This media criticized the latter stand without however making reference to the discretionary clauses, whose application would have resolved the problem.

The logic of restricting the use of the clauses on the grounds of not wanting to undermine the system is flawed. The discretionary clauses are part of the Regulation so using them more generously cannot undermine the system; it is simply a manner of following the articles in the Regulation. Neither are there other international, European or Swedish laws that support or lead to MiÖDs interpretation – quite the opposite.

Now, it is the duty of the MiÖD to rule upon how Sweden shall implement articles 3 and 15. Its guidelines for ruling are judicial, not political. Upon reflecting why it does not apply the clauses we can only speculate but three possible reasons. Firstly, Sweden's relationship with other member states could be negatively influenced if Sweden disapproved of their practices and reception conditions. Secondly, it may be to keep migrant numbers low. Thirdly, Sweden might think that if it uses the discretionary clauses, this will undermine the intention of the Dublin Regulation, namely striving for a common system of receiving migrants in the EU. But actually, rather than undermining the system, their use may in fact highlight the flaws in reception conditions in other countries, so that the process towards an equal EU migration system can actually be furthered.

Whatever the reason is, in effect, it means that Sweden will continue to send people back to other member states, however bad and inhuman the reception conditions might be there. Sweden will only stop transferring people back if other countries stop too and if the European Court of Human Rights rules that people should not be transferred to a particular country. This was the case with Greece.

For this reason, we would rather strongly argue that Sweden's interpretation of the discretionary clauses runs counter to migrants' fundamental rights, and that carries severe and damaging consequences for migrants' experiences in Europe.

Several other problems stem from this, for example, that migrants in the Dublin system do not have the right to legal assistance from the state because the process is considered as formal.

**D) Provision of information**

Here we encounter another area where fundamental human rights are potentially violated. None of the people we interviewed had heard of the discretionary clauses from staff at the Migration Board. This is alarming. There is a simple

[218] "För att inte syftet med Dublinkonventionen skall motverkas är det av avgörande betydelse att det föreligger särskilda skäl för undantag från konventionens ansvarighetsregler", MIG 2007:8.

principle here: that people are informed about the Regulation and how it works must be considered as fundamental to safeguarding their rights and their ability to claim their rights. That is pretty straightforward and self-evident.

If migrants also have the right to apply for a clause in the Regulation that might help them, does the person providing the information violate their rights if he neglects to tell them about the clause? If it is a general practice among staff of the Migration Board not to inform about the discretionary clauses, this would be a violation of migrants' fundamental rights.

Likewise, a disturbingly low number of our interviewees had heard about their right to appeal their transfer. Only 12 had heard about this possibility, and only nine of the 12 had heard from the staff at the Migration Board. Not informing migrants about their right to appeal is a direct violation of their fundamental rights, just as not letting them know about the discretionary clauses is.

The two NGOs complained about the summary manner of providing information and checking that it had been understood. In the same way, the people we interviewed showed evidence of not having understood, although they felt that they had understood. Understanding means more than merely grasping the fact that one is being sent back to Italy. It is also a matter of understanding what my rights are, for example the right to appeal, and the possibility to apply for the use of the discretionary clauses.

Not to ensure that information imparted has been properly and fully understood is to fulfil one's obligation in a rather incomplete way.

However we must take into account the possible scenario that people were informed about the discretionary clauses and the right to appeal but did not understand what they heard and so could not report that they had been informed. This however would not alter the fact that they were unaware of these two vital sets of information. Not delivering information in such a manner that people can understand and can claim to have received it, amounts to neglect of one's duty to inform. It also amounts to a violation of the migrants' fundamental rights since it reduces their chances to claim these rights.

This is another area where the two NGOs and the UNHCR report confirm our findings. Both sources maintain that this is a general problem: people do not understand the interpreters either because they speak the wrong dialect, are not competent enough or do not know how to explain the information well enough.[219]

One important aspect is the fact that 20 of our interviewees claimed they did not meet with a lawyer. JRS' experience is that when people do have contact with a lawyer, it increases their chances of appealing a transfer and learning about the discretionary clauses.

In conclusion, there seems to be a strong connection between how information is provided and secured as understood, what information is given, and the presence of legal assistance in the information process.

The real problem, though, from which other violations of migrant rights derive, is Sweden's interpretation of the discretionary clauses. Under the current interpretation, the presence of a lawyer is not needed; information about the clauses might be seen as superfluous; the right to appeal is only formal, since the appeal has no suspensive effect. Indeed why should any of these be necessary if Dublin is simply a question of proving that someone's fingerprints were taken in Italy?

## *CONCLUSIONS & RECOMMENDATIONS*

As mentioned in the previous section, migrants seem to be pleased with Sweden and try to travel here because of the country's reputation as a good place to apply for asylum. However, there are also areas in Swedish practice that must be considered as a violation of migrants' fundamental rights.

The aim of the last section is to make proposals for improvements in Swedish practice and to propose legislative changes in the implementation of the Dublin Regulation at the national level.

[219] UNHCR (2011) pages 117-124.

*Recommendations*

Sweden's stance regarding the discretionary clauses is the potentially most severe violation of migrant rights. It means that Sweden might continue to transfer people back into a situation where their fundamental rights are severely violated, as was the case with Greece.

We recommend:

a) A more generous application of the discretionary clauses;

b) That the Migration Court of Appeal reformulate its ruling with regard to the application of discretionary clauses. And if it applies a ruling without judicial foundations, its reasons should be transparent. Anything else undermines the judicial security of the process;

Subsequently, Sweden needs to look into the ruling of the provision of legal assistance by the Migration Board. If the Migration Court of Appeal changes its ruling regarding the discretionary clauses, this change needs to follow as a consequence. However, legal assistance is needed in the process regardless, since all experience shows that with a lawyer present, the provision of information is better, people's right to appeal is more secured and they have a higher chance of trying to apply for the discretionary clauses.

Likewise, the presence of a lawyer evidently prompts migrants to appeal their transfer decisions. This should be considered positive because it means the migrants are given the opportunity to exercise their rights. Hence, we recommend that legal assistance is offered throughout the Dublin process, especially with regard to the provision of information.

When it comes to provision of information, three things stand out: the process of providing information seems to be unsatisfactory; migrants need to have truly understood what they are told; the Migration Board needs to look into the quality of its interpreters. These points have already been put to the Migration Board elsewhere and it seems that it is looking into them.

However it remains concerning that although only 11 of our interviewees stated that they were informed by the staff at the Migration Board about their right to appeal their transfer decision, while none was informed of the possibility to apply for use of the discretionary clauses.

We recommend:

a) That the Migration Board ensures these issues are taken into consideration in its project "Understand me correctly – improving the quality of meetings with the asylum seeker" *Tolka mig rätt – att öka kvaliteten i mötet med den sökande*;

b) That the Migration Board reviews the information it provides to migrants and makes sure that the right to appeal a decision and to appeal for the application of the discretionary clauses is included.

# Appendix I: DIASP national report, UNITED KINGDOM

**Author: JRS UK, www.jrsuk.net**

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***INTRODUCTION***

Since its adoption in 2003, the Dublin Regulation has changed the terms under which asylum seekers gain protection in the European Union. Individuals are routinely transferred between member states, several of whose asylum systems are not fit for the purpose. Yet the Dublin Regulation is based on an "assumption that an asylum seeker will receive equivalent access to protection in whichever member state a claim is lodged."[220] Although implementation of the Regulation has resulted in "changes and increased efficiency of the system by preventing multiple asylum applications and ensuring a one-stop asylum procedure through the formulation of a rapid, clear and workable method, it has done so at the expense of asylum applicants, and at the risk of violating their human rights."[221]

The United Kingdom (UK) immigration policy claims to operate a "fair but firm" system and remains committed to fulfilling its obligations under the 1951 United Nations Convention for Refugees in addition to the European Convention on Human Rights (ECHR). In March 2006 the European Council on Refugees and Exiles (ECRE) nonetheless produced a "major report showing that the Dublin II Regulation was failing to guarantee asylum seekers a fair hearing, putting refugees at risk and causing unnecessary suffering to families, children and survivors of torture."[222] Today, seven years on, the inefficiencies and the clinical application of Dublin II continue to have a deleterious impact on the lives of the most vulnerable. Asylum seekers are struggling to make sense of their already fraught and tentative situations exacerbated by the internal complexities and inconsistencies of asylum law and its procedures within the member states of the EU.

As a consequence of the above, Jesuit Refugee Service (JRS) Europe proposed to research how the Dublin Regulation affects asylum seekers' fundamental rights and their access to asylum procedures in the EU. The study interviewed asylum seekers in the Dublin system with the assistance of partners from 10 EU countries including the United Kingdom.

The sample population was to be found in detention centres, open reception centres and elsewhere in the community. Permission was sought from the government departments of each of the 10 member states. Nine gave permission and there was one exception: the United Kingdom. As grounds for its refusal the UK government said: "there are already a number of research projects taking place across the UK Border Agency's detention estate, arguing that this high degree of interest 'made it impossible to accede to every request…"[223]

This decision has denied the UK's European partners the opportunity of learning how a major component of EU asylum policy is implemented here. This paper will provide readers with what is necessarily only a partial insight into how Dublin II works in the United Kingdom by outlining its procedural and legal documentation pertaining to the Regulation. It will also

[220] Report on the Application of the Dublin 11 Regulation in Europe 2012
[221] Merkourios-International and European Migration Law
[222] ECRE/ELENA Report on the Application of the Dublin 11 Regulation in Europe, March 2007
[223] UKBA, Liz Rhodes- Detention Services - 9 January 2011

endeavour to examine whether implementation of the law has a deleterious impact on migrants, exacerbating their already vulnerable state and potentially infringing their human rights.

## *MEMBER STATE PRACTICES*

The United Kingdom Border Agency (UKBA) has made available online much of its procedural and legal documentation, which contains information pertaining to third country/Dublin cases.[224] Information outlined below comes from these documents. Other sources include people working for non-governmental organisations (NGOs) and law firms who have working experience in Dublin cases.

