EXECUTIVE SUMMARY

Jesuit Refugee Service Europe

PROTECTION INTERRUPTED

THE DUBLIN REGULATION'S IMPACT ON ASYLUM SEEKERS' PROTECTION

(The DIASP project)

The DIASP project is co-financed by the European Refugee Fund.

EXECUTIVE SUMMARY

PROTECTION INTERRUPTED

THE DUBLIN REGULATION'S IMPACT ON ASYLUM SEEKERS' PROTECTION

(The DIASP project)

The DIASP project was coordinated by JRS Europe in partnership with:

JRS Belgium
Forum réfugiés-Cosi (France)
JRS Germany
Halina Niec Legal Aid Centre (Poland)
Hungarian Helsinki Committee
JRS Italy
JRS Malta
JRS Romania
JRS Sweden
JRS United Kingdom

Full report can be downloaded from www.jrseurope.org

Published in June 2013
Principal author/editor: Philip Amaral, JRS Europe
Cover designer: Simona Zucca

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'.

TABLE OF CONTENTS

DIASP EXECUTIVE SUMMARY

INTRODUCTION

Ever since it was adopted into EU law, Council Regulation (EC) No 343/2003 – better known as the 'Dublin Regulation' – has never been short of controversy.

One of the original intentions of the regulation and the system it has since established was and remains to ensure that an EU government would be responsible for an asylum seeker's application. One application, one EU member state; this is the principle underlying the architecture of the Dublin system. The regulation also ensures that, by having one responsible member state for an individual asylum application, asylum seekers would not be able to move around Europe in search of a country that would grant them protection. To put an end to what is commonly termed 'asylum shopping', was a very worthy goal from the perspective of the EU and its member states.

But somewhere along the line, notably in 2007 when the European Commission evaluated the Dublin system,[1] these intentions went wrong in their implementation, and controversy began to grow. Numerous refugee NGOs throughout Europe have criticised the Dublin Regulation as failing to provide asylum seekers with access to fair and efficient asylum procedures in Europe. In the regulation's "hierarchy of criteria" to decide which member state is responsible for an asylum application, the 'first EU country of entry' criterion has attracted the most vociferous criticism. Critical voices have long argued that to force asylum seekers to process their claim in the first country to which they entered is unfair, because more likely than not the 'first EU country of entry' would have had more to do with happenstance than with a logical choice on the part of the asylum seeker.

A large amount of research done by a variety of stakeholders has since substantiated these criticisms. As a result of the Dublin Regulation, people are forced to be in EU countries with weak asylum systems; families are split apart; detention is often used to undertake 'Dublin transfers'; people's asylum applications get lost in the din of complexity that results from applying a rigid system to nuanced human need.

Although the Dublin Regulation itself is the source of many concerns, it is not the main culprit. Rather, differing reception conditions and asylum procedures among the EU member states are known to be a root cause of many of the problems. The Dublin Regulation is supposed to be situated within a Common European Asylum System, in which an asylum seeker can have access to the same conditions and procedures regardless of whichever EU country they are in. Sadly, this is far from the reality at hand. In one country, an asylum seeker may enjoy state accommodation and a decent subsistence allowance; in another, they may live on streets. An individual may have a better chance of getting their asylum claim accepted in one member state than another. These differences are not superficial: they are at the crux of what goes wrong with the

1 COM (2007) 299 final, Report from the Commission to the European Parliament and the Council on the evaluation of the Dublin system; available at: http://www.detention-in-europe.org/images/stories/commission%20evaluation%20of%20dublin.pdf

Dublin Regulation, and by connection, the EU asylum system.

A NEW PERSPECTIVE: THE DIASP METHODOLOGY

The objective of the research that is at the heart of this report is to examine these issues from a particular perspective: that of the asylum seeker and migrant who is in the Dublin system. Much of the existing research on the Dublin Regulation has been done from an institutional perspective: member state 'Dublin practices', legal reasoning in court judgements, the quality of reception conditions and access to asylum procedures. Yet there is still much to learn from the point of the view of the people who are directly concerned with the Dublin Regulation.

Thus we and our partners sought out to systematically interview asylum seekers and migrants in the Dublin system, using a mixed qualitative-quantitative social questionnaire to gauge their experience with several areas related to their fundamental rights. We assessed their knowledge of Dublin procedures and of their asylum case; their experience with appealing Dublin decisions and their knowledge of the so-called 'discretionary clauses'; their take on the level of reception conditions where they were, and how it affected their daily needs; the impact of the regulation on their family, and experiences with detention. We concluded every interview by asking people to share their personal opinions about the Dublin system, and what they would think to be the best solution for their own situation.

