

IRCT POSITION PAPER ON THE EUROPEAN COMMISSION'S PROPOSAL FOR THE REFORM OF THE DUBLIN SYSTEM (MAY 2016)

INTRODUCTION

On 4 May 2016, the European Commission released its first package of proposals as part of a broader reform of the Common European Asylum System¹, foreseen in the European Agenda on Migration adopted in 2015².

Part of this package consists of three proposals that aim to (1) transform the European Asylum Support Office into a strengthened Agency; (2) adjust the EURODAC database to address new challenges and; (3) to reform the system for determining the Member State responsible for examining international protection claims in the Europe Union³ (hereafter the Dublin system). The latter aims to “enhance the system’s capacity to determine efficiently and effectively a single Member State responsible for examining the application for international protection”; “ensure fair sharing of responsibilities between Member States” and in this regard to “discourage abuses and prevent secondary movements of the applicants within the EU”⁴. If adopted, the reform would significantly change the current functioning of the determination system as defined by the Dublin III Regulation⁵.

The International Rehabilitation Council for Torture Victims (IRCT) strongly advocates for asylum procedures and reception conditions that respect and address the specific needs of torture victims. This paper will present the IRCT’s comments on the European Commission’s proposal for a reform of the Dublin system. The paper will focus specifically on the Dublin system’s impact on torture victims.

¹ European Commission, Communication to the European Parliament and the Council, "Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe", COM(2016) 197 final, 6 April 2016.

² European Commission, Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European Agenda on Migration", COM(2015) 240 final, 13 May 2015.

³ European Commission, Proposal for 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), COM(2016) 270 final, 4 May 2016.

⁴ European Commission, COM(2016) 270 final, Explanatory Memorandum, p.4.

⁵ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 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), hereafter the Dublin III Regulation.

SUMMARY OF VIEWS

Integrating vulnerability into the Dublin system

The new Regulation is an opportunity to ensure that the Dublin system adheres to existing provisions in the Asylum Procedures Directive⁶ and the Reception Conditions Directive⁷ in relation to vulnerable applicants. The negative impact on vulnerable applicants of inappropriate asylum procedures, inadequate reception conditions and unsuitable transfers carried out by law enforcement officials often involving various forms of deprivation of liberty and the use of force, have been widely documented⁸. It is time for the Dublin system to take into account the special needs of vulnerable applicants.

The Dublin III Regulation, adopted in 2013 at the same time as the revised APD and RCD, scarcely included any provisions for vulnerable groups. Article 32 on the exchange of health data before a transfer is carried out is the only article providing additional guarantees on the basis of the applicant's vulnerability, which is restricted to medical considerations. As such, the Dublin III Regulation does not reflect the progress made in the revised APD and RCD to safeguard their rights. More recent acts, such as the 2015 decisions establishing emergency relocation schemes⁹ and the proposal for a permanent relocation mechanism¹⁰, have in fact integrated additional guarantees for vulnerable groups.

The IRCT urges the European Commission and the co-legislators to ensure coherence and consistency with other instruments of the Common European Asylum System by including specific safeguards for vulnerable groups, such as a systematic exclusion from detention and from accelerated procedures, and access to reception conditions adapted to their needs, even when the applicant is in another Member State than the one in which he or she is required to be present.

Indeed, detention can have long-term, debilitating effects on the mental and physical health on vulnerable asylum seekers, many of whom have suffered from traumatic experiences in their countries of origin¹¹. Furthermore, the detention of torture victims is incompatible with their right to rehabilitation as enshrined

⁶ Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), hereafter the Asylum Procedures Directive - APD.

⁷ Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), hereafter the Reception Conditions Directive - RCD.

⁸ See for instance: Filges T, Montgomery E, Kastrup M, Jørgensen, A-MK (2015). The Impact of Detention on the Health of Asylum Seekers: A Systematic Review. Campbell Systematic Reviews, 13; Schock K, Rosner R, Knaevelsrud C (2015). Impact of asylum interviews on the mental health of traumatized asylum seekers. European Journal Of Psychotraumatology, 6; Steel Z et al. (2006). Impact of immigration detention and temporary protection on the mental health of refugees. The British journal of psychiatry : the journal of mental science, Vol.188, pp.58-64; Hocking D, Kennedy G, Sundram S (2015). Mental Disorders in Asylum Seekers: The Role of the Refugee Determination Process and Employment. Journal of Nervous and Mental Disease, Vol.203(1), p.28, Carswell K, Blackburn P, Barker C (2011). The relationship between trauma, post-migration problems and the psychological well-being of refugees and asylum seekers. The International journal of social psychiatry, Vol.57(2), pp.107-19.