### 1. Asylum procedures and implementation

Dublin cases in the UK are handled by the Third Country Unit (TCU) within the UKBA. Most are identified as such by matched fingerprints through the Eurodac database. Following confirmation that an applicant falls under the Dublin II Regulation, he is given a screening interview where a decision is made, under paragraph 345 of the Immigration Rules (HC 251), to remove the applicant to another member state. Having been identified as a Dublin case, the applicant is referred to the Fast Track Intake Unit, which then decides whether his case is to be handled by the TCU. Such cases follow different procedures than regular asylum cases: third-country cases are not processed as asylum claims and do not have a comparable processing schedule.[225]

UKBA documents replicate the timetable laid out in the Dublin Regulation for notification of the receiving country. However, there is little evidence of a standard timetable for processing Dublin cases within the UK. The UKBA procedural document notes: "A non-Dublin Regulation case will usually require action within a few hours, a Dublin Regulation case usually six months."[226] This would appear to support allegations of prolonged waits, in some cases in excess of the six-month criteria detailed in Schedule 2 of the Immigration Act 1971.[227]

UKBA documents instruct officials to obtain agreement from the member state to which the asylum seeker is to be removed, and the member state must be notified of the removal with at least three working days' notice. Asylum seekers must also be given at least three days' notice before their removal to another member state.[228]

### 2. Provision of information/linguistic assistance

Interpreters are provided throughout the process, from the initial interview onwards. The UKBA employs freelance interpreters and sets out the following criteria: an interpreter must be a "full status member of the National Register of Public Service Interpreting (NRPSI) or already holds a Diploma in Public Service Interpreting (law), or has passed the Asylum and Immigration Tribunal (AIT) or a metropolitan police assessment in the last 3 years."[229] However, inconsistencies in the quality of interpreters have been documented.[230] Sometimes prolonged waits for the arrival of interpreters lead to unnecessary tension for the applicant, who becomes worried and anxious.

### 3. Legal assistance

On paper, Dublin II returnees have access to a lawyer generally through Legal Aid, a scheme managed by the Legal Services Commission.[231]
Once detained, whether in a police station or in an immigration removal centre (IRC), asylum seekers have the right to a diagnostic advice session with a legal advisor. If the case requires further legal action, the advisor is obliged to take it on.

[224] www.ukba.homeoffice.gov.uk
[225] British Refugee Council: New Asylum Model 2005 (NAM) brief
[226] Schedule 2 Immigration Act 1971
[227] Migrants Resource Centre (Mario Marin) 2012
[228] UKBA, Enforcement Instructions and Guidance, ch 28.
[229] Home Office, UKBA Website/Interpreters
[230] Refugee Council (Judith Dennis) 2012/The Independent Asylum Commission – Fit for Purpose Yet?- 2010
[231] The **Legal Services Commission** (LSC) is an executive non-departmental public body of the Ministry of Justice that is responsible for the operational administration of legal aid in England and Wales.

This is standard practice and is regularly followed, though often with delays in IRCs. However, the quality of legal advice, as well as the will to pursue challenges to removal, may vary.[232]
In 2010 the UKBA introduced a new system of establishing exclusive legal aid contracts with a small number of law firms within the detention estate. Problems have arisen due to the large numbers of potential clients versus fewer lawyers. Such unequal ratios have had serious consequences for the client group whose access to legal representation has been compromised, especially those in the fast-track system, which includes asylum seekers under Dublin II.

## 4. Detention

It is common for Dublin II migrants to be detained in the UK. Immigration officers or officials acting on behalf of the Secretary of the State Department (SSHD) have the power to detain.[233] However, they also have the power to grant temporary admission. Additionally, the lawfulness of any detention may be challenged by way of *habeas corpus* at any time. The applicant may also apply for bail either to a chief immigration officer or an immigration judge after he has been in the UK for seven days.

While there is no provision in UK law for automatic detention of Dublin migrants, it appears to be standard practice.[234] Only unaccompanied minors are not detained, although there are frequent instances of age-disputed cases where a lack of sufficient evidence to prove age results in detention.

## 5. Appeals

National legislation severely limits the applicant's opportunity to challenge or appeal a Dublin II decision. However, there is a ground upon which an appeal to the Asylum and Immigration Tribunal is permitted, namely that removal to the other member state would be in breach of the UK's obligations under the ECHR, without considering the possibility of onward removal. However, the Asylum and Immigration (Treatment of Claimants) Act 2004 deems that the Dublin II member states are "safe countries":

- Where a person's life and liberty are not threatened by reason of his race, religion, nationality membership of a particular social group or political opinion;
- From which a person will not be sent to another state in contravention of his convention rights, and
- From which a person will not be sent to another state otherwise than in accordance with the Refugee Convention.[235]

Generally, appeals to removal under Dublin are non-suspensive, excepting those made on human rights grounds that are not certified as clearly unfounded by the Secretary of State. A UNHCR legal officer said: "…[applicants] are not given a realistic opportunity to comment or object to the application of the safe third country concept before a decision is taken. Therefore, the applicant does not have an opportunity to consult with a legal adviser, in advance of a negative decision, regarding the potential application of the safe third country concept."[236] Asylum seekers are normally given three working days between notification of removal and the removal itself, which may often be insufficient time in which to apply for a judicial review.

## 6. Use of discretionary clauses

Those we interviewed indicated that the UK hardly ever resorts to the discretionary clauses of the Dublin Regulation.

The British Refugee Council, in a report issued with French organisation *France Terre d'Asile*, said: "For family members who are split in different EU countries, the state may exercise discretion by using the humanitarian clause of the Dublin II

[232] Charlie Bagnall/Fadiga Solicitors
[233] Immigration Act 1971, Schedule 2, paragraph 16
[234] British Refugee Council, Judith Dennis
[235] Schedule 3, part 2, paragraph 3, Asylum and Immigration Act (Treatment of Claimants), 2004
[236] UNHCR London, Alexandra McDowall (Legal Officer)

Regulation. The UK has very rarely used its discretionary power, even in the most compelling and compassionate cases."[237]

A solicitor with experience in Dublin cases concurred: "The UK rarely/never exercises its discretionary power unless forced by means of a legal challenge to removal. Asylum seekers may seek a judicial review on human rights grounds (i.e. fear for the protection of their rights in the country to which they will be removed), which does carry a suspensive effect, and there are several examples of such cases. As noted previously, however, asylum seekers may have limited time and/or access to legal assistance with which to explore this option. It has been noted that the UK has even tried to remove people during court proceedings."[238]

### *DISCUSSION*

The UK applies the Dublin Regulation in a clinical manner. However, this has come at a considerable cost in terms of fairness, transparency and due process. It is evident that the United Kingdom adheres to the letter of the law, giving the asylum seeker the right to appeal against transfer to another member state. However it is difficult for migrants to access this right in the restricted timeframe available. It is far from clear that the appeals procedure has been clearly explained to the asylum seeker or, if such an effort has been made, whether the interpreter has communicated the facts simply and accurately. Evidence suggests, therefore, that the Regulation does indeed impede the legal rights and personal welfare of asylum seekers.[239]

Furthermore, there is a general concern that certain member states fail to respect the rights of those transferred to a fair hearing of their asylum application. States routinely close the files of asylum seekers who move on to another country. When the individual is transferred back, some states refuse to reopen their file, even in cases where their claims were never examined in the first place.[240] Such practices jeopardise safety and intensify asylum seekers' anxieties, as they all too frequently face the prospect of deportation and exposure to further persecution in their countries of origin.

Under the terms of the EU Reception Directive, standards of care across member states should be the same. However, wide gaps in the quality of accommodation and material benefits as well as access to health and social care remain between one state and another, and are a cause for concern. The UK government has increasingly resorted to detention for asylum seekers caught under the Dublin Regulation. This has its advantages in so far as the asylum seeker will have food, warmth, shelter and access to healthcare while awaiting transfer. However, there is much evidence to suggest that being in detention is associated with poor mental health including high levels of depression, anxiety and post-traumatic stress disorder (PTSD).[241] The longer someone is detained, the more his mental health deteriorates.[242]

### *CONCLUSIONS & RECOMMENDATIONS*

To conclude, the law in the UK is applied in a clinical manner. A focus on the quantitative (metrics such as number of cases processed, etc.) has led to neglect of the qualitative needs and of every individual's right to live free from fear and further persecution.

*Recommendations*

- A standard timetable for processing Dublin cases within the UK must be adhered to in every case.
- The ratio of lawyers to clients should be addressed if the Dublin system is to be applied equitably.
- Standard practice of the use of detention, for migrants in a Dublin procedure, should only be used as a last resort.

[237] British Refugee Council and France Terre D'Asile, Fact-finding mission, Calais, 2009
[238] Mr C. Bagnall, Wilson Solicitors LLP, Assistant Solicitor
[239] Dublin 11 Regulation: Asylum seeker's lives on hold in the European Union - Willers, R. 2013
[240] ECRE, AD2/3/2007/ext/CN
[241] Physicians for Human Rights and Bellvue/NYU, Program for Survivors of Torture (2003)
[242] International Detention Coalition, There Are Alternatives – A handbook for preventing unnecessary immigration detention (2011)

- The use of the discretionary clauses should be invoked to examine the asylum applications of traumatised asylum seekers where removal to the responsible member state may exacerbate the condition and/or deny existing medical treatment.[243]

[243] Report on the Dublin II Regulation in Europe

# Appendix II: The impact of the Dublin Regulation on asylum seekers on the basis of international and regional law, and court judgements

**By: JRS Europe**

***INTRODUCTION***

In 2003, the Council of the EU adopted the Dublin Regulation (or Dublin II) with the premise that a single member state is to examine an individual's asylum application, ensuring that efforts are not duplicated among countries.[244] When this regulation is applied, a certain set of criteria is used in order to determine the "responsible" member state. Responsibility is bestowed on the state where either some member of the "core" family is already present, or where authorities have – such as by issuing a visa – facilitated the entry of the person. The most frequently used criterion is the "country of first entry", under which asylum seekers may be transferred back to the country where they first entered the territory of the EU.[245] These transfers can happen regardless of whether asylum seekers have any cultural, family, or linguistic ties to the initial country as that state is viewed as an acceptable safe third country. Under the principle of 'mutual trust' that exists between member states, EU countries assume that each state will fulfil its minimum obligations to asylum seekers, which are outlined in international, legally binding documents such as the European Convention on Human Rights (ECHR) and the 1951 UN Refugee Convention. In practice, the assumption of mutual trust as a basis of the Dublin Regulation has given way to the exposure of serious shortcomings in the asylum systems and practices of multiple member states, particularly Greece, in which conditions for asylum seekers have been described as tantamount to "a humanitarian crisis."[246] UNHCR has pointed out that, "The underlying assumption of the *Common European Asylum System*, including the Dublin Regulation, is that national asylum systems afford the same prospects and levels of protection. However, this is not yet the case."[247]