One of the best ways to evaluate a policy is to know more about the people who are affected by it. Asylum seekers and migrants in the Dublin system are regularly interviewed by member state authorities, but only to obtain just enough information so a state can decide how to handle a person's Dublin procedure. Our methodology aspires to know something more: how the Dublin Regulation impacts their ability to seek protection in Europe.

To this end, our partners interviewed 257 asylum seekers and migrants in nine EU countries. These interviews were analysed to understand how frequently people have access to fundamental rights – to information, judicial remedies, family unit, freedom of movement – and which relationships exist between particular factors. These interviews are situated in an objective account of how EU member states implement the Dublin Regulation, which we did in order to learn how specific practices affect people, and to assess which support people's fundamental rights and which do not. We also examined how the Dublin Regulation sits with national, regional and international case law and human rights standards, to be aware of the broader implications it poses for asylum protection.

This report is divided into four main parts: 1) the interview data findings, analytic conclusions and policy recommendations, 2) an assessment of EU member state Dublin practices based on the research, 3) a review of the Dublin Regulation based on case law and human rights standards, and 4) national reports from each of our 10 project partners. **The main highlights from the first three sections** are described in this executive summary.

DIASP INTERVIEWS: DATA FINDINGS

WHO DID WE INTERVIEW?

Out of the 257 interviews collected, 59.1% were in the transfer process, i.e. 'transferees', and 40.9% had been returned from another EU member state, i.e. 'returnees'.

Four tenths of our interviewees said their family was present in the EU, most likely in France, Germany or Sweden. About 75% claimed they could speak a second language, with most saying they could communicate in English, French, Russian, Italian and Arabic.

Among transferees, 46% were still awaiting a decision as to whether they would be transferred or not, and 35% had already received a transfer order. A minority were holders of subsidiary protection, all of whom were interviewed in Italy and Malta.

Transferees had spent an average of 2.48 months in Dublin procedures. A small number had spent from 12 to 21 months. Four tenths of all interviewees were detained for an average duration of 1.90 months. The longest duration recorded was 10 months.

PERSONAL 'DUBLIN STORIES'

Every interviewee was asked to tell their Dublin story. People's interactions with the Dublin system are never as linear as the text of the regulation. This is why we felt it important to allow people to express themselves freely at the beginning. In doing so we learned that people describe their Dublin journey in Europe in four ways.

First, people describe their experience with the regulation in terms of the country of first entry. Most have difficulty coming to terms with this criterion in the hierarchy of member state responsibility. For most it does not make sense that they are sent back to the country through which they first entered the EU, because in all likelihood they came through that country by happenstance, and not as a logical choice of where they had wanted to be.

Secondly, people describe their frequent travels between EU countries. On average, our interviewees had made four to five trips between member states prior to their DIASP interview. If people are not where they want to be, then move onward, travelling until they reach an EU country where they want to submit their asylum claim. They base their decision on wherever they feel they can get the best protection possible; more often than not, they also take into account a country's reception conditions into their decision on where the best protection is. Ultimately people are subjected to a game of human Ping-Pong with severely negative impacts: frequent detention, interrupted asylum applications and separated families.

Thirdly, people often speak of detention. Most EU countries detain during the transfer process. Under the Dublin Regulation there are no common rules on detention, meaning that practices vary widely among member states. Detention is thus a fact-of-life for the majority of people in the Dublin system. It is already known that detention severely harms anyone who experiences it; for people in the Dublin system, the harm is compounded because of the greater uncertainty of their situations.

Fourthly, people speak of the number of times they apply for asylum. Although the intention of Dublin is to limit people to one application, and one decision, in actuality people try to submit multiple applications in more than one member state. Among the holders of subsidiary protection, we spoke to many who had insisted on applying anew in another country because they wanted *refugee* protection. For the most part these decisions are too based on where the better reception conditions are.

The vast majority feel that the transfer process itself has worsened their chances to have their asylum application accepted. Most people feel this is so because they cannot choose where to submit their own asylum claim.

KNOWLEDGE OF DUBLIN PROCEDURES

Ironically, people are more likely to know about Dublin procedures if they had made multiple journeys to the EU country where we interviewed them, or to other EU countries. But as the regulation is there to limit secondary movements, this is obviously not a sustainable way for people to learn about the Dublin system.

Ultimately people do not know enough. The majority claims to know little or nothing about Dublin procedures. And for those who do know something, it is mostly about the 'responsible EU country' and less about the other technical aspects of the regulation.

