

Introducing Dublin III

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The Dublin III Regulation¹ entered into force on 19 July 2013, and is intended to serve as a recast of the Dublin II Regulation, which itself replaced the Dublin Convention in 2003. The original Dublin Regulation was a law that set out which Member State of the European Union (EU) had the duty to decide on an application for humanitarian protection from an asylum seeker. Dublin III, which became applicable on 1 January 2014, is the latest version of the Dublin Regulation, with the objective of bettering the circumstances of those persons seeking protection in EU Member States.

The Dublin Regulation deals with the situation that arises when a person seeks asylum in one EU Member State, then subsequently seeks asylum in another EU Member State. The issue that arises in this case concerns which Member State should, in fact, take responsibility for granting asylum to that person. Dublin III states that it should be the first State that should be the one to determine the asylum seeker's application, and that an asylum seeker in another Member State will be transferred back to the first Member State where he or she applied for asylum. Article 3 (2) states that:

Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.²

This rule of transferring asylum seekers back to the first Member State is liable to certain exceptions, such as where the asylum seeker has family members that are living in the second Member State. The Dublin III Regulation aims to give a quick answer to which Member State is to consider granting asylum 'to deter the making of multiple asylum claims or 'forum shopping' within the European Union.'³

¹ Regulation of the European Parliament and of the Council (EU) 604/2013 Establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast) [2013] OJ L180/31 <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:180:0031:0059:EN:PDF>> accessed 12 April 2014

² Ibid 3(2)

³ --, 'Dublin III Regulation ILPA Information Sheet' (ILPA 2014)

<www.ilpa.org.uk/data/resources/.../14.01.10-Info-Sheet_Dublin-III.pdf> accessed 12 April 2014

The Dublin regulations have been subject to a number of criticisms in the past. One of the core values entrenched within the Dublin regulations is that of mutual recognition among the EU Member States, meaning that the Dublin regulations assume that an asylum seeker will receive an equal level of recognition and protection regardless of which EU Member State he applies for asylum in. The reality is that once a Member State is inundated with refugees seeking asylum, the natural result is that resources are spread too thinly and therefore that particular Member State cannot actually provide an asylum seeker with conditions that satisfy the criteria of the EU. Under the old Dublin regulation, this meant that asylum seekers were susceptible to the exposure of conditions that violated their basic human rights, a situation not acceptable within the EU.

The idea that an asylum seeker should be sent to the first EU Member State he or she landed in meant that the border countries of the EU, including Malta, Italy, and Greece, ended up being responsible for all the asylum seekers in the EU. This resulted in a lot of pressure being put on EU Border States, which in turn led to a breakdown of the asylum seeking process in these countries. Indeed in the case **MSS v Belgium and Greece**⁴ the European Court of Human Rights (ECtHR) decided that Belgium and Greece had violated the rights of Mr. M.S.S.- an Afghani refugee-when Belgium deported him back to Greece, the Member State in which he first landed in the EU. This violation of human rights was based on the fact that the asylum seeking process in Greece had deteriorated so much that the ECtHR felt that it was against Mr. M.S.S.' basic human rights to expose him to the asylum seeking process in Greece. 'After the ruling, Denmark, Norway, Finland and, on Wednesday, Switzerland announced that they would cease returning people to Greece.'⁵ In an ever more recent example, on 2 January 2014, the United Nations High Commissioner for Refugees (UNHCR) urged EU Member States to stop sending refugees back to Bulgaria due to an increase in asylum seekers there because of the current crisis in Syria. The UN Refugee Agency 'concluded that asylum-seekers in Bulgaria face a genuine risk of inhuman or degrading treatment due to systemic deficiencies in reception conditions and asylum procedures.'⁶

Dublin III aims to solve the problems presented by the previous Dublin regulations. Dublin III has kept the principle that asylum seekers should be sent back to the first EU Member State they sought asylum in, however Dublin III recognizes that in some cases this may result in a violation of the human rights of that asylum seeker and therefore accepts that in certain cases the asylum seeker should not be sent back to the first EU Member State. Under Dublin II,⁷ Member States were at liberty to decide an asylum seeking application without sending that asylum seeker back to the first Member State. This option was, however, rarely availed of, for a number of reasons. In contrast, Dublin III explicitly states in article 3(2) that:

⁴ *MSS v Belgium and Greece* App no 30696/09 (ECHR, 21 January 2011)

⁵ Brothers, 'Rights Ruling Stops Return of Refugees to Greece' (The New York Times 2011) <http://www.nytimes.com/2011/01/27/world/europe/27iht-asylum27.html?_r=0> accessed 14 April 2014

⁶ --, 'UNHCR calls for temporary halt to Dublin transfers of asylum-seekers back to Bulgaria' (UNHCR The UN Refugee Agency 2014) <<http://www.unhcr.org/52c691d59.html>> accessed 14 April 2014

⁷ Regulation of the Council (EC) 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2013] OJ L 50 article 15

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systemic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.⁸

It thus follows that under Dublin III the Member State has an *obligation* to consider the conditions that the asylum seeker would be exposed to if he or she is sent back to the first Member State, and if those conditions are not acceptable, then that asylum seeker cannot be sent back to that Member State.