UNHCR's claim has been backed by both public officials and NGOs, who have expressed concerns that states' incongruent asylum structures and interpretations of the regulation may indicate that the lack of safeguards for asylum seekers stems from an inherently flawed system. After all, if the assumption of equivalent levels of protection is shattered by just one member state, under the Dublin Regulation other states are inevitably affected as well. In article 53 of the Vienna Convention on the Law of Treaties it states that a treaty cannot "conflict with a peremptory norm of general international law."[248] While the text of the Dublin Regulation does not explicitly conflict with a peremptory norm, several of other norms[249] have been repeatedly violated during the application of the Dublin Regulation. Article 3(5) of the Treaty on the European Union explicitly states that the EU "shall contribute to…the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law."[250] Yet, these rights have not been consistently fulfilled under the Dublin system. The former Council of Europe Commissioner for Human Rights Thomas Hammarberg maintained that application of the Dublin Regulation, "has, in extreme cases, even put lives at risk."[251]

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[244] European Commission (2009). Dublin II Regulation Summary. See http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/l33153_en.htm
[245] Ibid.
[246] International Commission of Jurists (July 2011). *Non-refoulement* in Europe after M.S.S. v Belgium and Greece: Summary and conclusions, p.4.
[247] *UNHCR Global Appeal 2011 Update*, p. 101.
[248] Article 53, Vienna Convention on the Law of Treaties
[249] See Criddle, E. and Fox-Decent, E. A fiduciary theory of *jus cogens*. *The Yale Journal of International Law*, 34 (331), pp.331-387, p. 68, who note that "torture or other cruel, inhuman, or degrading treatment or punishment" as well as "prolonged arbitrary detention" are included as *jus cogens* norms by the Restatement (Third) of Foreign Relations of the United States. The authors also characterize the right to due process as an "emerging peremptory norm," which they acknowledge is supported by the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, p. 370. These norms are recurring themes in many court decisions surrounding the Dublin Regulation.
[250] Article 3(5), Treaty on the European Union
[251] Migration Policy Group. Council of Europe's Human Rights Commissioner claims that Dublin Regulation is seriously flawed and accuses northern Member States of opposing its revision. *Migration News Sheet.* See http://www.migrationnewssheet.eu/council-of-europes-human-rights-commissioner-claims-that-dublin-regulation-is-seriously

In examining whether the mandate of the Dublin Regulation aligns with asylum seekers' fundamental rights, it is important to recognise not only what the regulation states but also what it does not. The Council of Europe's Commissioner for Human Rights had reiterated that the Dublin Regulation "is only aimed at determining the member state responsible for processing an asylum claim."[252] When the Dublin Regulation was established in 2003, few EU-wide mechanisms had been adopted on comprehensive asylum legislation besides the Reception Conditions Directive (2003/9/EC).

The Dublin Regulation also omits any framework or guidelines on the use of and criteria for detention, even though some member states frequently detain asylum seekers in the transfer process for varying amounts of time. The European Commission has reminded states that, "custodial measures should only be used as a last resort when all other non-custodial measures are not expected to bring satisfactory results and because there are objective reasons to believe that there is a high risk of the asylum seeker absconding."[253] However, because of this omission in the regulation, there is no EU legal accountability to enforce which steps states must take in order to arrive at the solution of detention. Such guidelines could help close protection gaps, address the differences in detention conditions among Member States, and solidify a more cohesive, uniform European system.

Measures such as the Qualification Directive (recast: 2011/95/EU) and the Asylum Procedures Directive (2005/85/EC) have since been added to the framework of the *Common European Asylum System*, which includes the recasts of the aforementioned Asylum Procedures Directive, of the Reception Conditions Directive and of the Dublin Regulation is expected to be adopted in June 2013. These acts have, however, not succeeded in eliminating the variances in member state practices towards asylum seekers; instead, they have uncovered them. The implementation differences that continue to exist pose ongoing challenges to ensure the fulfilment of fundamental rights and undermine the cornerstone assumption of similar standards and protections for asylum seekers across member states.

These gaps in fundamental rights protection forced Dublin asylum seekers and their supporters to pursue legal action. In 2011, the European Court of Human Rights (ECtHR) has estimated that close to a thousand cases pertaining to Dublin were awaiting decision by the Court,[254] highlighting the regulation's significant impact on human rights. The European Commission proposed a recast of the regulation in 2008, which include more concrete legal guidelines for asylum seekers and have since been slated for adopted by the European Parliament and Council in 2013. Without significant changes in interpretation, implementation, and stronger language to secure broader protections for asylum seekers, the Dublin system will continue to violate human rights, leaving the fate of asylum seekers and member states' policies in the hands of the European courts.

### Safe third-country?

A key question that the Dublin Regulation has raised is not only whether a third country can be legally established as a safe country for asylum seekers through national or EU legislation, but whether such a designation *should* be established in this way. Article 27 of the Asylum Procedures Directive indicates that:

> Member states may send applicants to third countries with which the applicant has a connection, such that it would be reasonable for him/her to go there, and in which the possibility exists to request refugee status and if s/he is found to be a refugee, it must be possible for him/her to receive protection in accordance with the 1951 Convention. In that third country, the applicant must not be at risk of persecution, *refoulement* or treatment in violation of Article 3 ECHR.[255]

The idea of whether safe third country agreements can be expected to reasonably safeguard asylum seekers' rights has been contested. In the context of the Dublin Regulation, the safe third country for an asylum seeker would be the EU country that he first entered, despite the possibility that an asylum seeker's connection to the first country may be entirely arbitrary. While governments have continually attempted to justify a connection to an asylum seeker's first country of entry, UNHCR has pointed out that, "Transit through a particular country is often the result of fortuitous circumstances, and does not necessarily imply the existence of any meaningful link."[256] The Meijers Committee, a group of legal experts on

[252] Ibid.
[253] European Commission. (2007). *Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin System*, p. 8.
[254] European Court of Human Rights (Aug. 2011). Factsheet-"Dublin cases," *Press Unit*, p.2.
[255] UNCHR (2010). *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, p. 60.
[256] Ibid, p. 63

immigration and asylum, has asserted that the Dublin Regulation fails to provide the asylum seeker with appropriate channels to challenge mutual trust by "not ensur[ing] that the applicant has the possibility to put forward grounds for rebutting the presumption of safety before the decision to transfer has been taken."[257]

UNHCR has also taken a position against a one-size-fits-all policy, arguing that, "Whether an asylum seeker can be sent to a third country for determination of his/her claim must be answered on an individual basis."[258] As the prohibition of torture guaranteed in Article 3 of the ECHR is a peremptory norm, states must ensure that this right is upheld. Recital 21 of the Asylum Procedures Directive maintains that a state may not fit the criteria for a safe third country if an asylum seeker "shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances."[259] However, Article 27(2b) of the same directive does not require member states to review cases individually through an "and/or" clause which allows states the option to determine safe countries through their own policies.[260] The 'or' aspect of this clause mitigates the required responsibility of states to thoroughly assess whether a country that may generally be deemed 'safe' is in fact, legitimately safe regarding the circumstances of a particular individual.

The Dublin Regulation encourages bilateral agreements among member states for reasons including "simplifying the processing of requests to take charge or take back, or establishing procedures for the performance of transfers."[261] Nevertheless, bilateral agreements between member states where one either has an additional arrangement with another country outside of the EU, or where there is substantial risk that a member state may send asylum seekers back to countries generally recognised by international standards to be unsafe, do not always guarantee adherence to the principle of *non-refoulement*. Article 19(2) of the Charter of Fundamental Rights of the EU states that individuals are not to be "removed, expelled, or extradited to a State where there is a serious risk that he or she would be subjected to…inhuman or degrading treatment or punishment."[262]

In January 2011, the ECtHR, in the case of *M.S.S. v Belgium and Greece* on whether an asylum seeker should have been transferred from Belgium to Greece, found both countries to have violated ECHR Articles 3 and 13.[263] This ruling has challenged the basis for a safe third country that the Dublin Regulation presupposes by setting a precedent in establishing responsibility not only in the state where poor conditions exist, but also with the state that deliberately sends an asylum seeker back to such conditions. This judicial interpretation has been strengthened through the joint cases of *N.S. and M.E. v U.K.*, where the Court of Justice of the European Union (CJEU) ruled in December 2011 that, "EU law precludes a conclusive presumption that the Member State indicated by the Regulation as responsible observes the fundamental rights of the EU."[264] This ruling has prohibited transfers from member states which "cannot be unaware that systemic deficiencies in the asylum procedure and in the reception conditions of asylum seekers"[265] are occurring in the receiving member state.