We found that any information about Dublin procedures is more likely to be understood if people are given repeated and thorough oral explanations, rather than *only* being given written documentation. Lawyers help people to understand specific and technical aspects of the Dublin Regulation; NGOs help people understand the bigger picture that comprises the Dublin system in Europe.

APPEALS

Nearly half of interviewees did not know how to appeal a Dublin transfer, and 60% had never tried to actually challenge a transfer. Our findings show that people are more likely to appeal a transfer if they have been informed about it, especially by a lawyer.

Most people did not know about articles 3 and 15 of the Dublin Regulation: the sovereignty and humanitarian clauses, respectively (and to be called the 'discretionary clause' in the Dublin III Regulation). People who know about the discretionary clauses are more likely to take action to appeal their transfer. Also, people who are informed about these clauses via oral and written means are more likely to take action on them than if they are informed by only an oral explanation, or by only written information. In this sense knowledge is indeed power.

ASYLUM CASE

Nearly half of the asylum seekers in our sample knew little or nothing about their case. As in other areas, people are likely to know more about their asylum case if they are being supported by a lawyer.

Nearly half of the transferees we interviewed did not know how to apply for asylum in the country they were being transferred to; the majority did not know what they would do with their lives after they were transferred. Only 39% of returnees said they had gotten information about the asylum system of the country where we interviewed them prior to having been transferred there.

PERSONAL WELL-BEING

Interviewees were asked to rate their experiences with several reception conditions that are closely connected to their well-being. Medical care is the most widely accessed reception condition.

Conversely, people felt the most negatively about access to accommodation, with 65% saying that it was either poorly provided or not at all in the countries where we interviewed them. There are great differences between member states: in some countries people are left homeless, and in others they must resort to squatting in buildings or staying with friends and families; some states are able to provide state accommodation, but others resort to detention, which we do not consider as an appropriate form of housing.

Reception conditions are a key determinant of how protected a person feels. We found that the availability of basic services – such as public

transportation, food and clothing, housing and subsistence payments – and sharing the same language are important reasons who one might feel more connected to one particular EU country than another. Interestingly, we find that transferees are more likely to feel a connection to the EU country they are in than returnees, showing that people in the transfer process are being sent away from countries where they may actually prefer to be in.

Just over one-third of interviewees felt that the regulation negatively impacted their family situation. Most spoke of family separation as the most negative consequence.
Four tenths of all interviewees were in detention. We find that detainees are much less informed about Dublin procedures than non-detainees are. Detainees are less likely to speak a second language than non-detainees, which is important because the people in our sample who know multiple languages are also more knowledgeable about Dublin procedures. People in Dublin detention also expressed suffering from severe stress and symptoms related to anxiety and depression, which corroborates our findings from an earlier study: that people detained during Dublin procedures are more vulnerable to harm than non-Dublin detainees.[2]

A significant majority of people, or 70%, had never absconded from the authorities. People very much base their decision to do so on their well-being. Individuals who fear the state authorities, or who feel that the reception conditions of an EU country are inadequate, may try to abscond as a means of personal survival rather than on a decision to undermine the system.

Worryingly, we found that most of the detainees we interviewed had never had prior experience with absconding, putting into question why they were detained in the first place. This finding also raises the question of the efficacy of member state risk assessment procedures, if they exist at all.

PERSONAL OPINIONS ABOUT THE DUBLIN SYSTEM

The vast majority of interviewees feel that the Dublin system is unfair and unjust. Most feel this way because it restricts where they can choose to apply for asylum. Interestingly, people interviewed at the eastern and southern EU borders – typically the first EU countries of entry for most – feel the most negatively about the Dublin Regulation.

Detention, the inability to work and the lack of stability are the three biggest problems people experience as a consequence of the Dublin system. Transferees are particularly fearful of being sent to their first EU country of entry; returnees are deeply concerned about being separated from their families.

People's ideas for how they would feel protected are as unique as people's reasons for fleeing persecution. Yet we find that most people want to stay in the EU country where they are and obtain a refugee status or a residence permit. Many people just want to be somewhere where they can feel dignified and protected, and integrated in an EU country that provides for this.

2 JRS Europe (2010). Becoming Vulnerable in Detention, p. 69; available at http://www.jrseurope.org/publications/JRS-Europe_Becoming%20Vulnerable%20In%20Detention_June%202010_PUBLIC_updated%20on%2012July10.pdf.

DIASP INTERVIEWS: ANALYSIS

INFORMATION IS A KEY FACTOR FOR FUNDAMENTAL RIGHTS

The complexity of the Dublin system means that people typically understand only one aspect of it: that they must be transferred to the 'responsible' EU member state. This is the part of the Dublin system that asylum seekers and other migrants most frequently encounter. That only 20% of the persons we interviewed could express an advanced understanding of Dublin is indicative of a system that is difficult for many to grasp.

