Parliamentary Assembly
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COUNCIL OF EUROPE
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Resolution 2072 (2015)[1]

After Dublin – the urgent need for a real European asylum system

Parliamentary Assembly

1. As parties to the 1951 Convention relating to the Status of Refugees, all Council of Europe member States have an obligation to protect refugees. In order to determine who should benefit from this protection and thereby avoid breaches of the obligation, it is necessary to examine individual asylum applications.

2. The Dublin Regulation is a European Union legal instrument establishing a system for definitive identification of the participating State responsible for examining a particular application. Alongside other instruments and mechanisms, it forms part of the European Union's wider Common European Asylum System (CEAS). Its essential purpose is to address the problems of "asylum shopping" and "refugees in orbit". Addressing these problems remains crucial for the CEAS to function as it should.

3. Since the original Dublin Convention was adopted in 1990, however, the scale, nature and geographical focus of mass migration into the European Union have changed significantly, with especially dramatic developments in recent years, and in particular in the last few weeks. In addition, the distribution of asylum applicants between participating States is extremely uneven, in many cases simply because of their geographical location. For example, in 2014, five participating States dealt with 72% of all applications.

4. The Dublin system is not intended, or capable of functioning, as a "burden-sharing" mechanism to counteract this inequity. On the contrary, the inequity is exacerbated by transfers of asylum applicants, carried out in application of the Dublin Regulation, based on the criterion of "irregular border crossing". This is the most commonly evoked criterion by which asylum seekers are transferred back to the country of first entry to European Union territory. The Dublin system has thus become a symbol of unfairness and lack of solidarity in European asylum policy, in particular the CEAS, which lacks an effective compensatory mechanism for redistributing the burden.

5. The dysfunctionality inherent in the Dublin system has its adverse effects beyond the borders of the European Union. The core of the system, which stipulates the transfer of refugees to the first country of entry to the European Union has brought about an additional, often hidden unfairness: that in some cases the first country of entry to the European Union tends to reject the asylum application artificially in order to be in a position to send these asylum seekers to the last transit country in which they had been present before entry into the European Union. This puts an additional and unfair burden on non-EU Council of Europe member States which are mainly on the transit route.

6. Furthermore, the implementation of the Dublin system has in a number of instances given rise to violations of asylum seekers' human rights, such as the right not to be subjected to inhuman or degrading treatment, the right not to be detained arbitrarily, the right to respect for private and family life, the right to an effective remedy and the prohibition of collective expulsions. Some of these violations have been confirmed by court judgments at the national or European level. The Dublin system may also subject asylum applicants

1. *Assembly debate* on 29 September 2015 (31st Sitting) (see Doc. 13866, report of the Committee on Migration, Refugees and Displaced Persons, rapporteur: Mr Michele Nicoletti; and Doc.13884, opinion of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Boriss Cilevičs). *Text adopted by the Assembly* on 29 September 2015 (31st Sitting).

to a lengthy period of uncertainty and precarity before the State responsible for examining their application is identified; this may be further prolonged where the person concerned is transferred to a country with lengthy delays in its asylum procedures.

7. Many of these problems are caused by deficiencies in implementation of other elements of the CEAS, in particular the Eurodac Regulation (on fingerprinting of asylum applicants, Regulation (EU) No. 603/2013), the reception conditions directive (Directive 2013/33/EU) and the asylum procedures directive (Directive 2013/32/EU), which may obstruct proper implementation of the Dublin system. Indeed, the fact that transfers of asylum applicants to a particular country constitute a burden is a perverse incentive not to comply fully with these other instruments. In the case of the reception conditions and asylum procedures directives, this comes at great cost to the protection afforded to asylum applicants.

8. The Parliamentary Assembly has already expressed criticism about the functioning of the Dublin system, in particular in its Resolution 2000 (2014) on the large-scale arrivals of mixed migratory flows on Italian shores, Resolution 1918 (2013) on migration and asylum: mounting tensions in the eastern Mediterranean and Resolution 1820 (2011) on asylum seekers and refugees: sharing responsibilities in Europe, and concludes that the Dublin system is dysfunctional. It is not effective and certainly not efficient in achieving its basic aims, and its operation in practice has an unacceptably high human cost for asylum applicants and resource costs to participating States in complying with its lengthy and complicated procedures, whilst only aggravating the unfair repartition of responsibility. Furthermore, it is difficult to see how the Dublin system can operate as intended, as it depends on the still unfulfilled assumption that all participating States are able to ensure protection of asylum applicants and properly cope with the number of applications they receive. Indeed, recent events in Germany, Austria, Hungary and elsewhere show that the Dublin system has already collapsed and must be reformed as a matter of urgency.