The ruling that "states cannot be unaware" of such deficiencies in a recognised safe third country has been further established in other Dublin cases such as *X v. the Belgian State*, where Malta's reception conditions would allegedly be in violation of ECHR Article 3, as indicated in a report by the Commissioner for Human Rights.[266] The asylum seeker's request for a suspension of a transfer to Malta was granted due to the findings of the court that these were not "minor deficiencies"[267] and that "the defendant could not have been unaware of these shortcomings in the system of the asylum

[257] Battjes, H., Brouwer, E., de Morree, P., and Ouwerkerk, J. (2012). *The Principle of Mutual Trust in European Asylum, Migration, and Criminal law: Reconciling Trust and Fundamental Rights*, p.15.
[258] UNCHR (2010). *Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice*, p. 61.
[259] Recital 21, Council Directive 2005/85/EC of 1 December 2005 on minimum standards and procedures for granting and withdrawing refugee status, OJ L 326/13 (Asylum Procedures Directive)
[260] Article 27 2.b, Asylum Procedures Directive.
[261] Recital 9, Council Regulation (EC) No 343/2003 of 18 February 2003 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, OJ L 50, 25.2.2003 (Dublin Regulation).
[262] Article 19 (2), Charter of the Fundamental Rights of the European Union.
[263] M.S.S. v Belgium and Greece, App. no. 30696/09, Council of Europe: European Court of Human Rights, 21 Jan. 2011.
[264] Court of Justice of the European Union (21 Dec. 2011). Press Release No 140/11: Judgment in Joined Cases *C-411/10 N.S. v Secretary of State for the Home Department* and *C-493/10 M.E. and Others v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform*, p. 2
[265] Ibid.
[266] X v. Belgian State, represented by the Minister for Asylum and Migration, Social Integration and Poverty Reduction, Nr. 72824 of January 6, 2012, Belgium: Contentieux du Conseil des Etrangers, 6 January 2012, p.4, see http://www.unhcr.org/refworld/docid/4f21b2b52.html
[267] Ibid.

proceedings and the reception facilities and should thus have taken them into consideration in the decision-making process."[268]

Judicial scrutiny on the validity of safe third country legislation has occurred outside of the EU as well. The decisions in these cases highlight the necessity for closer analyses of safe third country agreements and exhibit the increasing burden of responsibility placed upon all parties of such agreements. For example, in 2007, a federal judge in Canada found the 2004 Safe-Third Country Agreement between the U.S. and Canada to be "in violation of the Canadian Charter of Rights and Freedoms," not due to Canada's direct actions but because he asserted that the U.S. was "not in compliance with the Refugee Convention requirements or the United Nations Convention Against Torture prohibition."[269] In a 2011 case regarding a bilateral refugee exchange agreement between Australia and Malaysia,[270] concerns were raised by NGOs that as Malaysia had not ratified the UN Refugee Convention, the Australian government would potentially be subjecting asylum seekers to torture, as there is significant evidence that Malaysia engages in the practice of caning.[271] Australia's High Court ruled against the refugee swap on grounds that Malaysia did not have any legal obligations to comply with Australia's 1958 Migration Act, which recognises certain protections for asylum seekers.[272]

Refugee law experts have argued that the premise for the Australia-Malaysia refugee swap was also a violation of Article 31(1) of the UN Refugee Convention as asylum seekers were to be penalised (in this case, through a transfer to another country with insufficient legal protections) "*purely* on the basis of their mode of arrival."[273] Article 31(1) explicitly states that asylum seekers should not be punished for "coming directly from a territory where their life or freedom was threatened."[274] Furthermore,

> "Article 31(1) makes clear that the 'coming directly' requirement does not require the claimant to have come directly from their country of origin, although the requirement of 'good cause' would require an explanation for onward flight – for example, a subsequent threat to life or freedom in the initial country of refuge, or an inability to secure asylum in the initial country of refuge."[275]

This argument is also applicable to asylum seekers involved in Dublin procedures as the first country of entry may provide a subsequent threat to life or freedom, not only with obstructing access to asylum but also with being subjected to destitution, exposure to xenophobia, prolonged periods of detention, and lack of access to legal aid or legal assistance of good quality. Evidence to support the claim that significant barriers to protection exist in the EU has been backed by a number of sources, including UNHCR, who has expressed concern that "administrative detention of asylum seekers is less regulated than the detention of people accused or convicted of criminal acts."[276] Yet Article 10(1) of the Dublin Regulation insists that for "an asylum seeker [who] has irregularly crossed the border into a Member State by land, sea, or air having come from a third country, the Member State thus entered shall be responsible for examining the application," a provision which States may apply for up to a year following such entry.[277] This article places a greater burden on states with more frequent irregular border crossings while indirectly penalising asylum seekers returned to countries with inadequate asylum systems.

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[268] Ibid.
[269] Cohen D. American refugee policies violate Canada-US Safe Third Country Agreement. See http://www.canadavisa.com/press-release/american-refugee-policies-violate-canada-us-safe-third-country-agreement.html While the initial verdict was overturned in 2008 during an appeal, the first decision illustrates the depth of the legal responsibility among both States in a safe third country agreement and the limitations to mutual trust.
[270] Foster, M. and Pobjoy, J. (2011). A failed case of legal exceptionalism? Refugee status determination in Australia's 'excised' territory. *International Journal of Refugee Law*, 23(4), 583-631. Between the two countries, it was agreed "that Malaysia [would] accept up to 800 persons who have 'traveled irregularly by sea to Australia; or been intercepted at sea by the Australian authorities', while Australia [would] resettle (over four years) 4,000 persons who have been determined to be refugees by the UNHCR in Malaysia," p.618.
[271] Amnesty International (26 May 2011). Malaysia refugee swap: Trading in human lives. See http://www.amnesty.org.au/news/comments/25763/P20/
[272] See judgement of the High Court of Australia for *Plaintiff M70/2011 v Minister for Immigration and Citizenship; Plaintiff M106 of 2011 v Minister for Immigration and Citizenship* [2011] HCA 32 (31 August 2011).
[273] Foster and Pobjoy, p. 606.
[274] Ibid, p. 603-604.
[275] Ibid, p 604
[276] UNHCR (15 July 2010). Remarks of United Nations High Commissioner for Refugees Antonio Guterres at the informal meeting of EU Ministers of Justice and Home Affairs, Brussels. See http://www.unhcr.org/4c44034f9.html
[277] Article 10 (1), Dublin Regulation

Similarly, the judgement in the ECtHR case of *Saadi v. Italy* indicates that a government's pledge to uphold peremptory norms (such as ECHR Article 3) must extend beyond an informal assurance of compliance, even if such assurance is in writing, demonstrating that the procurement of such pledge or agreement may still not qualify a country as safe, particularly if there is substantial proof of existing practices that jeopardise the adherence to these norms.[278] This reasoning is evidenced in the ECtHR's dismissal of two *notes verbales* issued by the Tunisian Ministry of Foreign Affairs to Italy, in which:

The Court emphasised that the existence of domestic laws and accession to treaties were not sufficient to ensure adequate protection against the risk of ill-treatment where, as in the applicant's case, reliable sources had reported practices manifestly contrary to the principles of the Convention. Furthermore, even if the Tunisian authorities had given diplomatic assurances that would not have absolved the Court from the obligation to examine whether such assurances provided a sufficient guarantee that the applicant would be protected against the risk of treatment.[279]

Again, this rationale stresses states' responsibility to be aware of well-documented circumstances that may contradict the ECHR and has also been utilised in the decisions of *Baysakov and Others v. Ukraine*[280] and *Hirsi Jamaa and Others v Italy*.[281] These rulings reinforce the opinion of the UN Human Rights Committee, which has maintained that a sending state "must institute credible mechanisms for ensuring compliance [to protect fundamental rights] by the receiving State…from the moment of expulsion."[282] The Dublin Regulation's recital 12 calls upon states to abide by the "instruments of international law to which they are party."[283] However, it does not provide guidelines for how transferring states should ensure that fundamental rights are upheld in receiving states.

### Inconsistencies within the Dublin regulation

The application of the Dublin Regulation has frequently shown that states generally seek little input from asylum seekers when making decisions that directly affect the course of their lives. Many asylum seekers have expressed their reluctance to be sent back to the first country of entry by attempting to have their transfers suspended. This counters the premise that the Dublin Regulation would make the asylum application process more efficient for states – the transferring state must still review the grounds for a transfer suspension before a receiving member state will even consider an application, thus ensuring that two states ultimately end up reviewing an asylum application. During 2009-2010 alone, the ECtHR "received no less than 700 applications lodged by asylum seekers requesting for their transfers to their 'first country of asylum' to be suspended."**[284]** The European Commission has pointed out that, "The low rate of effected transfers of asylum seekers compared to accepted ones undermines considerably the effectiveness of the system."**[285]**

Additional evidence suggests that the Dublin Regulation is an impediment to the efficiency it was designed to promote. Because of data constraints, the cost of the Dublin Regulation cannot be analysed.**[286]** This limitation significantly hinders comparisons to less expensive and possibly more effective alternatives. The European Commission has cited a lack of strict adherence to time limits among states as another barrier to maximising efficiency.**[287]** The disregard for time limits not only creates difficulties among member states but also to asylum seekers, since Article 18(7) of the Dublin Regulation gives states the right to assume, in instances of transfer requests, that no response from another state is the equivalent of a positive answer indicating that the state in question will take back the asylum seeker.**[288]** A lack of response might be due to a number of factors and could indicate that a state does not have the capacity to comply with the regulation's administrative obligations.

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[278] See ECtHR Grand Chamber Judgement of 28 Feb. 2008, no. 37201/06, *Saadi v Italy.*
[279] Ibid.
[280] See ECtHR Grand Chamber Judgment of 18 Feb. 2010, no. 54131/08, *Baysakov and Others v. Ukraine*
[281] See ECtHR Grand Chamber Judgment of 23 Feb. 2012, no. 27765/09, *Hirsi Jamaa and Others v. Italy.*
[282] Foster and Pobjoy, p. 627.
[283] Recital 12, Dublin Regulation
[284] Migration Policy Group. Council of Europe's Human Rights Commissioner claims that Dublin Regulation is seriously flawed and accuses northern Member States of opposing its revision. *Migration News Sheet*. See http://www.migrationnewssheet.eu/council-of-europes-human-rights-commissioner-claims-that-dublin-regulation-is-seriously
[285] European Commission. (2007). *Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin System*, p. 8.
[286] Ibid, p. 13
[287] Ibid, p.8
[288] Article 18 (7), Dublin Regulation

Member states are not consistent with interpreting and applying the regulation. The European Commission has acknowledged that, "A uniform application of the rules and criteria established by the Dublin Regulation is essential for its proper functioning. However, Member States do not always agree on the circumstances under which certain provisions should apply."[289] Disagreement on circumstances, whether through uncertainty or lack of political will, has been a particular issue for Articles 3(2) and 15 of the Dublin Regulation, which we refer to as the *discretionary clauses*.[290] Article 3(2) respects states' autonomy and enables them to process asylum applications made in their country, regardless of official responsibility.[291] Without any incentives for states to employ this clause, UNHCR has acknowledged that, "States are in general reported to be reluctant, at the level of the administrative authorities, to voluntarily apply Article 3(2)."[292] Article 15 of the Dublin Regulation enables any member state to "bring together family members, as well as other dependent relatives, on humanitarian grounds based in particular on family or cultural considerations."[293] There is no mechanism in place to pressure member states to apply this clause, which gives governments the liberty to articulate what circumstances constitute 'humanitarian grounds.' The positive impact that these legal provisions could have on asylum seekers is significantly limited if member states opt rarely to employ them or do not fully understand the capacity in which they can be used.