One of the most negative implications of being poorly informed about the Dublin Regulation is that a person's ability to access their fundamental rights becomes severely limited.

In our sample, 47% of persons were not informed on how to appeal a transfer and 64% were not informed about the discretionary clauses. The consequence is that these persons were not aware of the two aspects in the Dublin system – appeals and the discretionary clauses – that may have positively impacted their cases; at the least, they might have had an opportunity to express their wishes and personal choices.

There are strong relationships between being informed about appeals and/or the discretionary clauses, and actually taking action on them. The alarming conclusion is that so many people are unable to enforce their right to challenge a Dublin decision simply because they are uninformed about it.

Language is a key means for people to understand information that is given to them. Knowing multiple languages is correlated with being well informed about the Dublin system. For those who do not know more than one language, it would thus be important to provide them with information in their mother tongue.

It is also important for people to receive multiple explanations that are thorough and presented orally and in writing. A person is more likely to understand Dublin procedures, as well as the appeals process and the discretionary clauses, if they are given both written documentation and repeated verbal explanations.

ACCESS TO LAWYERS AND LEGAL ASSISTANCE IS IMPORTANT

People who had met with a lawyer are more likely to understand the technical aspects of the Dublin Regulation than people who had not. People who are in contact with and informed by a lawyer – whether or not they are detained – are much more likely to actually challenge a transfer or demand that the discretionary clauses be applied in their case. Lawyers thus play a critical role with safeguarding the fundamental rights of people in the Dublin system, especially when it comes to being informed and enforcing judicial remedies.

'PROTECTION' ALSO MEANS RECEPTION CONDITIONS

People assess their safety not only in terms of their ability to apply for asylum, but also on the quality of reception conditions in a particular country. Poor reception conditions are a major factor for people's negative attitudes towards the Dublin system in general. Half of the people who felt that the Dublin system is 'unfair and unjust' also said they were not provided with basic services in the country where we interviewed them.

People's perceptions of an EU country's reception conditions also affect how they interact with the Dublin system. Those who feel negatively about a country's basic services, for example, are more likely to abscond than people who feel more positively.

Most of the people we interviewed assess the Dublin system based on how well reception conditions uphold their dignity. Homelessness or

inadequate housing and a lack of basic services run counter to people's sense of dignity. And the concept of dignity is important because it is equated with protection.

DETENTION STILL A NEGATIVE MEASURE

From our interviews it is clear that detention is one of the most negative measures of the Dublin system. From the point of view of the asylum seeker or migrant, detention achieves no other purpose than to increase people's frustration.

Though detention and the Dublin Regulation often go hand-in-hand, it is important to emphasise that a sizable number of our interviewees were not in detention: 60% of the entire sample and 55% of transferees specifically. This raises an important question: If not everyone is detained, then is it necessary to detain anyone in the Dublin system in the first place? From the data we see that people are detained for very unclear reasons.

The variance in the number of people who are detained seems to have much to do with incidental EU member state practices than with any systematic needs or risk assessment of an individual's case. This means that detention appears to be used rather inconsistently in the Dublin system.

The consequences of the arbitrary use of detention are startling. Detainees are poorly informed about Dublin procedures, and they are less likely to actually appeal a Dublin decision than non-detained persons are. Detainees have less access to lawyers, who can in turn help them appeal Dublin decisions. Moreover, the closed nature of a detention centre means that detainees learn about the discretionary clauses much later than non-detained persons. Detained persons are therefore at a stark disadvantage when it comes to the realisation of their fundamental rights.

PERSONAL CHOICE AS A MEASURE OF DIGNITY

Personal choice matters. A procedure that systematically removes personal choice from the calculus of asylum protection cannot be sustainable for very long.

People choose to travel to a particular EU country based on a variety of factors. Despite these many differences it is still possible to broadly stratify people's reasons for choosing a particular EU country to be in.

First and foremost is how well a person feels he or she would be protected. Secondly, people choose where in the EU to go based also on where they feel they can best maintain a livelihood and uphold their well-being. Since asylum seekers in the EU generally cannot work, despite their eagerness to do so, the only way to sustain a livelihood is to be in an EU member state with decent reception conditions. Aside from reception conditions, people are keen to maintain their livelihood by being close to family; knowing the same language helps, too.

At the root of people's choices of where they want to seek protection is their desire to safeguard their dignity. People often manifest their sense of dignity through their freedom to choose: in this case, 'choice' is about where to people can protect themselves and their loved ones, where to live and how to maintain a livelihood. Against this standard, the Dublin Regulation continues to perform poorly because it suppresses nearly every element of individual choice.

