

WHEN THE DUBLIN SYSTEM KEEPS FAMILIES APART



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For many years, the Danish Refugee Council (DRC) has been working with asylum seekers in the Dublin procedure. And for many years, DRC has experienced how families in practice are separated by the Dublin procedure and how the best interests of the child are often not taken adequately into consideration when authorities make decisions in accordance with the Dublin Regulation.

Families must often fight for their right to family life by challenging the decisions of Member State authorities – a fight that many families do not win. The protracted appeals procedures along with burdensome administrative procedures in first instance result in families having to wait for many months before they can be allowed to reunite.

With the reform of the Dublin III Regulation, DRC therefore calls for a Dublin IV Regulation which ensures that all families are kept together and that the best interests of the child are always taken into account when the Member State authorities make decisions based on the Dublin Regulation.

To ensure that both the current Dublin III Regulation¹ and a possible future Dublin IV Regulation are implemented by the Member States in accordance with international human rights law, DRC also calls for the EU and its Member States to develop guidelines on the implementation of the Dublin Regulation with the aim of keeping families together and respecting the best interests of the child.

In March 2017, DRC presented our position² on the proposed Dublin IV Regulation and this policy brief elaborates further on the topic of families and children in the Dublin procedure. Practical examples illustrate the challenges asylum seekers experience due to the restrictive and non-flexible practices of the Member States when making decisions under the Dublin Regulation and how this affects families who apply for asylum in Europe. The policy brief will provide policy recommendations based on practical lessons learned.

THE DUBLIN SYSTEM SHOULD ENSURE THE RIGHTS OF FAMILIES AND CHILDREN THROUGH:

- An **expanded definition of 'family member'** in the Dublin IV Regulation that is based on actual family ties such as siblings, adult children living with their parents, parents living with their adult children and unmarried couples;
- **Transparent and flexible guidelines** on how the Member States must apply the Dublin Regulation including proactive and flexible use of the dependency clause and the discretionary clauses **to keep families together;**
- **Clear guidelines** on how Member States should conduct and include assessments of the **best interests of the child** in Dublin decisions involving children; and
- **Access to high-quality free legal aid** for all asylum seekers to assist them navigate in the complex Dublin rules.



Photos of families in Greece

THE RIGHTS OF CHILDREN AND FAMILIES SHOULD ALWAYS BE A PRIMARY CONSIDERATION IN THE DUBLIN PROCEDURE

The Dublin III Regulation is drafted with reference to international human rights law³ and states that the best interests of the child⁴ and the respect for family life and family unity⁵ should be the primary consideration, when Member States make decisions on the application of the Regulation. However, in practice this is very often not the case.

DRC often experiences that family members are forced to live in separate countries for long periods of time, because the Member States do not recognize the family link or because they cannot agree on which Member State should be responsible for processing the asylum applications of a family separated in Europe or do not facilitate rapid transfers.

The family definition of the Dublin III Regulation

The Dublin III Regulation sets out a hierarchy of criteria for determining which Member State should be responsible for examining an asylum application. The Dublin III Regulation prioritizes children's reunification with family. Hereafter, the first criteria for determining which Member State is responsible is the presence of 'family members',⁶ defined as spouses, unmarried partners in a stable relationship, minor children and parents of minor children.⁷

The definition of family members in the Dublin III Regulation implies that while members of a nuclear family can unite under the Dublin III Regulation, it is often more difficult for adult children, siblings and unmarried couples, who have not been able to live in a stable relationship to unite. UNHCR's study on the Dublin III Regulation from 2017 illustrates that many families are separated by the Dublin system due to the Member States' restrictive interpretation of family.⁸

The 'dependency clause'⁹ allows for asylum seekers to reunite with 'siblings' and 'parents' in case of dependency due to serious illness, severe disability or old age. A broader group of 'family relations' can be brought together on humanitarian grounds based primarily on family or cultural considerations under the 'humanitarian clause'¹⁰.

The CJEU has stated that the dependency clause and the discretionary clauses should be interpreted in line with the objectives of keeping families together on humanitarian grounds and ensuring effective access to the asylum procedure.¹¹ In reality, however, many Member States lack national guidance on how dependency should be assessed and have a very high threshold for the application of the 'dependency' clause, which result in very rare application.¹²

A recent AIDA report on the Dublin system in 2017 illustrates how the Member States mostly send 'take back' requests based on 'hits' in the Eurodac or Visa Information System (VIS)¹³ instead of 'take charge' requests to unite families.