In addition to these clauses, there is also the solidarity principle. This concept, in which member states can assist others who are struggling, is a foundation for EU policies and is even referenced in recital 8 of the Dublin Regulation.[294] Besides the suspension of transfers to countries like Greece, little has been done in the way of sharing responsibility for the number of asylum seekers crossing into the EU borders. This has led EU Commissioner for Home Affairs Cecilia Malmström to note that, "Everyone supports solidarity in asylum matters between EU Member States in principle, but few are willing to create a coordinated system for actually helping Member States that are under great pressure."[295] Currently, there is no legal precedent to compel solidarity measures in the Dublin system as CJEU court cases have focused on solidarity as it relates primarily to "tensions between the common market and social duties owed to citizens."[296] Still, the roles and responsibilities of transferring states and others with greater capacities to process asylum claims cannot be overlooked in the implementation of the Dublin Regulation.

Certain member states have alarmingly low acceptance rates of asylum claims in general. Data from the first half of 2009 indicates that in Greece, only about 0.1% of asylum seekers were granted asylum.[297] The Belgian Refugee Council has indicated that in Poland, "refugee status is not always accorded where it should be because of a very strict interpretation (or sometimes misinterpretation) of the constitutive elements of the refugee definition."[298] Therefore, a Dublin transfer can adversely alter both how an individual's request for asylum is processed and the chances for a positive decision on their application.

The lack of homogeneity that still exists in refugee status determination among states makes it difficult to provide asylum seekers with equal protection in practice. The European Council on Refugees and Exiles has stressed that a "lack of equal protection can create a real risk of *refoulement*, and thus of failing to conform to international legal obligations."[299] Nevertheless, the process of how international protection is granted continues to vary among member states with differences in how frequently it is provided, the types of groups it is granted to and the type of protection status that is granted. For example, UNHCR Commissioner António Guterres has pointed out that, "If an Afghan seeks asylum in Europe, the chances of receiving protection vary from 8% to 91%, depending on the member state where the claim is lodged."[300]

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[289] European Commission. (2007).*Report from the Commission to the European Parliament and the Council on the Evaluation of the Dublin System*, p.6.
[290] Ibid.
[291] Article 3(2), Dublin Regulation
[292] UNHCR (16 June 2010). UNHCR information note on national practice in the application of Article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece, p. 1.
[293] Article 15, Dublin Regulation
[294] Recital 8, Dublin Regulation
[295] Malmstrom, C. (26 January 2012). Formal informal in Copenhagen. See http://blogs.ec.europa.eu/malmstrom/page/2/
[296] McDonough, P. and Tsourdi, E. (Jan. 2012). Putting solidarity to the test: Assessing Europe's response to the asylum crisis in Greece. *UNHCR Policy Development and Evaluation Service*, p. 11.
[297] Amnesty International (2010). *The Dublin II Trap: Transfers of Asylum-Seekers to Greece*, p. 7.
[298] Belgian Refugee Council (8 June 2011). Polish asylum procedure and refugee status determination, p. 33.
[299] ECRE (2008). *Sharing Responsibility for Refugee Protection in Europe: Dublin Reconsidered*, p. 16.
[300] UNHCR (26 Jan. 2012). Informal meeting of the Justice and Home Affairs Council, Copenhagen. Remarks by Antonio Guterres, United Nations High Commissioner for Refugees, p. 1.

It is still possible for groups of the same nationality to have their asylum claims largely accepted in one place while rejected in another. Although asylum applications are supposed to be individually reviewed among member states, wide discrepancies in who receives asylum occurs between states even among individuals with identical experiences of persecution.[301] While measures are needed to rectify the systemic problems that exist in Dublin countries receiving asylum seekers, the inaccurate assumption of equal protection standards must simultaneously be addressed.

### Assessing the Dublin regulation through DIASP indicators

In this report we use eight indicators to assess how the Dublin Regulation impacts asylum seekers' fundamental rights: Access to information; access to medical care; care for vulnerable persons and those with special needs; family well-being; expression and fulfilment of needs, opinions, wishes, and expectations; level and quality of reception conditions; level and quality of social conditions; and access to justice and quality of procedure.[302]

As the application of the Dublin Regulation generally affects more than just one indicator at a time, there is much overlap. Indicators such as *expression and fulfilment of needs* can be visible in each of the other indicators, as this particular right is consistently undermined throughout interpretation and application of the Dublin Regulation. This section aims to 1) analyse the Dublin Regulation through examining relevant court cases, international human rights instruments and NGO reports and 2) present arguments against the Regulation's ability to safeguard access to fundamental rights protection.

#### Access (to information, medical care, justice and quality of procedure)

Perhaps one of the most critical areas of the Dublin Regulation is how its implementation affects an asylum seeker's access to information, medical care, or to justice and quality of procedure, such as the right to appeal a Dublin transfer decision. The right to 'access' in its various forms is interlinked with other fundamental rights. A violation of any type of access, whether intentionally or unintentionally, can manifest into unsatisfactory repercussions for the asylum seeker as well as undermine basic human rights principles that Member States have committed to uphold.

- *Information*

A project spearheaded by the Italian Council for Refugees, found that "in practice, it is often difficult to verify if information [about the Dublin Regulation] has effectively been given to the asylum seeker by the authorities,"[303] acknowledging that there is not a uniform system among countries in how asylum seekers are given information regarding Dublin procedures. Their findings have highlighted limitations in the dissemination of Dublin information. For example, individuals unfamiliar with the type of language being used or the system itself, "do not know about their rights, and consequently they cannot lodge an appeal."[304]

Article 3(4) of the Dublin Regulation only requires that the applicant "shall be informed in writing in a language that he or she may reasonably be expected to understand."[305] However, barriers such as illiteracy or lack of a current mailing address can prevent the asylum seeker from accessing this information. Therefore, whether information is delivered in a way that the asylum seeker both unequivocally understands and can obtain directly impacts whether an individual is able to fully access ECHR Article 13, which provides all persons the right to an effective judicial remedy.[306] A government's failure to provide an asylum seeker with information about the procedures he is being subjected to in a language which he or she understands is a potential violation of ECHR Article 5(2), which explicitly guarantees this right for individuals who are arrested.[307] While asylum seekers may not face criminal arrest, many are detained, and those who are not must still comply with the Dublin measures against them; thus it would follow that this fundamental right would be applied in these circumstances as well.

Asylum seekers' access to information has become regarded as a fundamental right in court decisions. Both lower and higher courts in France have used Article 3(4) of the Dublin Regulation as a basis for determining whether such rights

[301] Walt, V. (23 Oct. 2009). Sending Europe's asylum seekers home. *Time World.* See .http://www.time.com/time/world/article/0,8599,1931717,00.html
[302] DIASP Indicators
[303] Italian Council for Refugees (9 April 2010). *Dubliners Project Report*, p. 24.
[304] Ibid, p. 26
[305] Article 3(4), Dublin Regulation
[306] Article 13, European Convention on Human Rights
[307] Ibid, Article 5

have been upheld or violated.[308] UNHCR has found that Dublin transfer cases in France "are often contested for failure to respect the obligation to provide information." [309] This failure is clearly depicted in the *Conseil d'Etat* case of *Chermykhanov*, *30 July 2008, Ordinance n° 313767*, where the court ruled in favor of a transfer suspension upon concluding that the applicants had not "been informed in writing in a language they understood the conditions for applying the Regulation, its time and its effects, thus, failing to put the applicants in a position to benefit from procedural safeguards provided for in Paragraph 4, Article 3."[310]

❖ *Medical Care*

The World Health Organization (WHO) defines the concept of health as "a state of complete physical, mental, and social well-being and not merely the absence of disease or infirmity."[311] The establishment of health as a human rights principle can be found in the 1961 European Social Charter, where Article 11(1) calls upon governments "to remove as far as possible the causes of ill-health."[312] Article 12 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR) establishes "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."[313] General Assembly Resolution 43/173 of the United Nations states that for persons in detention, "medical care and treatment shall be provided whenever necessary" and such care should also be "free of charge."[314] However, adequate access to medical care is not always received in detention: in a 2010 study, JRS Europe found that the majority of Dublin asylum seekers interviewed found medical care to be insufficient in detention.[315]

Even in instances where detention does not factor into an asylum seeker's experience under Dublin procedures, the lack of access to psychological and/or other medical care as a result of a Dublin transfer has become a question in multiple communicated ECtHR cases, including *Nasib Halimi v Austria and Italy*, [316] *Khalisat Daytbegova and Mariat Magomedova v Austria*,[317] *M.M. and Others v Finland*,[318] and *A.N.H. v Finland*.[319] This latter case is especially disturbing: the Finnish Immigration Service did not consider an unaccompanied minor, who was denied access to medication in Italy, to be vulnerable on the grounds that Italy is a signatory to the Convention on the Rights of the Child, "even though the Italian authorities had failed to confirm that they would receive the applicant."[320] While a decision to resolve the case is pending, in addition to medical access, the facts highlight the effects of the flawed rationale equating a member state's failure to respond as acceptance, revealing that it is the asylum seeker who suffers from a state's inability to comply with the Dublin Regulation. The case also demonstrates the extent to which states rely on mutual trust notwithstanding its limitations. Throughout each of these cases, although transferring states could have taken up these asylum applications under the Dublin Regulation's Article 3(2), they opted instead to attempt to shift the responsibility to a country with well-documented disparities between the rights guaranteed under law and the rights implemented in practice.