A DISRUPTIVE SYSTEM

The biggest effect of the Dublin system is the way that it severely disrupts people's lives. Asylum seekers and others who are seeking protection come to Europe with a definitive plan that is more often than not scattered to pieces because they are transferred to other EU countries not of their choosing.

This begs the question: does the Dublin Regulation meaningfully contribute to people's fundamental right to seek protection, or does it just needlessly disrupt people's lives?

Many NGOs in the asylum sector in Europe have already expressed their agreement to the latter point. After analysing the interviews, we too cannot arrive to any other conclusion. Just as detention is harmful for nearly everyone who experiences it, so too is the Dublin Regulation for nearly any asylum seeker or third country national who comes into contact with it.

There is no evidence that the Dublin Regulation makes it any easier, safer or more reliable for a person to access an asylum procedure somewhere in Europe. Rather, from the perspective of the asylum seeker, the regulation is an obstacle to their protection. It is also an obstacle to integration: people that spend much of their time moving around Europe in search of genuine protection become excluded from our communities.

Aside from the difficulties posed by the regulation for asylum seekers, are those posed for EU member states. Dublin transfers are resource-intensive, and bring governments no closer towards fulfilling the original intentions of the Dublin system. 'Dublin practices' have come to highly differ from one member state to the next. This has created an uneven terrain which has costly implications for the Dublin system as a whole. Court judgements lead to blockages in the system that force governments to expend resources even if Dublin transfers are not possible. Moreover, governments expend resources on detention and countering legal challenges brought forth by lawyers.

Aside from our conclusion that member state Dublin practices ineffectively people's protection needs, from our interviews with asylum seekers and other migrants we can also infer that the expenditure of state resources on the Dublin system appears to bring little or no added value to the *Common European Asylum System.* People are not accessing asylum procedures any more easily or effectively. If such a malfunctioning policy were to exist in any other sector, it would surely be scrapped.

Further evidence that the Dublin system needlessly disrupts lives can be found at the core of its very existence: in spite of the regulation's primary intention to prevent secondary asylum movements, people still move around Europe to an alarming degree. Asylum seekers and other migrants are still in orbit.

People circumvent the system to better protect themselves because they perceive the system to not protect them enough. Poor reception conditions in particular EU countries, which force people into homelessness and destitution, are a major reason for people's secondary or tertiary movements.

However, circumventing the Dublin system comes with a high degree of personal risk: interception by the authorities, detention and transfer to another member state, separation from family and so forth. That so many people feel they must take this great personal risk to protect themselves is perhaps the biggest indictment of the Dublin Regulation as a system that needlessly disrupts people's lives and interrupts their search for protection.

SUMMARY OF EU MEMBER STATE PRACTICES

PROVISION OF INFORMATION

Although most EU countries provide information about the Dublin system in one way or another, most do not offer comprehensive information. This means that many people do not learn about the technical aspects of the regulation, such as how transfer decisions are made, and how to access procedural safeguards such as judicial remedies.

In Belgium, asylum seekers receive information and can express their story during a 'Dublin interview' with the national authorities. Though this is an exceptional practice, it is a good one because people can express specific vulnerabilities and needs, and the authorities can better determine whether the discretionary clauses can be used. Having the chance to do this is an important element of personal dignity, and may lead to a fairer procedure over all.

However in Italy, asylum seekers have great difficulty with being informed because the Dublin Unit does not offer does not provide it. This is a missed opportunity because in our research we find that people tend to feel more knowledgeable about Dublin procedures if they receive information from the authorities.

LINGUISTIC ASSISTANCE

Good practices were found with member states that regularly provide interpreters to people in the Dublin system. the DIASP research shows that people are more likely to understand the Dublin system if they are informed in a language they can understand Language is a critical element of comprehension, and thus a crucial key to accessing one's fundamental right to information.

In some states the quality of interpretation is insufficient, with some interpreters being unable to describe administrative asylum procedures in a person's own language. In France and Italy, important documentation and proceedings are not interpreted into languages that most migrants can understand which leaves many feeling left out of the process and unable to enforce their rights.

LEGAL ASSISTANCE, ACCESS AND QUALITY

Some form of legal aid and assistance is available to asylum seekers in many EU member states, but accessing it can be difficult for several reasons.

Lawyer reimbursement schemes can be low, as in Germany, which discourage lawyers from assisting asylum seekers. In Belgium and Poland, lawyers are not always specialised in asylum and immigration law and in Dublin procedures, reducing the effectiveness of their assistance. And legal assistance is not provided at all stages of the Dublin procedure, as in Sweden: there the Dublin procedure is considered only as a formal process and not a substantive one, so people are left without legal assistance.