UNHCR's study on the Dublin III Regulation re-enforces findings of previous studies¹⁴ and confirms that many Member States only use the dependency clause or the discretionary clauses in a very limited number of situations.¹⁵ An exception to this practice is the Greek authorities who systematically send requests for transfers to other Member States based on the family provisions and discretionary clauses. However often these requests are rejected by the receiving Member States due to lack of flexibility.¹⁶

A reformed Dublin-system?

With the European Agenda on Migration¹⁷ the European Commission proposed to relieve some of the pressure on the Member States at the external European border by increasing the amount of transfers based on the family provisions¹⁸ and the discretionary clauses¹⁹ of the Dublin III Regulation. With this initiative, DRC hoped to see a change in how the Member States implemented the Dublin III Regulation. We also hoped to see the EU institutions agree on a new ambitious Dublin IV Regulation with reinforced rights for families and children as well as a permanent responsibility sharing mechanism.

In this respect, DRC welcomes that the European Commission proposal²⁰ for the recast of the Dublin III Regulation contains certain improvements for families in the Dublin procedure; mainly the extended definition of family members to include siblings and family formed in transit, instead of only in country of origin.²¹

However, in DRC's experience other family relations often consider to be each other's immediate family, e.g. an 18-year-old daughter and her parents. In line with ECRE's recommendation, DRC therefore calls for a further extended and more flexible definition of family members that relates to the actual tie between an asylum seeker and the person's family member.²² Further to the proposed changes, DRC specifically calls for the definition of 'family member' to include adult children who live with their parents, parents who live with their adult children, as well as unmarried partners in a stable relationship without having lived together and same sex partners.

DRC is also concerned with the European Commission proposal's focus on punitive and coercive measures to prevent onwards movement. In the experience of DRC and other organisations, asylum seekers often move onwards for many reasons; one of which is to be reunited with their family.²³ The right to family unity is therefore necessary to consider when reforming the Dublin system.

The European Parliament has agreed on its position on the Dublin IV Regulation²⁴ based on the report by MEP Cecilia Wikström.²⁵ Positive elements of the position include special procedures for family reunification, asylum seekers' right to information and free legal assistance as well as a corrective allocation mechanism and a light procedure for persons with meaningful links.

The Council of the European Union's position on the Dublin IV Regulation is – at the time of writing – still pending.

Adult children are not considered family?

When children turn 18 years they become adults in legal terms, and thus age out of the special guarantees which the Dublin III Regulation provides for children. Independently of their situation – economically and emotionally – adult children age 18-22 years are not covered by the definition of 'family members' in the Dublin III Regulation.

It is thus left to the discretion of the Member States to decide whether adult children should be reunited – or allowed to remain – with their parents and siblings under the Dublin III Regulation, either based on 'humanitarian grounds' or based on the existence of a 'dependency relationship'. As the Member States' use of the discretionary clauses is very limited, many parents and siblings in practice end up separated from their families.

CASE

WHEN ADULT CHILDREN ARE EXCLUDED FROM BEING REUNITED WITH THEIR FAMILIES

Lana fled Kuwait with her mother, Farrah, step-father, Raheem, and her four younger siblings. Lana's biological father had died, when she was very young and Farrah soon remarried, so Lana considered Raheem to be her father although she was never adopted.

The family fled to a neighbouring country, but the situation remained insecure for Raheem and he was forced to continue his flight alone. Raheem came to the United Kingdom, where he was recognised as a refugee. The family kept in touch through telephone during their time apart.

Lana was 22 years old when she came to Denmark in November 2015 together with her mother and minor siblings. They applied for asylum and asked the Danish authorities to unite them with Raheem in the United Kingdom. Raheem came to visit his family in Denmark as soon as possible.

The Danish authorities decided to request the British authorities to take charge of the asylum application of Farrah and her four minor children which were accepted by the British authorities. The Danish authorities refused to send a request in Lana's case, as they did not find that the Dublin rules applied because Lana was over 18 years old.