❖ *Justice and Quality of Procedure*

In cases brought before the ECtHR, including *M.S.S. v Belgium and Greece*, access to judicial remedy in Dublin procedures has been widely cited as a chief complaint among plaintiffs. As a result of these cases, court decisions have begun to place more responsibility on member states. These rulings have, as Human Rights Watch has pointed out, "highlighted structural defects with the Dublin II Regulation."[321] Despite the widening of protection that the *M.S.S.* decision advanced, the right to justice and quality of procedure in the Dublin system is still too often inadequate, and this right cannot be met when other fundamental rights are also being violated. UNHCR has pointed out that, "If it is not possible for the person to access basic subsistence and other reception conditions while awaiting the outcome of an appeal against a

[308] UNHCR (Oct. 2009). Submission by the Office of the United Nations High Commissioner for Refugees in the case of *Xb. v. France and Greece* (Appl. No. 44989/08), pp. 3-4.
[309] Ibid, p. 3
[310] Ibid, footnote 29.
[311] Preamble to the Constitution of the World Health Organization as adopted by the International Health Conference, New York, 19 June - 22 July 1946; signed on 22 July 1946 by the representatives of 61 States (Official Records of the World Health Organization, no. 2, p. 100) and entered into force on 7 April 1948.
[312] Article 11 (1), European Social Charter
[313] Article 12, International Covenant on Economic, Social, and Cultural Rights
[314] United Nations General Assembly Resolution 43/ 173 of 9 December 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Scope of the Body of Principles, Principle 24.
[315] JRS Europe (June 2010). *Becoming Vulnerable in Detention*, p. 59.
[316] See the communicated ECtHR case of no. 53852/11, *Nasib Halimi. v Austria and Italy.*
[317] See the communicated ECtHR case of no. 6198/12, *Khalisat Daytbegova and Mariat Magomedova v Austria.*
[318] See the communicated ECtHR case of no. 72861/11, *M.M. and Others v Finland.*
[319] See the communicated ECtHR case of no. 70773/11, *A.N.H. v Finland*.
[320] Ibid.
[321] Human Rights Watch (2012). *World Report 2012: European Union*, p. 2.

decision to transfer, s/he may not in practice be in a position to pursue that appeal for its duration."[322] The Hungarian Helsinki Committee has found that, "Dublin returnees put in immigration detention have no access to effective remedy,"[323] although ECHR Article 5 guarantees individuals the right to appear "promptly before a judge."[324] Asylum seekers' access to free legal assistance would help preserve the integrity of this right as well as other fundamental rights. Unfortunately, this is not currently mandated under the Dublin Regulation.

The Dublin Regulation does not require states to apply a suspensive effect on appeals to transfer decisions, even though UNHCR has pointed out that "fully 20% of persons granted protection in the EU receives it only on appeal."[325] Consequentially, asylum seekers in certain member states may access this right in court while those in other member states may not. Furthermore, even states with this type of protection mechanism in their laws may not be implementing it in practice. Recently in Hungary, asylum seekers were often unfairly given expulsion orders before they had a chance to apply for protection.[326]

Adequate access to justice and quality of procedure is also inextricably linked with an asylum seeker's ability to express him or herself. In addition to being able to satisfactorily receive information from authorities, asylum seekers caught in Dublin procedures are often unable to sufficiently share their information with authorities, such as the extent of their personal experiences and reasons for seeking international protection. There is no uniform procedure for how Dublin interviews are conducted among Member States, although Belgium's current interview process has broadened its scope to include "the past situation of the country from where the person comes or through which he or she passed."[327] This practice recognises Article 31(1) of the UN Refugee Convention by giving the individual the opportunity to explain any hardships or rights violations he may have encountered in another member state before arriving in Belgium.

Care for Vulnerable Persons and Family Well-Being

- *Right of the family*

The establishment of family rights and the primacy of the family is a pillar in several human rights instruments. For example, ICCPR Article 23(1) states that, "The family is the natural and fundamental group unit of society and is entitled to protection by society and the State."[328] This statement is reiterated in ICESCR Article 10(1), which asserts that, "The widest possible protection and assistance should be accorded to the family."[329] Additionally, both Article 8 ECHR and Article 7 of the Charter of the Fundamental Rights of the EU protect the right of people to enjoy family and personal life.[330] Despite pervasive international recognition prioritising family rights, recital 6 of the Dublin Regulation stipulates that the objective of keeping families unified "should be preserved insofar as this is compatible with other objectives pursued by establishing criteria and mechanisms for determining the member state responsible for examining an asylum application."[331] While family unity is recognised as a priority, the regulation simultaneously undermines it by enabling member states the freedom to designate higher priorities.

The right to not only found but to maintain a family has been repeatedly tested by the application of the Dublin Regulation. In some courts, family separation has been argued as an infringement of ECHR Article 8. In the case of *Nikoghosyan c Préfet du Rhône* in France, where the asylum seeker "was faced with the alternative either of leaving his family to pursue

[322] UNHCR Statement on the reception conditions of asylum-seekers under the Dublin procedure. Issued in the context of a reference for a preliminary ruling addressed to Court of Justice of the European Union by the French Council of State lodged on 18 April 2011 – *CIMADE and GISTI v. Ministry of the Interior* (Case C-179/11), p. 11.
[323] Hungarian Helsinki Committee, p.5.
[324] Article 5, European Convention on Human Rights
[325] UNHCR (15 July 2010). Remarks of United Nations High Commissioner for Refugees António Guterres at the informal meeting of EU Ministers of Justice and Home Affairs, Brussels. See http://www.unhcr.org/4c44034f9.html
[326] Hungarian Helsinki Committee, p.2.
[327] International Commission of Jurists (July 2011). Non-refoulement in Europe after M.S.S. v Belgium and Greece: Summary and conclusions, p.4.
[328] Article 23 (1), International Covenant on Civil and Political Rights
[329] Article 10 (1), International Covenant on Economic, Social, and Cultural Rights
[330] Article 8, European Convention on Human Rights and Article 7, Charter of the Fundamental Rights of the European Union
[331] Recital 6, Dublin Regulation

his asylum claim in Austria, or of having his claim assessed in his absence for an indeterminate period of time,"[332] UNHCR has noted that:

> As regards jurisprudence, the *Conseil d'Etat* has upheld the appeal of an asylum seeker facing transfer to Austria on the grounds that to do so would constitute a violation of his right to respect for family life and/or to his right to benefit from an assessment of his asylum claim in a procedure in conformity with necessary guarantees.[333]

Although the right to family is guaranteed in ECHR Article 8, not all member states have laws in place that inherently protect this right. The EU Fundamental Rights Agency has acknowledged that legislative protection for irregular migrants to stay in a country specifically on the basis of their family life only exists "in approximately one-third of EU Member States."[334]

The 1995 Copenhagen Declaration on Social Development recognises that "in different cultural, political and social systems various forms of family exist."[335] The Dublin Regulation lacks recognition of this principle. Member states' strict adherence to a limited definition of family to consist of only that which is directly established in the Dublin Regulation presents problems for asylum seekers whose family situation may be more complex, although the regulation does not prevent member states from broadening the definition of family either.[336] France's *Conseil d'Etat* has permitted the expansion of the definition so long as an asylum seeker can "demonstrate the reality and the intensity of the existing family links."[337] Likewise, the ECtHR has considered the family tie between a father-in-law and his son-in-law to be falling within the definition of "family life" in accordance to Article 8 ECHR. It reiterated that the notion of "family life" in Article 8 was not confined solely to marriage-based relationships and could encompass other "family" ties where the parties were living together outside the sphere of marriage.[338] Expanding the family definition in the Dublin Regulation would in fact not only enhance the rights of asylum seekers but could provide states with alternative options besides a transfer back to the first country of entry, including to another member state where there are family connections.

❖ *Rights of Vulnerable Persons*

Current EU asylum policies reference vulnerability and the need for protection of vulnerable groups yet, apart from unaccompanied minors, little is specified in the Dublin Regulation as to who constitutes a vulnerable person and to what extent vulnerability shall impede a state's ability to apply Dublin procedures. Nor does the regulation state anywhere that a recognised vulnerability automatically suspends a transfer. The lack of guidelines in both defining and protecting vulnerable groups has meant that vulnerable persons are still subjected to Dublin transfers.

Cases that have been communicated to the ECtHR, such as *B.M. and Others v Denmark*, indicate that certain states are attempting to overlook vulnerabilities surrounding family well-being and mental health in order to issue transfer orders, in this instance to Italy, without any suspensive measures during the appeal process.[339] During 2009, cases were reported in which people were transferred returned to Rome "in a fragile state, in particular an HIV-positive girl who had been detained for two months and was psychologically distraught."[340] In 2006, Austria lifted its ban on applying the Dublin Regulation to "traumatised asylum seekers."[341] This change has been reported to have detrimentally affected Chechens, many of whom have been reported to have "post-traumatic stress disorder and other psychiatric or health problems."[342] The Finnish Refugee Advocacy Centre has indicated that there may be additional vulnerabilities for Chechen asylum

[332] UNHCR (16 June 2010). UNHCR information note on national practice in the application of article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece, p. 18.
[333] Ibid.
[334] European Union Agency for Fundamental Rights (2011). Fundamental rights of migrants in an irregular situation in the EU, p. 30.
[335] United Nations World Summit for Social Development (1995). **A/CONF.166/9.** Annex 1: Copenhagen Declaration on Social Development, Part. B: Principles and Goals, Article 26. h. See http://www.un.org/documents/ga/conf166/aconf166-9.htm
[336] Article 2(i) of the Dublin Regulation states that "'family members' means insofar as the family already existed in the country of origin" and include asylum seekers' spouses, minor unmarried children, and parents or guardian if the asylum seeker is an unmarried minor.
[337] UNHCR (16 June 2010). UNHCR Information note on national practice in the application of Article 3(2) of the Dublin II Regulation in particular in the context of intended transfers to Greece, p. 18.
[338] See the ECtHR Grand Chamber Judgment of 10 Nov. 2011, no. 29681/08, *Mallah v France*.
[339] See the communicated ECtHR case of no. 4346/12, *B.M. and Others v Denmark*.
[340] Grant, H. and Domokos, J. (7 Oct. 2011). UK failing to share burden of migration crisis, says southern Europe. *The Guardian.* See http://www.guardian.co.uk/world/2011/oct/07/uk-migration-crisis-southern-europe
[341] ECRE (March 2011). ECRE guidelines on the treatment of Chechen Internally Displaced Persons (IDPs), asylum seekers and refugees in Europe, p. 21.
[342] Ibid, p. 22

seekers returned to Poland as "the asylum seekers themselves had spoken about the poor reception conditions, racism, and direct violence and threats."[343] Despite these accounts and other factors such as Poland's low recognition of Chechens as refugees, ECRE has found that the number of Dublin cases returned there has risen.[344]

