

National report: **POLAND**



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

Cover photo: The 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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DIASP national report: POLAND

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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 EUODAC. 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 EUODAC). 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 Nieć* 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-Belarusian 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.¹ 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.

¹ 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.

The statistics on numbers of challenges to detention and their outcomes are not publicly available.

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 Okęcie 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 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.





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