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-Europe-*

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Dublin II: A summary of JRS experiences in Europe

The following is a summary of JRS' experiences with the Dublin Regulation in Europe. Questionnaires were sent to JRS offices in Belgium (BE), Germany (DE), Italy (IT), Romania (RO), Slovenia (SI) and Sweden (SE) because of their regular contact with asylum seekers who experience the consequences of the Regulation's implementation.

1. How does JRS accompany asylum seekers who await a Dublin transfer, or who have already been transferred?

JRS staff and volunteers primarily visit detention centres to meet with asylum seekers awaiting a Dublin transfer. Social counselling and legal assistance is also provided. JRS also offers to contact friendly organisations in the country of first entry, to help facilitate people's asylum cases and to ensure smooth and safe transfers. JRS-BE and JRS-SE, for example, have collaborated with the Greek Refugee Council and with *Stowarzyszenie Interwencji Prawnej* (a Polish NGO) in the past.

2. What motivates asylum seekers to make a secondary movement to another EU country?

In all reported cases, the primary motivation is the weakness of the asylum system in the first countries of entry. JRS-RO, for example, notes that a 2007 decision by a Hungarian court suspended the Dublin transfer of an asylum seeker to Romania, arguing that the transfer would infringe against the prohibition of inhumane treatment in Article 3 of the European Convention of Human Rights.¹ Many asylum seekers who leave Italy, according to JRS-IT, succeed with getting their asylum applications processed in other EU countries. Underlying the weakness of the asylum systems in Greece and Italy is the fact that asylum seekers never intend to stay there. To them, Greece, Italy and other EU border states are merely transit countries.

A secondary motivation is the perception an asylum seeker has about a country's asylum system. JRS-BE remarks that many come to Belgium because of the positive impression they have of its asylum system, or to eventually reach the UK. Similarly,

¹ Metropolitan Court of Budapest, 07/09/2007, *Abdelfatah Saadallah M'hamed v. Office of Immigration and Nationality of the Republic of Hungary*, 17.K.34.397/2007/8

asylum seekers with a positive impression of Sweden's asylum system expect better treatment there.

A third motivation is the availability of employment. According to the experiences of JRS-RO, some asylum seekers make a secondary movement to another EU country because of a promise they received to obtain work in the black market, or because a family member or friend succeeded in finding employment.

Other reasons for secondary movements include family reunification, the fear of being *refouled* to a country where the asylum seeker was persecuted, and the need for medical and/or psychological treatment that cannot be obtained in the country of first asylum.

3. What is the process like for asylum seekers who await a transfer? Or for those who have already been transferred and await a decision on their asylum claim?

The smoothness and speed of the Dublin transfer process relies mostly on the responsiveness of the country of first entry. JRS-BE and JRS-DE remark that asylum seekers typically face months in detention if they are being transferred to Greece. In Belgium, one reason for this is that transfer requests to Greece are usually not answered within the time period of two months, as required by the Regulation.² Although this, in principle, should lead to the automatic acceptance of the request on the part of Greece,³ the Belgian authorities continue to detain the asylum seeker until Greece offers an official guarantee that the person will be able to introduce a new asylum application once they arrive there. Poland, alternatively, tends to respond more quickly to Dublin cases, according to JRS-BE. JRS-SE also reports very quick action on the part of Swedish authorities, who try to keep an asylum seeker in detention for only a few days.

The difficulties are no less for those who have already been transferred. Asylum seekers who are transferred to Greece, for example, often do not have documentary evidence that they intend to ask for asylum; without this they risk being identified as an illegal immigrant and face immediate detention or expulsion. JRS-BE confirms that this is sometimes the case with asylum seekers who are transferred to Belgium. An Afghan asylum seeker who was recently transferred to Belgium from the UK was arrested and detained as an illegal immigrant upon arrival in Brussels. After one month of detention without an interview, he realised that he was not considered to be an asylum seeker by the Belgian authorities and that he had to formally apply for asylum again.

JRS-IT remarks that asylum seekers transferred to Italy are treated no differently from other cases, and wait just as long for their decisions – which in Italy's case may take some months.

² Article 18.1 of COUNCIL REGULATION (EC) No 343/2003

³ Article 18.7 of COUNCIL REGULATION (EC) No 343/2003

4. How does the Dublin system personally impact asylum seekers who experience it?

JRS-BE observes that the positive attitude many asylum seekers report to have of Belgium's asylum system soon give way to despair, hopelessness and depression as they learn that they will be transferred to another country. These feelings especially stem from their ignorance of the Dublin system – a system they would have avoided if they had known about it. There is a strong sense of 'wasted time.' JRS-DE remarks that many asylum seekers feel like "banana crates being transported all over Europe"; others feel that they are left "high and dry in a desperate situation." Transferred asylum seekers are shocked by the asylum systems they face in the countries of first entry, such as in Greece and Italy. There is also the factor of how much time they spent in the second EU country before being transferred. Attachments or expectations may have been formed that make it difficult for them to leave.