However, Lana and her mother were dependent on each other. Lana had lived with her family all her life and had helped her mother take care of her siblings. Farrah was forced to make a choice between her daughter and her husband and she decided to stay with Lana in Denmark as she feared they might not get the chance to be united again. Farrah thus withdrew her consent for being united with her husband and was allowed to have her asylum case examined in Denmark.

In October 2016, DRC assisted Lana and her mother in filling a complaint to the Danish authorities regarding the decision of the Danish authorities to not recognise Lana as a member of her family under the Dublin III Regulation. The case was pending for another one and a half years, after which Lana and her family with the assistance of a British lawyer succeeded in getting family reunification visas to the United Kingdom.

The cases in this paper are based on experiences of asylum seekers, who DRC has assisted in their Dublin cases in Denmark and Greece. Names and other details have been anonymized to protect the identity of the persons involved.

Fleeing war and other forms of persecution is rarely a simple matter. Rather families are often separated en route, and therefore often end up being registered as asylum seekers in different Member States after having entered Europe. This situation can be especially problematic for children who are 17 years, when they ask for asylum in a Member State and want to reunite with family in another Member State.

Despite the Dublin III Regulation stipulating that the responsible Member State should be determined on the basis of the situation at the time when the asylum seeker first applied for asylum²⁶, some Member States only recognise asylum seekers' rights to the special guarantees as children until the moment they turn 18 years.

CASE

WHEN TURNING 18 YEARS HINDERS YOU FROM BEING REUNITED WITH YOUR FAMILY

Rifat fled from Syria and came to Greece by boat in October 2016, when he was 17 years old. His adult sister, Safa, had also fled Syria and was living in Germany with her husband. Safa and Rifat grew up together and had a close family bond, so it was important for them to reunite.

However, the Greek authorities did not manage to send the request for the transfer of Rifat to Germany within the required three-months deadline, which would have facilitated family reunification between Rifat and Safa.

The Greek authorities instead sent a request for transfer of Rifat based on the humanitarian clause (which does not include a time limit), which the German authorities rejected in June 2017, because Rifat had turned 18 years old and no longer was a minor. The German authorities also argued that Rifat was not dependent enough upon Safa for them to be reunited under the humanitarian clause, although the humanitarian clause does not require the existence of a dependency relationship.

The Greek authorities sent a request for re-examination to the German authorities underlining the close relationship between the siblings and the problematic situation Rifat was living in in Greece. The German authorities once more rejected the request for transfer, because the siblings did not fulfil the German criteria for humanitarian reasons for reunification, such as separation due to a shipwreck during the common flight.

The German authorities did not accept the fact that Safa would be able to provide support for Rifat during his stay in Germany as a humanitarian reason for them to be reunited. Rifat is now living alone in a refugee site in Greece.

Siblings are not considered family?

Adult siblings are often separated in the Dublin procedure, because siblings are not recognized as family members in the Dublin III Regulation and because Member States have divergent national practices on the use of the discretionary clause in such situations.²⁷

Despite siblings having strong family ties established in their home country, the Dublin III Regulation provides few options of the siblings sustaining their family life. Even if the only family in Europe is a sibling, the limited use of the dependency clause and the discretionary clauses results in many siblings being separated, which conflicts with the rationale of the Dublin III Regulation of keeping families and their asylum cases together.

Additionally, restrictive national practices can hinder integration prospects for refugees, because well-integrated refugees would be able to support their siblings, if they are given the chance to stay in the same Member State.²⁸

CASE

WHEN AN OLDER BROTHER IS ALL YOU HAVE GOT

Malek was 22 years old, when he came to Denmark and applied for asylum in 2016. He had fled Syria and came to Denmark, where his older brother, Jamal, was living with his wife and child. Jamal had been in Denmark for several years as a recognized refugee and owned his own business.

Malek had entered the EU through Bulgaria, where he had been arrested by the Bulgarian police and was detained for a month due to illegal entry. During the detention, the Bulgarian authorities exposed Malek to violence, which resulted in him losing his hearing on one ear.

The Bulgarian authorities requested Malek to register his fingerprints and informed him that the fingerprints had nothing to do with asylum. They also asked him to leave the country within two weeks, so Malek continued his travels through Europe until he reached Denmark and was reunited with Jamal.

