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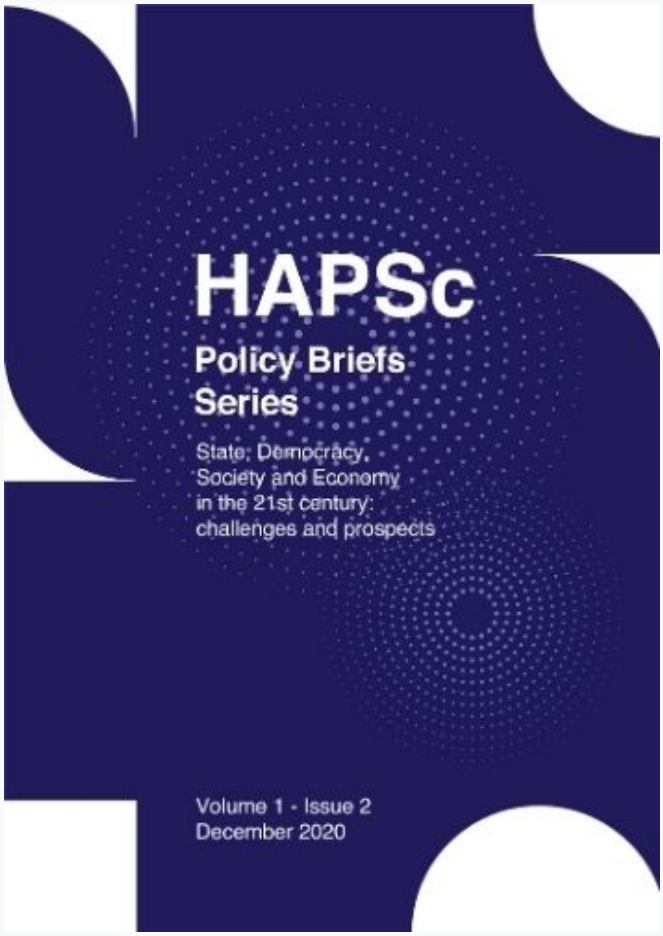

The Dublin Regulation: Dimensions, Problems and Perspectives

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The Dublin Regulation: Dimensions, Problems and Perspectives[1]

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Abstract

Over the last 20 years, with the development of the Common European Asylum System, the policymaking towards asylum seekers has transposed to the European Union. EU's ambition though to build a harmonized asylum system differs from reality and the injustices among Member States led to the deep crisis of the Dublin Regulation. This policy brief, examines the process of the Dublin Regulation, the problems that are still being confronted and the legislative framework of the regulation. The paper concludes with the proposal of recommendations and perspectives that could lead to a deeper integration of the system.

Keywords: Dublin Regulation; Immigration Policy of EU; European Union; Common European Asylum System; Asylum seekers.

Introduction

It is undeniable that the Dublin Regulation is a very complex subject which includes a plethora of major parameters such as fairness among the Member States of European Union (EU), fundamental human and refugees' rights and of course the effectiveness of the Regulation.

The Dublin Regulation practically, evaluates the responsible Member State for the assessment of individual asylum applications within the EU according to the so – called Dublin criteria. In order to understand the conditions and the reasons that led to the Dublin Regulations, it is legitimate to lay down the framework of the European Union's immigration policy within which they were created. (Brouwer, 2013)

Until the beginning of 1980's, the formation of a Common European Asylum System was not a priority and remained in the third pillar: Justice and Home Affairs (JHA). This changed drastically with the increase in the number of applicants due to international developments and setbacks (conflicts in the European continent and difficult political situations in countries outside Europe) which created the need to coordinate the national asylum policies of the Member States of the Community and the existence of a common strategy.

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Common European Asylum System (CEAS)

Briefly referring to the formulation of the European immigration policy, we can identify two milestones. The Schengen Agreement refers to an extra-EC initiative between five European Community countries (Belgium, Germany, France, Luxembourg and the Netherlands) to control the Union's external borders and free movement of Member States' citizens in the Single European Area. The creation of such an area would not have been possible without the simultaneous regulation of immigration and asylum issues. It also introduced the first pan-European police database, the Schengen Information System (SIS). In addition, the Single European Act in 1987, created the Common Market, a Community area with free movement of people, goods, services and capital (Brekke, 2014).

*On 15 of June 1990, **the Dublin Convention** was signed* and it was the first binding treaty in the field of asylum. It was a transnational and not a Community creation. It was intended to regulate the EU Member State which was each time responsible for examining an asylum application in order to deal with the abuses by the applicants, but also in order to tackle the inaction of the states invoking their incompetence. The fundamental premise of the convention was that all contracting States were considered *safe countries* and therefore the determination on a basis of objective criteria, against the personal wish of the applicant, would not infringe their rights (Velluti, 2014).