Unfortunately, despair is a common feeling that asylum seekers experience. JRS-BE notes an example of an Afghani male that travelled to Greece via a small boat from Turkey, who was promptly beaten by Greek officials upon arrival and sent back to Turkey. Later he returned to Greece from Turkey, this time through an improvised sea vessel composed of two large tires that he used for respite in between long bouts of swimming. After somehow finding the means to travel from Greece to Italy, he eventually came to Belgium. His physical scars were very noticeable. Despite this the Belgian authorities ordered his transfer back to Greece. Upon receiving this news the man reached such a height of despair that he simply disappeared. Neither JRS-BE nor his lawyer have had anymore contact with him. In one sense, the Dublin system may have forced this man to go underground. JRS-BE confirms that this has not been an exceptional case: many Iraqis and Afghans who were transferred to Greece have returned to Belgium, without notifying the authorities, in order to avoid another transfer. The rare application of the Regulation's humanitarian clause in Belgium has been a factor in causing such negative consequences.

Other asylum seekers simply give up in the face of a likely Dublin transfer to a country with a poor asylum system, and return to the country from which they fled. JRS-RO recalls a Moroccan asylum seeker who was intercepted in Romania and refused transfer to Bulgaria. He instead chose to return to Morocco because he considered Bulgaria to be unsafe.

"There is no human element in the system," according to a JRS detention visitor who regularly accompanies detained asylum seekers awaiting a Dublin transfer.

5. What do asylum seekers know about the Dublin system? Are they aware of it prior to their departure?

Many asylum seekers are totally unaware of the existence of the Dublin Regulation and its consequences for them. The burden of knowledge rests on the asylum seeker, and not on the authorities. JRS-BE remarks that even some Belgian immigration

judges are misinformed or ignorant of the provisions within the Dublin Regulation. They also remark that some asylum seekers are reassured by the Belgian authorities that Greece's signatory status to the 1950 Refugee Convention, and its membership in the EU means that their cases will be sufficiently treated, and that any problem with Greece's asylum system is a question for the Greek authorities and not for Belgium. EU Member States do not often inform asylum seekers of the humanitarian clause within the Regulation. Asylum seekers must either be already well informed and assertive, or, they must have good lawyers. JRS-BE reports, for example, the case of a couple seeking asylum who demanded to have the document sent by Belgium to Greece affirming their request for asylum, in order to avoid needing to ask for it again in Greece (and risk detainment as illegal immigrants). A copy of this document was provided to them, which facilitated the processing of their asylum application in Greece. But most are not so lucky: in the case of two Iraqi asylum seekers transferred to Romania from Austria, no documents were provided, and as a result their need for asylum went unreported.

JRS-IT states that some asylum seekers leave Italy knowing full well the risk of being transferred back, but feel that it is a risk worth taking. The experiences of JRS-RO also show that some asylum seekers choose to leave Romania despite knowing about the Dublin system, because they feel it is useless to continue the asylum procedure in Romania.

The Swedish authorities appear to be the exception, according to JRS-SE, as they inform the person well about the rules of the Dublin system and what they should expect to happen. But even having this information does little to soothe the concerns of asylum seekers facing a transfer, since many tell JRS-SE that they intend to return to Sweden anyway.

6. How are families impacted by the Dublin system?

The separation of families is a major negative consequence of the Dublin system for asylum seekers. In some cases entire families are transferred, such as in Belgium, where a Chechen family with five children (all under 10 years of age) were transferred to Poland after several weeks of detention. This transfer occurred despite the physical assaults the family's father endured from other Chechens while in Poland. For persons who travel to a certain EU country to be with their family, being transferred to another EU country where they might have no social connections can be overwhelming and stressful.

7. How are children impacted by the Dublin system?

JRS-BE observes that there are many families with children in detention who await a Dublin transfer. The biggest impact children experience is the separation of their family. Unaccompanied minors tend to be the exception. There have been a few reported cases in JRS-SI, such as the case of one minor who saw his uncle transferred to Slovenia, and as a result was left unaccompanied. Belgium does not transfer

unaccompanied minors except when it is the will of the child to join a family member in another Member State.

8. How do governments respond to individuals and families awaiting a Dublin transfer, or to those who have already been transferred?

In general, families or individuals awaiting a Dublin transfer are accommodated in reception centres, but more and more are kept in closed detention centres. There is little to no use of the humanitarian clause in the Regulation. JRS-SE notes one example where a woman in her sixth month of pregnancy was transferred on her own back to Greece, despite loud protests from NGOs and church groups.

In most cases asylum seekers are poorly informed of their rights and what they can expect to happen. Any kind of social assistance is usually left to the NGOs or churches and charities.