Each of these obstacles is to the detriment of asylum seekers. Our research shows that lawyers help people to understand the technical aspects of the Dublin process, especially appealing decisions and the discretionary clauses. Thus having a lawyer is a crucial element in accessing one's fundamental rights to information and judicial remedies.

TRANSPARENCY OF DUBLIN PROCEDURES

Data on Dublin procedures is published by the state on the Internet, as in Sweden and Belgium. Having access to reliable data is absolutely necessary for the analysis of policies and their impacts. The DIASP project itself has benefitted from the openness of some member state authorities. It would also be important for lawyers and NGOs who are supporting asylum

seekers to have access to such information so they can help people feel better protected and dignified.

USE OF THE DISCRETIONARY CLAUSES

In every country the discretionary clauses – articles 3 and 15 of the Dublin Regulation – are scantily used. Nor are people regularly informed about their existence. The discretionary clauses are the one facet of the Dublin system that enables asylum seekers to express at least a modicum of personal choice based on particular factors. Interviewees who were not informed of these clauses were likely to not have appealed their Dublin decisions. People cannot uphold their fundamental rights if they are not informed of the procedures that would allow them to do so, nor if they are left without the agency to actually take action.

There are few guidelines to assist states with deciding on whether to use the discretionary clauses for a particular case. But even in states that do systematise their decisions, implementation rates remain low. Sweden, for example, rarely uses the discretionary clauses even though it bases its application on guidelines from a chief juridical officer of the Swedish Migration Board. In Belgium, the 'Dublin interviews' are structured to assess whether a person can benefit from the discretionary clause, which in itself is a good practice, though asylum systems must know that such a possibility exists in order for them to request its usage.

APPEALS AND JUDICIAL REMEDIES

Most member states do not provide for an automatic suspensive effect during an appeal. The Dublin transfer deprives people of agency. People who feel that they did not have a fair procedure are likely to circumvent the system. Fair procedures at every step of the Dublin process, especially at the appeals stage which ought to include a suspensive effect, are a minimum of what asylum seekers should get on the basis of their dignity.

There are a few exceptional practices. In Poland, appeals made on transfer decisions come with an automatic suspensive effect; in Malta this is also done in practice (though it is not specified in law). As our research shows that the transfer is the most disruptive part of the Dublin process, it behoves member states to suspend a transfer until all appeals and challenges are dealt with.

In Germany, courts now take into account the asylum system of an EU member state where a person may be transferred to when considering a decision to suspend a transfer. This is a positive step because it allows a state to examine more closely whether a transfer to a particular country might pose harm for the concerned individual; unfortunately, it is an exceptional practice in Europe.

RECEPTION CONDITIONS

Belgium, Germany, Poland and Sweden provide reception conditions to people in the Dublin system in the same way as to other asylum seekers: accommodation, daily allowance, food and health care. Yet Belgium and Germany also frequently detain Dublin asylum seekers, which is not appropriate as a reception condition.

Dublin asylum seekers in France are excluded from vital reception conditions that other asylum seekers are entitled to, such as the daily allowance and accommodation in state-run centres.

Our research shows that reception conditions are one of the top three problems experienced by our interviewees. The lack of decent housing is a particular concern. Having a temporary fixed address means everything: a place where a person can receive important documents by post, a place to sleep for the night, a space for privacy and a place to feel safe. Aside from accommodation, interviewees rate 'basic services' as another important condition.

These include daily subsistence allowances, assistance with paying for public transport and even having a space to wash one's clothing. These two elements are at the minimum of a dignified reception system.

DETENTION

The detention of asylum seekers and migrants in the Dublin system is the rule, rather than the exception. And detention seems to be ordered for people who are simply in a Dublin procedure, and not based on a systematic assessment of risk or needs. The DIASP research shows that detention is one of the three biggest problems faced by interviewees. Detainees in Dublin procedures face particularly high levels of stress and anxiety. Oftentimes people experience multiple detentions in many countries throughout Europe, as a consequence of regular Dublin transfers. This means that a person may be detained on several occasions before their asylum claim is assessed.

Better practices are found in Sweden, France and Italy where automatic detention during Dublin procedures is not the norm. Our research demonstrates that non-detained persons are better informed about the Dublin system, have greater access to lawyers and other sources of support and are more likely to enforce their fundamental rights to judicial remedies. That said, although France and Italy do not regularly detain Dublin asylum seekers, there is also a lack of community housing which leaves many homeless.