⁹ Council Decision 2015/1523 of 14 September 2016 and Council Decision 2015-1601 of 22 September 2015.

¹⁰ European Commission, Proposal for a Regulation of the European Parliament and of the Council establishing a crisis relocation mechanism and amending Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member States responsible for examining an application for international protection lodged in one of the Member States by a third country national or a stateless person.

¹¹ See footnote 9 for references.

in international law. In addition, the requirements under the recast RCD to provide vulnerable asylum seekers with adequate support and necessary treatment for torture victims cannot be guaranteed in a detention setting. As a result, the IRCT calls on co-legislators to not only protect torture victims from detention in the Dublin procedure, but also to amend the RCD accordingly.

The reformed Dublin Regulation should contain provisions for vulnerability assessments, including medical examinations where needed. In the absence of such a vulnerability evaluation, special needs, including those related to the person's physical or mental health, can only be assessed through self-identification or on the basis of visible signs or symptoms that would be proactively identified by liaison officers. To avoid the multiplication of assessments during the asylum procedure, the new Dublin Regulation could refer to the evaluation provided for by Article 22 RCD. To maximise its effects, this assessment should take place before the responsible Member State is determined.

Safeguarding appropriate reception conditions from a Dublin perspective

In addition, the results of the vulnerability assessment should not only inform the immediate adaptation of Dublin-related transfers but also anticipate further reception conditions needs. The capacity of both the Member State responsible and the Member State of allocation to effectively respond to these needs should be considered before any transfer takes place. Moreover, the reform of the Dublin system should build on the developments and progress achieved in the framework of the existing relocation mechanisms. In particular, the IRCT welcomed the prioritisation of vulnerable applicants for relocation from countries under great pressure to other Member States. While much needs to be done to implement these provisions, they constitute an additional safeguard for torture victims and should be integrated into the corrective mechanism.

In terms of proportionality, the establishment of a “sustainable” and “fair” system for determining the Member State for examining asylum applications must not be achieved at the expense of asylum seekers, especially vulnerable applicants. The IRCT strongly condemns the punitive measures introduced in the new Dublin regulation to “discourage abuses and prevent secondary movements” by imposing “material consequences” in cases where asylum seekers fail to comply with their obligations. These sanctions could disproportionately impact asylum seekers’ physical and psychological health and breach their fundamental right to health by restricting their access to health services during the transfer procedures. This “sanction” may leave thousands of torture victims awaiting their transfer with no access to rehabilitation services for prolonged periods of time while, as highlighted by the European Commission in its implementation report on the Dublin system¹², only about a quarter of the accepted requests actually result in a physical transfer. Entitlement to healthcare, as provided for by the RCD, should be authorised during this period and during the appeal procedure.

MAIN RECOMMENDATIONS

- A vulnerability assessment should be carried out before a decision is made on the responsible Member State (meaning right after the admissibility check) in order to allow vulnerable asylum seekers to access the special procedural guarantees and appropriate reception conditions to

¹² European Commission, COM (2016) 270 final, p.10

which they are entitled while waiting for their transfer, which may occur several weeks or months later.

- Vulnerable applicants should be prioritised for relocation under the corrective mechanism, in the same way they are prioritised for relocation under the existing emergency relocation schemes.
- The information resulting from the vulnerability assessment should be circulated to the final country of destination in an appropriate manner in order to take the applicant's special needs into account for the entirety of the procedure.
- In line with relevant case law¹³, asylum seekers who are in a country other than the one responsible for their claim should be entitled to healthcare and other basic services, as determined by RCD, with additional guarantees provided for vulnerable applicants such as children, pregnant women and torture victims.

CONTACTS

For more information, please contact:

Mr Mushegh Yekmalyan
Head of the European Affairs Office
Tel: +32 2 230 15 04
Email: my@irct.org

Mr Asger Kjærum
Director of Advocacy
Tel: +45 44 40 18 50
Email: akj@irct.org

¹³ According to the Court of Justice of the European Union, the RCD applies to all asylum seekers, including those awaiting transfer to another State to have their asylum application examined. See: Court of Justice of the European Union, *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, C-179/11, 27 September 2012.