Malek and Jamal had always shared a special bond, because they were close in age compared to their other siblings. While in Syria, the brothers had a business and their hope was that they once again could start a business together when they had found safety in another country.

When Malek arrived in Denmark, the two brothers were very happy to be reunited. Malek was very vulnerable due to his experiences in both Syria and Bulgaria. He suffered from post-traumatic stress disorder (PTSD), and was feeling depressed which caused him to attempt suicide.

Malek needed help in his daily life and Jamal did all he could to help; he let Malek stay at his home as much as possible to ensure that Malek felt safe, that he got something to eat and that he took the necessary medicine. Jamal also assisted Malek for interviews with the Danish authorities as well as to the psychologist.

Malek was very appreciative about Jamal's help and expressed a strong wish to live together with his brother, if he was granted asylum in Denmark. It calmed Malek to spend time with Jamal and his family; especially Jamal's young child, who was playful and happy.

After more than 14 months in Denmark, the Danish authorities decided to send Malek back to Bulgaria, because that was Malek's first country of entry. The Danish authorities did not recognize that Malek was depended on the help of Jamal and assessed that Denmark should not accept the case because of the family bond between Jamal and Malek.

Parents are not family?

Parents with adult children are in a similar situation as siblings and adult children, because they are not recognized as family members according to the Dublin III Regulation. It is however very common for adult children – regardless of whether they have families of their own – to want to take care of their parents; especially when the parents are elderly and need support in daily life.

CASE

WHEN 'DEPENDENCY' REQUIRES MORE THAN DAILY HELP FROM YOUR CHILDREN

In 2015, Amal fled the war in Syria and arrived in Denmark, where five of her adult children had been granted residence permits as refugees. Amal had always been living together with her children in Syria and since she lost her husband in 2008, she was solely dependent on the help of her children.

Due to the conflict in Syria, Amal was separated from her family and they had all been forced to flee the country at separate times. Furthermore in 2014, Amal suffered from a heart attack, which prevented her from travelling as she was partially paralysed.

When Amal felt a bit stronger, she fled Syria together with her nephew. They entered the EU through Spain, where Amal was apprehended by the Spanish authorities. Amal informed the authorities that she wanted to be united with her children in Denmark and the Spanish authorities replied that she was free to travel onwards to Denmark.

Amal was 58 years old, when she came to Denmark. Her health had deteriorated within the last years and she had problems with her heart and back. She felt mentally unstable due to her experiences during the war and suffered from diabetes. Furthermore, Amal often experienced blackouts and had seizures, which made her dependent on the help of her children as she feared not being able to get the necessary medical assistance, if she was alone.

While in Denmark, Amal has spent as much time as possible with her children. They help her in daily life which includes bathing her, making sure that she takes her medicine and bringing her to the doctor.

The Danish authorities decided that Amal had to return to Spain as her first country of entry, because she and her adult children were not considered family members according to the Dublin III Regulation. Furthermore, the authorities did not find that Amal should have her asylum application examined in Denmark due to humanitarian reasons or that she was dependent on the help of her children, because she was not suffering from serious illness and because she had managed on her own after her children had left Syria.

Couples are not families?

The Member States have restrictive interpretations of whether couples can be recognized as 'family members'. For a couple to be reunited under the Dublin III Regulation, they should either have been married in the country of origin or be in '*a stable relationship, where the law or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to third-country nationals*'.²⁹ Couples, who do not fulfil this criterion, can usually only hope to be reunited under the discretionary clauses, which rarely happen, resulting in many families being forced to live apart.³⁰

Furthermore, the Member States usually do not have a holistic approach to the protection of family life and Dublin cases are often processed by different authorities than those, who usually process applications for family reunification. This results in families often having to await the Member State authorities' decisions in different procedures before they can be reunited.

Decisions by the Member States to refuse unmarried partners from reuniting under the Dublin III Regulation does not only affect the adults, but also their common children, who can be forced to grow up with only one parent.

CASE

WHEN BEING A COUPLE DOES NOT MAKE YOU FAMILY

Tsibekti was 20 years old, when she fell in love with Negasi, who was 22 years old. They went to school together in Eritrea. In 2013, after they had been together for about five years, they decided to get engaged. Short time later, Negasi was forced to flee the country, because he feared for his life. Negasi came to Denmark, where he was granted refugee status.