IMPLEMENTATION OF DUBLIN DECISIONS

Some countries prioritise voluntary Dublin transfers, as in Sweden, France, Belgium and Poland. Since the transfer is an inherently disruptive process, it is important to allow asylum seekers to do it on their own terms as much possible, with appropriate support from the state.

In other countries, government authorities implement Dublin decisions with little notice. Transferees in Germany are only notified on the day the transfer is to be carried out, leaving no time to challenge the decision. The Italian authorities send letters to people asking that they go to the local *Questura*, without telling them that if they show up they will be immediately transferred. Member states ought to issue their decisions well in advance of its implementation. This is a minimum point of dignity for asylum seekers and the basis for a fairer Dublin procedure.

DIASP CONCLUSIONS & POLICY RECOMMENDATIONS

The long awaited *Common European Asylum System* (CEAS) is finally at hand. The European Parliament and the Council of the EU reached a political agreement on the recast Dublin Regulation – first proposed by the European Commission four years ago – by the end of 2012. A formal adoption of the new "Dublin III Regulation" by the European Parliament is expected by June 2013; the Council will follow soon after. This new EU asylum law will join with the newly agreed directives on qualification for protection, reception conditions, asylum procedures and the EURODAC regulation, to establish a CEAS. The decision-making process has indeed been difficult and complex. And for asylum seekers who have experienced the full brunt of the Dublin Regulation during the last decade, the difficulties and complexities have been no less daunting.

Although the research for this project took place while the negotiations on the recast Dublin Regulation were on-going, its focus is exclusively on the application of the Dublin "II" Regulation, which as of this writing is still in force. This report cannot influence the EU political negotiations on Dublin III as they are since concluded. But its research findings and conclusions are very relevant for how Dublin III will be implemented in the member states, and monitored by the European Commission and Parliament as well as other EU institutions, intergovernmental and nongovernmental organisations.

The new Dublin III Regulation, as stipulated in the Council's 'first reading' position as of 14 December 2012,[3] contains several major changes that already address many of the issues highlighted in this report, such as:

- A *right to information* (art. 4) obliging member states to inform asylum seekers on elements such as the objectives of Dublin, the criteria for determining responsibility, the chance to conduct a "personal interview" (art. 5) enabling the applicant to bring forth further information.

- The production of a *common leaflet* (art. 4.3) containing such information in a language the applicant understands "or is reasonably supposed to understand".

- Guarantees *for minors* (art. 6) which include the consideration of the minor's "well-being and social development".

- New guidelines on *detention* (art. 28) obliging member states to not "hold a person in detention for the sole reason that he or she is subject to the procedure established in this Regulation", and only insofar as "other less coercive alternative measures cannot be applied effectively."

- Guidelines on *judicial remedies* (art. 27) requiring that applicants have access to an effective remedy either as an appeal or a review, and have the option to suspend their transfer during an appeal of the transfer decision.

- Access to legal assistance and *linguistic assistance* (art. 27.5)

- The possibility to *suspend transfers to member states with "systemic flaws" in their asylum procedures and reception conditions* (art. 3.2), opening up the possibility that the determining member state becomes the responsible member state for a person's asylum application.

3 Council of the European Union, position of the Council at first reading with a view to the adoption of a Regulation of the European Parliament and of the Council 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). ASILE 129, CODEC 2520, OC 601, Inter-institutional file: 2008/0243 (COD), Brussels, 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf; accessed on 07/05/2012.

That these issues are to be addressed by Dublin III is a positive step; but it does not automatically resolve the variety of problems and protection gaps revealed in this report. Member states must now practically improve their Dublin procedures, and generally their asylum systems, in order to make the most out of the changes proposed by EU law. The Commission and Parliament must endeavour to closely monitor how Dublin III is implemented, too. In particular the Commission should stand ready to use the mechanisms available to it to decisively enforce Dublin III in a manner that protects the fundamental rights of asylum seekers.

Below are a set of recommendations that are based on the three major components parts of this report: 1) the qualitative and quantitative interviews with 257 migrants, 2) the analysis of Dublin based on case law and international human rights standards and 3) the summary of member state 'Dublin practices'. They are proposed with the motivation of achieving the best possible practice standards under the new Dublin III Regulation, and maintaining the highest level of human dignity and fundamental rights for asylum seekers and other migrants who experience this regulation.

TO THE EUROPEAN COMMISSION:

1. In view of creating a "common leaflet" of information about Dublin procedures:[4]

   It should have clearly worded and precise information on all aspects of the Dublin procedure and what the asylum seeker ought to expect, including all avenues for judicial remedies and stages in which the asylum seeker can express the personal factors associated with his situation;

   It should be available in a language that the asylum seeker can understand;

   Versions should be tested in advance with samples of asylum seekers and NGO practitioners to ensure that the leaflet is as accessible and relevant as possible.