The step forward came with the Treaty of Amsterdam (1997), when asylum and immigration policy came under the first pillar and part of the Member State's jurisdiction was transferred to the Union. At the same time, an area of "freedom, security and justice" was established, in which " *In order to establish progressively an area of freedom, security and justice, the Council shall adopt: (a) within a period of five years after the entry into force of the Treaty of Amsterdam, measures aimed at ensuring the free movement of persons in accordance with Article 7a, in conjunction with directly related flanking measures with respect to external border controls, asylum and immigration, in accordance with the provisions of Article 73j(2) and (3) and Article 73k(l)(a) and (2)(a), and measures to prevent and combat crime in accordance with the provisions of Article K.3(e) of the Treaty on European Union"* (Treaty of Amsterdam, article 2).

The Dublin II Regulation (343/2003 / EC) was adopted in February 2003 to implement Article 63 TEC, which required the Dublin Convention to be replaced by a Community legal act. It has been implemented by all EU Member States, as well as by Norway, Iceland, Liechtenstein and Switzerland. This Regulation, which is considered to be the first cornerstone of CEAS, was based on the principle of causality. At the same time, the Eurodac database established an administrative fingerprint

database. It thus set the criteria for determining which Member State would be responsible for the asylum procedure.

The criteria were as follow[3]: Principle of family unity, insurance of residence permits or visas, illegal entry or stay in a Member State, legal entry in a Member State, application in an international transit area of an airport (Fullerton, 2016).

The crisis of Dublin Regulation

The Dublin II Regulation did not constitute a quota system for the distribution of asylum applications in all EU Member States but transferred almost the entire burden of management to the countries located at the Union's external borders. The point of the Rules of Procedure, which has largely created the present crisis and is a constant field of tension between States, is the criterion of the applicant's illegal entry and residence to determine the State responsible for examining the asylum application.

The industrialized countries of Northern and Central Europe, have long been the preferred destination for asylum seekers, since, for the period 2000-2004 (the time of enactment of the Dublin II Regulation), four countries of the European Union (United Kingdom, France, Germany and Austria) received two thirds of asylum applications worldwide each year (Eurostat, 2009). The desire of these countries to reduce the flows to their territories and to combat asylum shopping in conjunction with their political displacement in the Union led to the adoption of this criterion. Therefore, with the exception of family reunification and the liability of a state for the legal residence and entry of a third-country national -an extremely limited case- , the liability falls on countries of illegal entry which are not other than regional countries such as Greece, Italy, Malta and Cyprus. These states followed a relatively relaxed fingerprinting process, facilitating the transition to the North (Hatton, 2009).

Dublin III Regulation

The above weaknesses of the Regulation, problems related both to the effectiveness of the system and the level of protection of the rights of asylum seekers were recognized by the Commission, which in 2008 submitted a proposal for the reform of the Dublin II Regulation. The Commission proposal, was intend to increase the efficiency of the system and to ensure higher standards of protection for persons covered by the procedure, while at the same time addressing the particular pressures of reception facilities and asylum systems in the Member States. The most interesting point of the

[3] The criteria are to be applied in the order in which they are presented in the Regulation and on the basis of the situation existing when the asylum seeker first lodged his/her application with a Member State (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Al33153).

Commission's Proposal was the introduction of a new procedure in the Regulation allowing the temporary suspension of transfers to the responsible Member State, in cases where a State is facing a *" particularly urgent situation which puts a great deal of pressure on the reception capacity, its asylum system or infrastructure"* (Preamble, para. 21) or when the Commission considers that *the level of protection of applicants for international protection in a particular Member State does not comply with Community asylum law*, in particular as regards the access to the asylum procedure, in order to ensure that all applicants for international protection enjoy an adequate level of protection in all Member States (Preamble, para. 22).

This proposal was justified in terms of solidarity for those Member States which, due to their geographical location, face intensive pressures. However, it was not adopted in the revised Regulation 604/2013/ EU, because as the Commission acknowledged, the consultation process showed that the majority of Member States were in favor of maintaining the fundamental principles of the Regulation. The compromise solution was the introduction of the Early Warning Mechanism (Regulation 604/2013 / EU, Article 33).

As is clear from the above provision, the Regulation once again does not overturn either the criteria for determining the responsible Member State or their hierarchy.