Apart from this obligation to consider the conditions in the first State, the deciding Member State has to inform the asylum seeker of the application of this regulation and of their possible deportation to another Member State. This was not a requirement under the Dublin II regulation, and caused a lot of upheaval in the lives of asylum seekers if they were not warned of their deportation in sufficient time. In some countries, people are told about a Dublin transfer just before it actually happens, leaving no time to appeal it before a court and access their right to an effective remedy.⁹

Dublin III also widens the criteria that allow the asylum seeker to stay in the second Member State. In fact personal interviews have to be conducted with the asylum seeker to review the actual attachments that the asylum seeker has to that Member State:

A personal interview with the applicant should be organised in order to facilitate the determination of the Member State responsible for examining an application for international protection. As soon as the application for international protection is lodged, the applicant should be informed of the application of this Regulation and of the possibility, during the interview, of providing information regarding the presence of family members, relatives or any other family relations in the Member States, in order to facilitate the procedure for determining the Member State responsible.¹⁰

These interviews should be able to provide a clearer picture of the actual situation the the asylum seeker is in, and in particular protect families from being separated in different Member States. The Dublin III regulation aims to provide more information

⁸ Regulation of the Council (EC) 343/2003 Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2013] OJ L 50, Article 3(2)

⁹ --, 'The Dublin III Regulation enters into force ' (JRS Europe 2013) <http://www.jrseurope.org/publications/ECREJRSStatementonDublinIII_publications_19072013.pdf> accessed 14 April 2014

¹⁰ Regulation of the Council (EC) 343/2003 Establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national [2013] OJ L 50, Preamble 18

to the asylum seekers, clearly setting out in Article 4 that the asylum seeker has a right to information. This article also states that such asylum seekers must be given information in a language that they can understand, and that this information should be given orally if for some reason it is impractical to provide it in written form, for example if the asylum seeker cannot read:

The information referred to in paragraph 1 shall be provided in writing in a language that the applicant understands or is reasonably supposed to understand. Member States shall use the common leaflet drawn up pursuant to paragraph 3 for that purpose. Where necessary for the proper understanding of the applicant, the information shall also be supplied orally, for example in connection with the personal interview as referred to in Article 5.¹¹

Dublin III also ensures that the asylum seeker has a right to appeal the decision that is taken in regard to his asylum application and ensures that the Member State provides enough time so that the asylum seeker can exercise that right to appeal:

The applicant or another person as referred to in Article 18(1)(c) or (d) shall have the right to an effective remedy, in the form of an appeal or a review, in fact and in law, against a transfer decision, before a court or tribunal.

Member States shall provide for a reasonable period of time within which the person concerned may exercise his or her right to an effective remedy pursuant to paragraph 1.¹²

It is clear that Dublin III is a step forward in dealing with the problems of asylum seekers and living conditions that they are exposed to within the EU. However a number of entities have criticized Dublin III as not going far enough. Critics point to the fact that there is no right to a suspension of a readmission while it is being appealed, in order to show that Dublin III still has a long way to go. In a report published in 2013, JRS Europe acknowledged the new improvements in Dublin III, however expressed concern as to whether these improvements would transfer from words on a paper to real life situations: 'Improvements on paper will not lead to improvements in practice as long as there is not a level playing field.'¹³ The success or failure of Dublin III depends on the Member States' willingness to create a Common European Asylum System based on providing fair living conditions for asylum seekers and providing support to those Member States that bear the brunt of asylum seekers coming into the EU. It is up to the governments of the different Member States to ensure that they employ the standards set out in Dublin III at a level that is sufficient to ensure the protection of these vulnerable asylum seekers.

¹¹ Ibid article 4(2)

¹² Ibid article 27(1)(2)

¹³ --, 'The Dublin III Regulation enters into force ' (JRS Europe 2013)

<http://www.jrseurope.org/publications/ECREJRSStatementonDublinIII_publications_19072013.pdf> accessed 14 April 2014