Two years later, Tsibekti had to flee Eritrea. She entered the EU with a boat to from Libya to Italy, where she was apprehended by the Italian authorities for illegal entry. She lived in the street for four days, before she continued to Denmark.

Both Tsibekti and Negasi were very happy to finally be reunited in Denmark and they spent as much time together as possible. Tsibekti got pregnant and the couple married in November 2016.

The Danish authorities sent a request to take responsibility of Tsibekti's asylum application to the Italian authorities, because Italy was the first country she had entered in the EU. The Italian authorities did not reply within the deadline, and the Danish authorities thus issued an accept by default.

In February 2017, the Danish authorities decided that Tsibekti had to go back to Italy together with the baby she was expecting in May 2017. The Danish authorities did not recognize Tsibekti and Negasi as being a family, because the couple were not married at the time, when Tsibekti applied for asylum.

The fact that the couple had been together for eight years did not make a difference, because they had not lived together. The Danish authorities did not consider whether the decision would be in the best interests of the unborn child.

The Member States usually do not have national guidelines for identifying family members,³¹ and although a couple is married, it depends on national practices in the Member State whether the marriage will be recognized or not.

The Implementing Regulation for the Dublin III Regulation contains lists³² which can provide guidance for evidence and the standard of proof, but these lists are only used in few Member States.³³ The lack of national guidance on evidentiary requirements results in the standard of proof often being very high and thus hindering family reunion.

CASE

WHEN THE BURDEN OF PROOF EXCEEDS REASONABLE DEMANDS

Parwana grew up in Iran as an Afghan refugee. She met Zaman, an Afghan man who had been living in Denmark for around 14 years, and they fell in love. The couple married in 2014 when Parwana was 26 years and Zaman was 30 years. They had their marriage registered with the Iranian authorities as well as the Afghan embassy in Iran. They also held a grand wedding with around 300 guests.

After the marriage, Zaman had to return to Denmark and the couple kept in touch by talking on the phone and social media. Zaman also came to Iran to be with Parwana during his holidays, usually three weeks at a time.

Parwana and Zaman had applied for family reunification in Denmark because they wanted to live together permanently. After more than a year, they still had not received a reply.

At the same time, Parwana's sister, who was in Afghanistan, had gotten terminally ill. Parwana's sister had lost her husband and sons and had no one to take care of her. Parwana therefore decided that she needed to visit her sister before she died. To travel to Afghanistan, Parwana needed to give up her residence permit in Iran.

Parwana stayed with her sister for some weeks before she died. Hereafter Parwana had to flee to Europe due to the security situation in Afghanistan and because she could not return to Iran.

Upon arrival in the EU, Parwana got stopped by the German authorities, who asked her to give her fingerprints to check whether she was registered for any criminal offences. Parwana told the German authorities that she wanted to reunite with her husband in Denmark and they replied that she could continue her travels.

Parwana and Zaman were very happy to be united in Denmark. Parwana was feeling mentally unstable due to her sister's death and the rough travel to and from Afghanistan, so she needed the support of her husband, and they spent as much time together as possible.

The Danish authorities decided that Parwana were to be returned to Germany, where she was registered as an asylum seeker. They did not recognize that the couple were a family, because they did not find that they fulfilled the Danish criteria for marriage: According to Afghan law, a couple can marry without the partners both being present at the ceremony, while Danish law requires for the couple to be present at the wedding.

Parwana and Zaman had both been present at their wedding and they presented evidence in the form of photos from their wedding and honeymoon as well as paid flight bookings for Zaman's travels to Iran. They also got the Afghan embassy to issue a confirmation of the marriage. Zaman's passport had expired and he had handed it in to the Danish authorities, which hindered him from presenting it as evidence in the case.

The best interests of the child?

Children have the right to be heard in all matters affecting the child and the opinion of the child should be included accordingly in an assessment of the best interests of the child.³⁴ The best interests of the child should be at the core of any decision affecting children and Member States must motivate, justify and explain any decision concerning a child.³⁵

Children are a particularly vulnerable group of asylum seekers and the Dublin III Regulation provides special procedural safe guards and guidance on how the best interests determinations are to be made.³⁶ However, in DRC's experience, these criteria are often not considered or given substantial weight in a best interest assessment conducted by the Member States.