Some of the notable changes are that the scope of asylum is expanded to include beneficiaries of international protection and stateless persons, while the concept of "international protection" is expanded to add asylum seekers and subsidiary protection applicants. It also establishes the right to inform applicants in a language they understand about the current legal framework on asylum in the EU and the implementation of the Dublin III Regulation and provide a personal interview in order to facilitate the process of identifying the responsible Member State, and in any case before the transfer decision is taken (European Commission, 2015).

Towards a reform of the CEAS: Dublin IV Regulation Proposal

In May 2016, the Commission once again seeks to reform the CEAS by submitting a proposal to the European Parliament and the Council (European Commission, 2016). Its objectives can be summarized as follows: **(a)** establishing a viable and equitable system for allocating asylum applications by providing a permanent allocation mechanism within the Dublin Regulation based on the logic of relocation; **(b)** preventing secondary movements through the greater harmonization of asylum systems and the imposition of sanctions on those making secondary travel, **(c)** facilitating return and combating irregular migration through the strengthening of the Eurodac system and **(d)** upgrading the role of EASO.

Even though earlier that year EU Commissioner for migration Dimitris Avramopoulos had announced that the revamp would be based on a distribution key system and he told MEPs in the civil liberties committee that "Dublin should not be any more just a mechanism to allocate responsibility […] it needs to be a solidarity instrument among member states", Commission chose in the submitted proposal to "streamline" the current system and supplemente it with a correctional mechanism of equal treatment (Nielsen, 2016).

In particular, it was proposed to introduce an allocation correction mechanism, which will work as follows: an automated system will record all applications for international protection and will continuously monitor the percentage of applications for each designated responsible Member State compared to a set key reference rate. Whenever the number of applications for which a Member State is responsible exceeds 150% of the number specified in the reference key, the mechanism will be activated automatically, resulting all new applications submitted to the disproportionately pressured Member State to be transferred to another Member State with a number of applications less than the number specified in the reference key.

Additionally, the criteria for determining the Member State responsible for examining the asylum application remain the same and some new obligations are added to them. The application for international protection must be submitted to the Member State of first irregular entry, where the applicant must remain until the procedure is completed and the applicant has an obligation to check whether the application is inadmissible, in case the applicant comes from a first country of asylum or from a safe third country, in which case the applicant will be returned to the third country and the admissions authority will be Member State. Finally, a proposal was adopted to abolish the disclaimer clause 12 months after the irregular entry, while the discretion clause is made less extensive, to ensure that it is used only for humanitarian purposes for the extended family (European Parliament, Policy Department, 2016).

The above proposals for the new Dublin Regulation provoked a strong wave of reactions, especially from the countries of first entry, which hoped for a substantial and tangible rationalization of the asylum system. The new regulations are obviously moving in the opposite direction from the one announced by the Commission. Not only do they not facilitate these states, but new obligations are introduced for them.

Conclusion and Recommendations

From the formation of the asylum system, it was clear that the division of responsibility between the Member States would not be done in a harmonizes and meritocratic way with the states on the

southern and eastern borders of the Union bearing the brunt of managing the refugee issue since the criterion of illegal entry was the dominant criterion for determining the responsible state. The inherent imbalances of the Dublin system were exacerbated by the pathogenesis of the asylum and host systems of the periphery of the European Union, which began to come under increasing pressure from mixed migratory flows.

From the examination of the way that EU handled the refugee crisis, two main findings emerge:

- The policies pursued are largely incompatible with international and EU law.
- Effective management of those entering European territory is not achieved, in terms of an equal distribution of responsibilities between the Member States and, in that regard, an equal burden on their asylum and reception systems, in fulfillment of the principle of solidarity in Article 80 TFEU.

Member States have engaged in a "zero-sum game", developing a more defensive than cooperative attitude, based on the lack of mutual trust. The European Parliament's proposal could launch a new dialogue within the EU. Clearly, a radical overhaul of the Dublin Regulation is a key precondition for managing the refugee issue and dealing with the crisis:

- The construction of a substantially CEAS, which will harmonize the standards of protection and social inclusion of applicants for international protection and refugees from all Member States is needed.
- The European Parliament should support the use of distribution keys, based on a rigorous assessment of the extent to which States are meeting their obligations.
- To cope with imbalances caused or exacerbated by significant numbers of arrivals and limited capacity, Asylum Migration and International Fund resources for emergency measures should be increased in future budgets to ensure that adequate resources can be quickly made available to deal with conditions of heavy migratory flows as prescribed in the provisions of the AMIF Regulation.
- The European Parliament should ensure future legislation avoids coercion.
- A comprehensive reform of the EU immigration policy - whose extremely restrictive logic has led to an overburdening of asylum systems - also needs to be reconsidered.

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