This protection gap poses additional hazards to the mental and physical well-being of vulnerable asylum seekers transferred back to countries known for extended detention practices, particularly groups who may be ostracised or face outward hostility or oppression. In these circumstances, individuals who identify as gay, lesbian, bisexual, or transgender are "frequently confronted with homophobic and transphobic behaviour, ranging from discrimination to abuse and violence."[345] Within or apart from the confines of detention, populations subject to different forms of discrimination and hostility are not protected in the same way due to the varying degrees of strength in legislation across member states. For example, the Council of Europe's former Commissioner for Human Rights has recommended that in Switzerland (a participating Dublin country), "anti-discrimination law and policy should be overhauled" due to its ineffectiveness.[346] The Dublin Regulation does not take into account the disparities of anti-discrimination legislation among member states, although the rights of vulnerable groups can be significantly weakened by inadequate standards of protection. The lack of consistent protections for vulnerable groups and individuals, as well as the failure of some member states to respect the vulnerability of asylum seekers in general, highlights the need for more protective measures to be laid down and implemented.

- *Rights of the child*

Article 3(1) of the UN Convention on the Rights of the Child (CRC) states that in all situations, "The best interests of the child shall be a primary consideration."[347] This right is also reinforced in Article 24(2) of the Charter of Fundamental Rights of the EU.[348] In the current regulation there are no clear requirements that ensure member states take into account other factors besides family relationships that may directly affect the best interest of the child. These could include variables such as linguistic ability or cultural considerations, including existing communities within a country that share a similar nationality, ethnicity, or religion, regardless of whether the child is unaccompanied or with family members. CRC Article 20(3) encourages states to do this, especially in the case of unaccompanied minors.[349] Member states have at times failed to respect the best interests of the child in order to expedite Dublin procedures, which can lead to additional vulnerabilities especially for unaccompanied minors, despite the commitment of Article 20(1) of the CRC, which states that:

> A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.[350]

The separate cases of *A v SSHD* (CO/1995/2009) and *T v SSHD* (CO/1858/2010), which were brought before the High Court of England and Wales, reveal how the best interests of the child have sometimes been overshadowed by the pursuit of states' own interests. In these cases, two unaccompanied adolescent females residing in the UK were subject to unlawful transfers to Italy the same day they were notified of the removal decisions; in both circumstances, authorities arrived at the girls' residences to announce the transfers in what their lawyer had described as "early morning raids on their homes."[351] In addition to violating the girls' right to appeal through the failure to provide sufficient notice of the transfers, the authorities disregarded the lack of accommodation in Italy.[352] As evidenced in these cases, the measures taken by UK authorities to accelerate Dublin procedures resulted in the direct violation of CRC Article 37 and ECHR Article

[343] Ibid, p. 23
[344] Ibid, p.22
[345] Jansen, S. and Spijkerboer, T. (Sept. 2011). Fleeing homophobia: Asylum claims related to sexual orientation and gender identity in Europe, p. 10.
[346] Council of Europe Commissioner for Human Rights ( 23 Feb. 2012). Switzerland: Political leaders should stress that xenophobic propaganda is unacceptable. See http://www.coe.int/t/commissioner/news/2012/120223switzerland_EN.asp
[347] Article 3, Convention on the Rights of the Child
[348] Article 24 (2), Charter of Fundamental Rights of the European Union
[349] Article 20 (2) of the Convention on the Rights of the Child states that, "When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background."
[350] Convention on the Rights of the Child, Article 20(1)
[351] Bindmans LLP (19 Feb. 2010). Bindmans leads the way on the protection of unaccompanied minors. See http://www.bindmans.com/index.php?id=694
[352] Ibid

5, which safeguard freedom from unlawful arrest,[353] thus initiating a chain of events that ultimately perpetuated the violation of other rights.

In December 2011, lawyers disputed whether unaccompanied minors should ever be sent back to the first country of entry into the EU, challenging the common interpretation of Article 6 before the Court of Appeals of England and Wales, in *MA, BT & DA v SSHD*, a case eventually sent to the CJEU for review.[354] The ambiguous language used in the Dublin Regulation in regards to unaccompanied minors has presented challenges for how states should interpret the mandate. Article 6 of the regulation stipulates that if an unaccompanied minor has no family members legally present in a member state, the state in charge of processing an asylum request "shall be that where the minor has lodged his or her application for asylum."[355] While the common interpretation of Article 6 implies that the responsible member state would be the *first* country where the unaccompanied minor lodged his or her asylum application, the plaintiffs have argued that because this article, unlike other articles in the regulation, does not explicitly say 'first lodged,' the word 'lodged' could be interpreted as most 'recently lodged.'[356] This would mean that if an unaccompanied minor had most recently lodged an asylum application in Belgium, he should legally be able to have his or her claim processed in Belgium, even if Belgium was not the first point of entry into the EU. This new argument reiterates the need for clarity in the language used in the regulation and to make distinctions for protections of vulnerable groups. The lawyers condemned Dublin transfers for this population on the grounds that:

> When one considers the purpose underlying Article 6, two points are obvious. The first is that in the hierarchy of criteria unaccompanied minors have first place. The second is that, as originally drafted, the single paragraph accorded protection to unaccompanied minors with family in another Member State by express reference to their best interests. If an unaccompanied minor with family is treated by reference to his best interests regardless of how many asylum applications he has made, it is difficult to see why one without family, who may be equally vulnerable, should not have the criteria modified to meet his presumed best interests.[357]

In addition to whether special protection for unaccompanied minors is sufficiently ensured, the Dublin Regulation's lack of parameters on detention has been not only a challenge for adults involved in Dublin procedures but for both accompanied and unaccompanied children as well. Even though accompanied children may not necessarily be separated from their families during detention, their rights may still not be upheld. CRC Article 37 points out that detention for minors "shall be used only as a measure of last resort and for the shortest appropriate period of time."[358] The ECtHR case *Popov v. France* indicates that just "two weeks' detention, while not in itself excessive, could seem like a very long time for children living in an environment ill-suited to their age."[359] In *Muskhadzhiyeva and Others v. Belgium*, where Belgium detained a family awaiting a Dublin transfer to Poland for over a month, the ECtHR also found the particular detention conditions to be inappropriate for children, constituting a breach of ECHR Article 3.[360] Other court decisions have cited the arbitrariness in which detention for minors is used, such as *Rahimi v Greece*, where the judgement reveals that even two days in detention may be unlawful if detention is pursued as the primary option instead of a final measure and without "paramount consideration to the child's best interests."[361]

Despite these rulings, practices that negatively impact children still occur among certain member states. Minors involved in Dublin transfers are also subjected to these practices, which may violate rights established in international human rights instruments. For example, the former Council of Europe Commissioner for Human Rights has criticised Malta for its mandatory detention policy, which applies to minors and contradicts the principle of using detention as "a measure of last

[353] Article 37, Convention on the Rights of the Child and Article 5, European Convention on Human Rights
[354] Bindmans LLP. (5 Dec. 2011). Unlawful to send child asylum seekers back to other EU countries. See http://www.bindmans.com/index.php?id=1106 This case is currently still under CJEU review.
[355] See Dublin Regulation, Article 6
[356] See [2011] EWCA Civ 1446, Issue 1 (11-12).
[357] Ibid, Discussion 18.
[358] Article 37, Convention on the Rights of the Child
[359] See the ECtHR judgment of 19 January 2012, nos. 39472/07 u. 39747/07, *Popov v France.*
[360] See the ECtHR judgment of 19 January 2010, no. 41442/07, *Muskhadzhiyeva and Others v Belgium,* and Medical Justice (2010). Muskhadzhiyeva and Others v Belgium: Detention of children unlawful and conditions of detention unacceptable. http://www.medicaljustice.org.uk/content/view/1050/85/
[361] See the ECtHR judgment of 5 April 2011, no. 8687/08, *Rahimi v Greece.*

resort."[362] At the end of January 2012, Amnesty International found that in Greece "the detention of unaccompanied or separated asylum-seeking children continues."[363] Furthermore, CRC Article 31 provides for a child's right to leisure,[364] yet during an Amnesty International visit to the Amygdaleza detention in Greece in November 2011, minors reported "that they were only allowed to exercise outside once a week."[365] While Dublin transfers to Greece have since been halted, these conditions still exist for Dublin asylum seekers who were already sent to Greece prior to the ECtHR and CJEU decisions.

Level and Quality of Reception and Social Conditions

The application of the Dublin Regulation has exposed the inequalities that exist in levels of reception and social conditions among member states. Article 25(1) of the Universal Declaration of Human Rights states that, "Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services."[366] Despite multiple findings from NGOs and intergovernmental agencies on the widespread failure to meet this objective in certain member states, no sustainable solutions have been developed to address the wide discrepancy between the integrity of fundamental human rights principles and the reality that asylum seekers routinely face in such circumstances. As a result, large-scale violations of peremptory rights persist.