9. Are JRS offices in contact with organisations in countries of first entry?

JRS-BE has been in contact with the Greek Council for Refugees, among others, to help asylum seekers through the transfer process. There is also contact between JRS offices, such as the case when JRS-IT was able to welcome a woman and her child in one of their reception centres after communicating with JRS-BE. JRS offices have also contacted local Caritas networks for assistance.

10. Are there any other issues raised by the JRS offices surveyed?

JRS-BE raises the issue of inter-ethnic tensions that act as a further negative consequence for asylum seekers trapped in the Dublin system. Many Chechen families in Belgium, for example, are transferred to Poland, where many other Chechens reside. JRS-BE has encountered Chechen families who fear the danger they might be exposed to from other Chechens upon their transfer to Poland.

JRS-SE observes that the Dublin system fosters 'mafia-like' criminality. Instead of immigrating through legal means, asylum seekers pay to be smuggled through the whole of Europe to reach Sweden as a means to circumvent the Dublin system. Criminal gangs that are involved in money laundering, prostitution, human smuggling and the arms trade, for example, have received a boost due to an increase in requests to avoid the Dublin system. JRS-SE believes that the Dublin system has contributed to an increase in the smuggling of Iraqi refugees to Sweden in 2006 and 2007.

JRS-RO observes an increase in 2008 in the number of persons transferred to Romania under the Dublin system in comparison to the previous year. As a new EU Member State and new party to the Regulation and EURODAC system, JRS-RO estimates that Romania will be assuming more responsibility for asylum seekers who simply transit through the country onto Western Europe. According to JRS-RO, the country's asylum system does not have the necessary capacity to accept these cases.

11. What are JRS impressions of the Dublin system? Can alternatives to the current system be envisioned?

The overall JRS impression of the Dublin system is that it does not work for one major reason: the asylum systems of the EU Member States are too different from each other. The underlying assumption of the Dublin system is that the asylum system in Belgium, for example, is the same as in Greece or Malta. This is simply not true. As a consequence, some of Europe's asylum seekers face an unfair system where they are forced to apply for asylum in a country with sub-standard procedures.

Following from this impression, we can infer two major cracks in the Dublin system. Firstly, it penalises a relatively small percentage of asylum seekers who are caught not due to the efficiency of the system, but merely due to their unfortunate circumstances. The severity of this penalty is compounded by the lack of awareness the asylum seeker has of the Dublin system, and by the sense that they are being punished for seeking protection in Europe. Moreover, the penalisation of the asylum seeker inhibits the opportunity for successful integration into European society should the person be granted refugee status, due to the lack of trust the person may have in Europe's ability to welcome them.

Penalisation of asylum seekers eventually gives way to the second crack in the Dublin system: illegal immigration. A strict application of the Dublin Regulation forces asylum seekers to utilise illegal means of entry into Europe, in order to avoid being transferred to a Member State whose asylum system is weak, or to preserve family ties. It is a system that does not have the necessary flexibility to consider the wide range of human need that asylum seekers possess. Its inflexibility encourages circumvention of the system, which carries many risks for asylum seekers such as interception during illegal entry, reliance on human smugglers or administrative detention as an illegally staying immigrant.

These impressions give rise to three major policy considerations for the Dublin system: suspension, re-allocation and a stronger humanitarian clause. The first argues that as long as asylum and reception conditions remain unequal in the EU, then there should be a mechanism for the suspension of transfers to Member States with an inadequate asylum system. In fact the European Commission admits that the unevenness of Europe's asylum reception conditions and procedures is the primary cause for the dysfunction of the Dublin system.⁴ The second alternative argues that the Dublin Regulation could be amended to provide for re-allocation to another EU country for asylum processing, if the country of first entry shares a higher 'burden' than the others. Any system of re-allocation should take into account the preferences of the asylum seeker, in particular their familial/cultural connections, skills, employment experience and their linguistic capacities. Moreover, any system of re-allocation should prioritise the protection needs of the asylum seeker over the

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions, *Policy Plan on Asylum: An Integrated Approach to Protection Across the EU*

logistical or political expediency of the system. The third alternative argues for a strengthened humanitarian clause in the Regulation that would more strongly oblige Member States to accept a person's application based on the protection needs of the applicant. Asylum seekers should also be informed of the clause's existence, and have the opportunity to ask for the its implementation.

None of these points suggest a permanent cessation of the Dublin system. But the general sense is that the Dublin system would only be logical if a Common European Asylum System were already in existence. But without the support of the latter, the former can never work. While it is felt by the JRS offices surveyed that the Regulation could be improved through the EU legislative process, there is also the sense that any improvement made to the Regulation would only serve as a 'bandage' unless true common asylum procedures are established throughout the EU.

Finally, the primary concern of JRS is that EU and Member State national law should always ensure access to asylum and protection. The three policy arguments described above do not apply as long as this fundamental human right is unrecognised and not enforced. As evidenced by JRS' experiences, the current Dublin system does not sufficiently meet this standard. Any future adaptations to the system that continue to neglect this standard will be fundamentally flawed.

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