Asylum Procedure under the Dublin Regulation: the urgent need for change

AN INEFFICIENT SYSTEM AND A VECTOR FOR EXCLUSION

Named after a convention originally signed in Ireland in 1990, the so-called "Dublin III" Regulation (No604/2013) outlines the criteria and procedures for establishing member state responsibility for examining asylum claims in the European Union (EU) and in four EU-associated countries. It entered into force on June 26, 2013. While Dublin III does not prevent an asylum seeker from submitting an application in several countries, a single country will ultimately be considered responsible for examining it. Responsibility is determined by criteria which include the presence of family members in a given country, regular or irregular residency, and registration of the asylum claim. Once the responsible state has been designated, the asylum applicant must be transferred to it.

The number of asylum claimants subject to the Dublin Regulation has significantly increased over the past two years, in France as well as in Europe. In 2014, approximately 6,000 applications were subject to Dublin III in France, but this figure climbed to 12,000 in 2015 and to 22,000 in 2016 (25% of all asylum seekers). Initial data suggest that over 30,000 people were subject to Dublin III in 2017, one third of all asylum claims made in France.

This rise is the result of the increase in arrivals of people in search of protection via the Mediterranean and Balkan routes since 2015. It is also the result of the dismantling of refugee camps in Calais and Paris, where numerous people were living after transiting through other European countries on their way to France. Nevertheless, the number of people who were ultimately transferred to other countries was relatively low: only 525 transfers took place in 2015.

In July 2016, France's Minister of the Interior, Gérard Collomb, quietly issued an administrative circular instructing prefects to tighten their implementation of the Dublin Regulation, deporting asylum seekers more rapidly towards responsible countries and authorizing the use of coercion. As a result, more and more asylum seekers are now held under house arrest in hotels, in emergency accommodation shelters (*Centres d'hébergement d'urgence*, or CHUs), reception and orientation centers (*Centres d'accueil et d'orientation*, CAOs), or so-called "Prahda"[1] centers, and the number of claimants subject to Dublin procedures who have been placed in detention centres has increased dramatically.[2] But despite this tightening up of enforcement, only 1,300 people were transferred from France to other countries in 2016, a mere 9% of total transfers accepted by other member states.

As for asylum seekers who are entitled to remain in France, they face long delays before they can submit their applications. Waiting periods can last at least six months and even up to eighteen months, if the prefecture considers the person to be on the run. These vulnerable people live in fear of deportation during the protracted waiting period, and are often without resources or housing.

Above all, the increase in the use of the Dublin Regulation destabilizes the entire asylum system: the registration of an asylum claim takes thirty days on average, because prefectures frequently convoke applicants who come under the Dublin rules. Most of these applicants need to wait months before their asylum claims are examined by the French Office for the Protection of Refugees and Stateless Persons (OFPRA). Paradoxically, while the asylum system is overwhelmed, it also in part under-utilized: people who are subject to Dublin rules cannot be legally admitted to a Reception Center for Asylum Seekers (*Centre d'accueil des demandeurs d'asile*, or CADA), while space is insufficient in CAOs and Prahdas, which represent the alternative. Furthermore, these centers are becoming more and more synonymous with house arrest.

A disastrous reform

In short, the system has run amok under the Dublin rules, and there is an urgent need for comprehensive reform. However, the reform proposal currently under discussion in the European Parliament falls far short. Inspired by the infamous deal between the EU and Turkey, the text aims to introduce a new step in the process, imposing an obligation to determine if there is a safe third country (a country outside the EU where the claimant would be considered safe and could request asylum) before the responsible state has been designated. This would infringe on the right to asylum. It would also increase the burden of taking in refugees on countries to the south and to the east of the EU.

Furthermore, the proposed reform of the Dublin III Regulation does away with what has thus far functioned as a safety valve for asylum seekers, namely, the time limit in which transfers towards another member state need to take place. As a result, no matter the circumstances, a state that has been designated as responsible for examining an asylum claim will remain responsible ad *vitam aeternam*, even if the claimant exits the European union for a period of years. The suppression of this clause would work against the examination of asylum claims and the evaluation of the need for protection, multiplying the numbers of asylum seekers condemned to wandering from place to place.

The proposal provides for a "redistribution" mechanism similar to the Emergency Relocation Mechanism agreed upon in 2015 (it should be recalled that, due to lack of political will, ultimately only 30,000 "super asylum seekers" were transferred from Greece and Italy). The proposed mechanism would only come into effect during periods of crisis, when the number of claims exceeds 150% of the normal reception capacity of a country.