9. The Dublin system, including both the regulation itself and its implementation in practice, is thus in urgent need of reform – as, indeed, is the wider CEAS. Without far-reaching reform, there is a risk of participating States suspending or withdrawing from the Dublin system, which would cause chaos and confusion. The Assembly welcomes the fact that the European Commission will conduct an evaluation of the Dublin system in 2016 and takes note of the European Council conclusions of 26 June 2015. Nevertheless, many necessary measures can and should be taken now, and the need for other, more far-reaching ones is already apparent. Whilst reform of the Dublin system cannot provide answers to all of the questions raised by today's mixed migratory flows to and around Europe, failure to reform it will undermine all other efforts to address the issue and place the entire CEAS in jeopardy. European political solidarity is at stake.

10. The Assembly therefore recommends that the European Union and its member States, as regards implementation of the Dublin system and related instruments:

10.1. include a permanent binding system of distribution of asylum seekers between member States, using fair, compulsory allocation criteria, while taking into account the prospects of integration and the needs and specific circumstances of asylum seekers themselves;

10.2. strictly apply family-related responsibility criteria and provisions concerning the best interests of the child, notably those relating to unaccompanied minors, to facilitate family reunification beyond the nuclear family;

10.3. apply the dependent persons and humanitarian clauses in a fair, humane and flexible manner, taking greater account of asylum seekers' preferences;

10.4. rigorously apply the discretionary clauses where a transfer would be incompatible with obligations under international law;

10.5. avoid reflexive recourse to the criterion of "irregular border crossing" in order to return asylum applicants to the country of first entry;

10.6. use in an extremely proactive manner the mechanism for early warning, preparedness and crisis management in anticipation of critical pressure on or problems in the functioning of a participating State's asylum system;

10.7. ensure harmonisation of national asylum procedures and standards through the full, effective and coherent implementation of the asylum procedures directive, the reception conditions directive and the qualification directive (Directive 2011/95/EU);

10.8. enhance the resources available and make greater use of financial mechanisms such as the Asylum, Migration and Integration Fund;

10.9. increase their sharing of expertise and provision of technical assistance, including through the European Asylum Support Office;

10.10. promptly and fully implement relevant judgments of the European Court of Human Rights and the Court of Justice of the European Union.

11. As regards the wider context within which the Dublin system operates and on which it is dependent, the Assembly recommends:

11.1. stronger supervision of national refugee status determination procedures, leading to mutual recognition of positive national status determination decisions; otherwise, "joint" processing of asylum applications, which would have the advantage of contributing to burden sharing;

11.2. ensuring, through appropriate, automatic procedures, relocation of recognised refugees on a level adequate to ensure equitable burden sharing amongst the participating States;

11.3. introducing a status of "European refugee" for beneficiaries of international protection, allowing the transfer of residence and exercise of other rights between States; otherwise, shortening to two years the qualification period for beneficiaries of international protection to qualify under the long-term residents directive (Directive 2003/109/EC).

12. The Assembly calls on the European Union and its member States to urgently revise the Dublin Regulation. For this purpose, it recommends, in particular:

12.1. prompt adoption of the European Commission's legislative proposal intended to resolve the ambiguity in the provision regulating responsibility for asylum applications lodged by unaccompanied minors;

12.2. considering removal of the criterion of "irregular border crossing" as a basis for determining which State is responsible for an asylum application;

12.3. considering the introduction of the notion of "manifestly founded claims" in order to speed up asylum procedures;

12.4. taking account of the foregoing recommendations, undertaking an immediate evaluation of the Dublin system, including the member States of the European Union, as well as the non-EU member States of the Council of Europe that are on transit routes, which takes a holistic view of the overall effects of the Dublin system and of the wider context within which it operates.