2. Closely monitor member states' implementation of the current Dublin Regulation and its recast, "Dublin III", to ensure that asylum seekers' fundamental rights are protected; if necessary, infringement procedures against member states should be taken.

3. Produce qualitative and quantitative research based on indicators such as family unity, access to information, use of the discretionary clauses, access to legal aid and detention, to demonstrate the extent and frequency to which they are applied in the implementation of Dublin at the national level.

4. Assist member states with the development of alternatives to detention in the Dublin system, by highlighting existing practices and applying them together with member states, with the participation of civil society organisations and asylum seekers.

5. Assist member states with the development of an assessment tool to aid states' decision-making on the usage of the discretionary clauses. Such an assessment tool should, for example, check for vulnerabilities, mental and physical illnesses and the person's family situation.

4 As foreseen in article 4.3 of the recast Dublin Regulation, Council first reading position of 14 December 2012, http://register.consilium.europa.eu/pdf/en/12/st15/st15605.en12.pdf (not yet formally adopted by the Parliament and Council), "The Commission shall, by means of implementing acts, draw up a common leaflet …"

6. Develop benchmarks to determine whether Dublin transfers to a member state should be temporarily suspended due to systemic flaws in their asylum procedures and reception system. Such benchmarks should include, for example, the availability of housing, the availability of medical care, the quality of asylum procedures and the use and conditions of detention.

TO THE EU MEMBER STATES:

7. Thoroughly inform asylum seekers about all aspects of Dublin procedures as early as possible. Information should be provided by way of frequent oral explanation and through the provision of written documentation, in a language the asylum seeker can understand. Such information should cover the entire range of Dublin procedures, including (but not limited to) judicial remedies, rights and obligations, the discretionary clauses, detention and chances to reunite with family; such information should also enable asylum seekers to learn about the asylum systems of EU countries they may be transferred to.

8. End the automatic detention of asylum seekers in the Dublin system and implement instead a legal presumption against detention, and practical community-based alternatives, as a standard first step.

9. Provide for reception conditions that are of an appropriate standard, including (but not limited to) decent housing in the community, a daily subsistence allowance, access to educational activities, medical care for acute and chronic illnesses and basic services to assist asylums seekers with meeting day-to-day needs.

10. Provide asylum seekers with access to lawyers and legal aid free of charge; as much as possible ensure that assisting lawyers are competent in asylum and migration law.

11. Grant a 'personal interview' to all Dublin asylum seekers at the earliest stage of the procedure, and incorporate into the interview a point when the asylum seeker can express personal factors that might impact his or her case and the Dublin decision.

12. Implement the discretionary clauses on the basis of a detailed assessment tool that checks for vulnerabilities, physical and mental illness, family situation and other indicators, including which other EU member states the asylum seeker has travelled from and special connections the asylum seeker may have to a particular EU country; this tool should also take into account the asylum procedures and reception system of the potentially responsible EU member state, in order to suspend a transfer so as to avoid endangering an asylum seeker's fundamental rights and access to protection.

13. Allow relevant NGOs and other civil society groups to meet with Dublin asylum seekers; such groups should also be able to join member state authorities in providing information to asylum seekers.

14. Keep families together for the duration of Dublin procedures, and uphold the best interests of the child at all times.

15. Inform asylum seekers of Dublin decisions well in advance of the actual date and time of its implementation, and thoroughly explain available remedies and how decisions are to be implemented.

TO THE EUROPEAN PARLIAMENT:

16. Regularly request information from the Commission and the Council on the implementation of the Dublin III Regulation by member states, analyse existing and new protection gaps and request the Commission to make legislative proposals that would close these gaps.

17. Regularly consult relevant actors, most notably civil society organisations that work with Dublin cases, in order to be updated on developments in member states' policies and practices.

18. Urge the Commission to make proposals with a view of a further and real harmonisation of protection in the EU, taking into consideration that the Dublin system will never properly work as long as the differences across member states with regard to protection rates, refugee definition, asylum procedures and reception conditions continue to persist.

Jesuit Refugee Service Europe

www.jrseurope.org

ACCOMPANY | SERVE | ADVOCATE

Jesuit Refugee Service Europe aisbl
Rue du Progrès 333/2
B-1030 Brussels - BELGIUM

www.jrseurope.org
www.detention-in-europe.org
www.twitter.com/JRSEurope

Tel: +32 2 250 32 20
Email: europe@jrs.net