In short, the proposed reform would not lead to an overall improvement of the system nor would it enhance solidarity between Europe's member states. On the contrary, it would increase the responsibilities for refugees in countries to the east and south of the EU, and would increase the vulnerability of people in need of protection.

RETHINKING THE ASYLUM SYSTEM

For a European system based on choice rather than constraint

The Cimade believes that asylum must be handled at the European level.

Political and legislative developments over the past twenty years have resulted in an acquis communautaire, which militates against the return of policymaking to the national level. During this same period, the European courts have considerably reinforced the rights of asylum seekers and refugees. Finally, in the face of the significant political conflicts occurring within the EU (Brexit, the East-West fracture, the rise of populism), it is important to reaffirm the role of Europe in the defense of asylum rights, and the importance of a system based on solidarity between European states.

To move beyond the Dublin Regulation will entail the development of a significantly more comprehensive and uniform asylum system than the current regime in the EU. Such a system would involve not only more dignified and more comparable conditions for asylum seekers across the member states, but also the establishment of a mechanism guaranteeing asylum seekers equal opportunities for protection across Europe. Today, there are flagrant disparities between decisions on asylum depending on which country processes the application, and chances of getting a favourable response can vary greatly from country to country[3]

To reduce such disparities, there should be a Community-level procedure for asylum application. It should be implemented by an independent European office (with a universally suspensive appeal process), or by reinforcing the authority of an independent office to harmonize policy responses and streamline doctrines.

In opposition to the current EU guidelines, we affirm the need to harmonize procedures and reception conditions for asylum seekers from the top down: every person in search of protection should see her or his request examined with attention and impartiality, and be welcomed with dignity into a European country.

This would go together with unconditional access to European territory for people in search of protection and the rejection of European policies of externalization and border screening procedures (such as the use of hotspots).

La Cimade thus reiterates its opposition to:
-----The notion of safe countries of origin;
— The notion of safe third countries;
— The use of accelerated procedures;
— The increasing restriction or the deprivation of liberty of asylum seekers (house arrest and detention).

In the context of such a reform, the current Dublin mechanism can be replaced by a system that takes the choice of the person who is seeking asylum into account from the outset, allowing it to be made according to her or his family ties, linguistic competencies, or personal aspirations. This will help avoid situations of wandering - from the country one wishes to be in to the country where one's claim is transferred - and of exclusion. Furthermore, the EU could consider establishing a

system of genuine solidarity, measured in terms of shared financial resources as well as expertise and human resources and compensating for imbalances resulting from the numbers of asylum seekers present in a given member state.

Another indispensable condition for reform is the establishment of genuine freedom of movement and residence within the European Union for people benefiting from a form of international protection. Freedom of movement would be allowed according to the same conditions as those enjoyed by European nationals, putting an end to the growing phenomenon of refugees without documents.

For an immediate end to the Dublin Regulation

Pending the introduction of such a system, La Cimade reiterates its position that, as it is implemented today and as proposed in the new draft, the Dublin Regulation is complex, unjust and inefficient: choice of the country of asylum must revert to the asylum applicant. Existing rules that permit France to be responsible for handling claims [4]need to be more broadly applied so that applications for protection can be examined expeditiously by OFPRA. Since 2015, the French Human Rights Commissioner has repeatedly asked the French authorities to suspend the implementation of the Regulation by making use of the suspensive clause.[5] The French authorities must urgently process the asylum claims of persons who currently find themselves subject to Dublin rules, and they must commit to a genuine European asylum system that ensures protection and solidarity.

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[1] *Programme d'accueil et d'hebergement des demandeurs d'asile* : a tender for the creation of 5351 beds was won by ADOMA which converted what were formerly « Formule 1 » hotels into shelters.

[2] In the immigration detention centers where La Cimade is present and provides legal aid (Bordeaux, Toulouse, Hendaye, Mesnil-Amelot and Rennes), 946 people subject to the Dublin Regulation were placed in detention during the ten first months of 2017, compared to 342 in the same period in 2016. Of these, 470 were effectively transferred to another EU member state. Ninety nine people were transferred despite the French Court of Appeal ruling that the grounds for placing them in detention were inapplicable. (C. Cass., 27 September 2017, n°17-1130).

[33] As an example, consider the differences in rates of approval for Afghan asylum applicants: 1.7 in Bulgaria, 37.4% in Sweden, 60.5% in Germany, 82.3% in France, 97% in Italy

[4] Notably, the Regulation's discretionary clause and the second clause of Article 53-1 of the Constitution

[5] See: *Défenseur des droits, Synthèse des recommandations, Exilés et droits fondamentaux: la situation sur le territoire de Calais*. October 2015.