Much of the focus of the Dublin Regulation's impact has been targeted towards the reception conditions in countries where asylum seekers are returned, particularly countries that border the Mediterranean Sea such as Greece, Italy and Malta. UNHCR reported that 2011 was a "record in terms of the massive number of arrivals in Europe via the Mediterranean, with more than 58,000 people arriving."[367] In Italy it has been reported that, "there are only 3,000 spaces for refugees and asylum seekers in the official integration system, while in 2009 and 2010 there were nearly 30,000 asylum applications."[368] Comparable discrepancies in 2010 existed in Greece.[369]

Accommodation for asylum seekers is not only a problem among southern EU countries. UNHCR estimates that "a third of refugees granted asylum in Poland may be homeless and forced to sleep in shelters, empty buildings, train stations, or even night buses."[370] Access to housing is a critical component to fundamental rights protections among Dublin returnees yet the evidence shows that not all member states can guarantee asylum seekers the same levels of access or even any access at all. The EU Fundamental Rights Agency has indicated that this barrier further "increases the vulnerability and marginalisation of migrants in an irregular situation**."**[371]

As a result, asylum seekers are left with limited options. The options that they have often violate the principle of human dignity, which is upheld in Article 1 of the Charter of Fundamental Rights of the EU.[372] These limited options underscore the connection between a lack of social protection and destitution. A description of a settlement near Rome in which a single building "is home to around 700 migrants and refugees, including families"[373] is portrayed bleakly:

> The satellite dishes on the front of the building are redundant and many of the windows have been smashed. Children's toys scatter the dimly lit corridors. Beds consist of simple mattresses or cardboard on the floor, and there is no hot water or heating.[374]

[362] Hammarberg, T. (9 June 2011). Report following visit to Malta from 23-25 March 2011, p. 2
[363] Amnesty International (26 Jan. 2012). Public statement EUR 25/002/2012: A year on since the M.S.S. Judgement: Greece continues to violate asylum-seekers' human rights, p.1.
[364] Article 31, Convention on the Rights of the Child
[365] Amnesty International (26 Jan. 2012). Public statement EUR 25/002/2012: A year on since the M.S.S. Judgement: Greece continues to violate asylum-seekers' human rights, p.1.
[366] Ibid, Article 25
[367] UNHCR (31 Jan. 2012). Mediterranean takes record as most deadly stretch of water for refugees and migrants in 2011. See http://www.unhcr.org/4f27e01f9.html
[368] Grant, H. and Domokos, J. (7 Oct. 2011). UK failing to share burden of migration crisis, says southern Europe. *The Guardian.* See http://www.guardian.co.uk/world/2011/oct/07/uk-migration-crisis-southern-europe
[369] McDonough, P. and Tsourdi, E. (Jan. 2012). Putting solidarity to the test: Assessing Europe's response to the asylum crisis in Greece. *UNHCR Policy Development and Evaluation Service*, p. 5
[370] UNHCR (20 Feb. 2012). A third of refugees in Poland may be homeless. See http://www.unhcr.org/4f426c279.html
[371] European Union Agency for Fundamental Rights, p.64.
[372] Article 1, Charter of the Fundamental Rights of the European Union
[373] Grant, H. and Domokos, J. (7 Oct. 2011). Dublin regulation leaves asylum seekers with their fingers burnt. *The Guardian.* See http://www.guardian.co.uk/world/2011/oct/07/dublin-regulation-european-asylum-seekers
[374] Ibid.

These conditions are, as German NGO Pro Asyl reports, "well known among asylum seekers… [which has] encouraged some of those affected to avoid applying for asylum in Italy and instead to continue on to another European country to apply for asylum."[375] Such conditions could be justification for onward flight under UN Refugee Convention Article 31(1). Too often, states automatically apply Dublin transfer procedures without seriously examining the individual circumstances for why an asylum seeker left the initial member state.

Access to accommodation that is provided for asylum seekers in certain member states can come with strict conditions. The EU Fundamental Rights Agency has noted that asylum seekers with suspended transfers in Bulgaria and Lithuania "are not provided with any form of minimum social assistance unless they remain in accommodation centres."[376] Denmark, Hungary, and Malta also impose this same constraint on social assistance provided for individuals who cannot be removed from their borders.[377] These restrictions can isolate people even further and place severe limitations upon asylum seekers' freedom and choices.

The critical scrutiny of Greece's overall reception and social conditions has been aptly warranted, dismantling the notion of equal protection standards in the EU by illuminating serious, on-going instances of degrading treatment. The Council of Europe's Committee on the Prevention of Torture (CPT) and the EU Fundamental Rights Agency have warned about the harmful environment in Greece for asylum seekers and other migrants, particularly in the area of detention.[378] During a visit to Greece in January 2011, at one detention site, the CPT found "146 irregular migrants crammed into a room of 110m², with no access to outdoor exercise or any other possibility to move around and with only one functioning toilet and shower at their disposal."[379] Far from being the exception to detention conditions in Greece, the CPT observed these types of circumstances mirrored at other sites.[380]

Amnesty International has also continuously found that Greece's social and political climate for asylum seekers stands in clear violation of several rights, pointing out that "the vast majority of asylum-seekers, including unaccompanied minors, are left destitute, denied of any support from the authorities…against a background where… racially motivated attacks against refugees, asylum-seekers, and migrants have increased significantly."[381] The situation in Greece has illuminated the lack of clear recourse outlined in the Dublin Regulation for member states to take should another not deliver on its responsibilities to protect fundamental rights. While the existing jurisprudence now makes it difficult for member states to argue that Greece is currently a safe third country, many are still reluctant to recognise the magnitude of systemic violations in other member states, possibly due to the enormous ramifications such recognitions would have for the entire Dublin system.

## *CONCLUSION*

The Dublin Regulation was established with the aim of improving how asylum applications are handled across the EU. Not only has this objective been unfulfilled, the Dublin Regulation has appeared to violate several fundamental rights, in areas including access to legal remedies, vulnerability, quality of reception, child rights and family life. The violation of one right is often inextricably linked with the violation of other rights; for example, lack of access to information has had direct consequences for asylum seekers to appeal transfer decisions. This has been verified in cases such as the *Conseil d'Etat* case of *Chermykhanov*, *30 July 2008, Ordinance n° 313767*, where a lack of written information in the asylum seekers' language presented a barrier to accessing a judicial remedy. These violations have occurred due to both disparate asylum systems in the EU and inconsistencies in member states' interpretation of the regulation.

The Dublin Regulation's purpose is primarily to clarify which country should process an asylum application in the EU. However, multiple court decisions have demonstrated that the automatic designation of a responsible member state does not guarantee that human rights will be upheld, even if a state is a party to international conventions. These cases have highlighted vast discrepancies between the assumption of equal standards of protection in the EU and the reality faced by

[375] Bethke, M. and Bender, D. (2011). *The Living Conditions of Refugees in Italy*, p. 17.
[376] European Union Agency for Fundamental Rights, p. 69.
[377] Ibid.
[378] Human Rights Watch, p.6.
[379] European Committee for the Prevention of Torture (15 March 2011). Public statement concerning Greece, p. 3
[380] Ibid.
[381] Amnesty International (26 Jan. 2012). Public statement EUR 25/002/2012: A year on since the M.S.S. Judgement: Greece continues to violate asylum-seekers' human rights, p.1.

asylum seekers, showing how the Dublin Regulation's method for determining a responsible member state has at times jeopardised the rights of asylum seekers. These decisions have also identified significant limitations to the principle of mutual trust and the ability of safe-third country agreements to sufficiently protect human rights.

Several peremptory norms in international law have been violated through the Dublin Regulation. These include prolonged detention, a lack of due process and degrading treatment. The judgements in *M.S.S. v Belgium and Greece* and *N.S. and M.E. v U.K.* have indicated that transferring states ought to be better aware of reception conditions in receiving states. These verdicts directly undermine the core principle of mutual trust, a pillar of how the Dublin Regulation functions, by proving that degrading treatment and lack of access to judicial remedy have systemically occurred within member states, themes which recur in other cases brought before the courts. The situation in Greece has aptly illustrated that the entire Dublin system is only as strong as its weakest link; when one member state is unable to fulfil its obligations to protect human rights the entire system faces the possibility of collapse. Additional cases such as *X. v. the Belgian State* reveal that courts have begun to discover that countries besides Greece stand in systemic violation of fundamental and peremptory rights, further weakening the validity of the argument of similar standards of protection.

The principle of mutual trust, which has been used in attempts to justify bilateral agreements among states, has been challenged in court decisions. The Asylum Procedures Directive explicitly states that safe-third countries "cannot establish an absolute guarantee of safety."[382] Limitations to safe-third country agreements in respecting international law have been documented in a variety of instances, including the thwarted Malaysia-Australia refugee swap, the debate surrounding the United States-Canada Safe Third Country Agreement, and ECtHR judgments in *Saadi v. Italy* and *Baysakov and Others v. Ukraine*.

The inconsistencies in states' interpretation of the Dublin Regulation, including the rare usage of the discretionary clauses in Articles 3(2) and 15 have decreased its ability to maximise protection for asylum seekers. Certain Dublin Regulation protocols, such as equating a lack of response from a receiving state as implicit acceptance of a Dublin transfer, do not increase accountability, but rather raise uncertainty as to whether a member state is adequately equipped to receive an asylum seeker. Omission of guidelines on relevant mechanisms that states frequently employ, such as detention, inhibit the regulation's ability to account for discrepancies in asylum systems or provide alternative scenarios for states in the event that one state can no longer fulfil its obligations.

Human rights cannot be fully achieved without the participation of those to whom the rights belong; yet under the Dublin Regulation, asylum seekers often have little influence on the decisions that directly impact their lives. While fundamental rights are more effective when they are implemented beyond minimum standards, even minimum standards should be clear in the responsibilities and protections states must guarantee. The current standards in the Dublin Regulation have not succeeded in holding governments accountable nor have they ensured the implementation of solidarity among states to assist others that are overburdened by increasing migration flows. Former Commissioner for Human Rights Thomas Hammarberg has said, "The system as such must be revised and replaced with policies which are fair and efficient, in line with the principle of solidarity – based on common principles and values."[383] So far, this type of system has yet to be established; until it is, the Dublin Regulation will continue to risk violating the fundamental rights of asylum seekers in Europe.

[382] Recital 21, Asylum Procedures Directive
[383] Migration Policy Group. Council of Europe's Human Rights Commissioner claims that Dublin Regulation is seriously flawed and accuses northern Member States of opposing its revision. *Migration News Sheet.* See http://www.migrationnewssheet.eu/council-of-europes-human-rights-commissioner-claims-that-dublin-regulation-is-seriously

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## NOTES

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