According to UNHCR the Member States reported to conduct best interests assessments for unaccompanied children, but it does not seem as if the Member States have a systematic and standardized approach to conducting best interests assessments based on the standards outlined in the Dublin III Regulation.³⁸ Furthermore, the cooperation between Member States on gathering information for the best interests of the child assessments is very limited,³⁹ thus risking for the best interests of the child not to be assessed correctly in the Dublin procedure.

When the Member States' assessments do not clearly demonstrate which criteria have been considered and what weight they have been given in a Dublin decision regarding a child, it complicates the possibility for the child to challenge the decision.

The lack of a harmonized approach to the best interests of the child assessments also has influence on accompanied children. Accompanied children are not heard by the Member State authorities and relevant information regarding the children's experiences in the previous Member State does not come to the Member State's attention unless the parents are aware of it.

In DRC's experience, the best interests of accompanied children are assessed even less than the best interests of unaccompanied children and thus rarely included in the decisions by the Member State authorities. When we talk to children and teenagers in the Dublin procedure, they often provide us with information about their situation, which we would not have gotten from other sources.

CASE

WHEN A CHILD CANNOT BE REUNITED WITH BOTH PARENTS

Asma fled Syria together with her son, Bassel. Bassel was granted family reunification with his father – Asma’s former husband – and Bassel travelled to Sweden in May 2017, when he was 13 years old.

Bassel’s father had been forced to flee Syria before the rest of his family and had found protection as a refugee in Sweden. Bassel’s father had married another woman after Asma and he was granted family reunification with his second wife and their children as well as with Bassel. Asma was refused family reunification with Bassel and her former husband in Sweden, so she fled to Greece and applied for asylum.

In June 2017, the Greek authorities requested the Swedish authorities to take charge of Asma’s asylum application under the Dublin III Regulation so that she would be reunited with her son. However, the Swedish authorities rejected the request for reunification of the family, because Bassel did not have refugee status or subsidiary protection in Sweden.

In August 2017, Bassel and his father during an interview with the Swedish authorities said that Bassel was in frequent contact with his mother and that it affected him negatively to be away from her. Family relations can be brought together under the humanitarian clause of the Dublin III Regulation, but the Swedish authorities also rejected to reunite Asma with Bassel on humanitarian grounds, because the Swedish authorities did not find that there was ‘any extra ordinary circumstances’ in the case that made the reunification of Asma and Bassel in the best interests of the child.

The Greek authorities sent a request for re-examination in November 2017, which the Swedish authorities rejected without further reasoning in December 2017. In January 2018, the Greek authorities sent a second request for re-examination to which no reply was received by May 2018. Asma now lives at an asylum camp in Greece, separated from her son for several years and with no prospects of being reunited.

There is no complaint mechanism in the Dublin III Regulation through which Asma – or Bassel – could appeal the decision of the Swedish authorities to refuse the request for transfer of Asma sent to Sweden by the Greek asylum services.

Organizations providing legal aid such as DRC provide assistance for asylum seekers and refugees to try to ensure that assessments of the best interests of the child are made in all cases. Although required by EU law, Member States do not always take such information into consideration when making Dublin decisions,⁴⁰ and it can be difficult to challenge the Member States assessments of the best interests of the child, which can result in a violation of the right to family life.

CASE

WHEN THE CHILD IS NOT HEARD

After fleeing Syria, 17-years-old Akram came to Greece in August 2017 together with his brother, Nidal, who was 20 years old. Their older sister, Amena, had refugee status and was living in Germany. She was 28 years old and married with children. Akram wanted to be reunited with his sister, because he felt that she and her family would be better suited to take care of him than Nidal, who was also young.

By the end of November 2017, the Greek authorities requested the German authorities to take charge of Akram's asylum application. In the beginning of January 2018, the German authorities rejected the request because the siblings had not proved their relationship, e.g. due to them having lived apart for more than four years, and that Akram thus was not recognized as being dependent on Amena.

A few weeks later, the Greek authorities sent a request for re-examination which included a best interests of the child assessment for Akram that DRC had helped prepare as well as his family book from Syria. A week later, the German authorities replied that these documents needed to be translated.

Mid-February 2018, the Greek authorities sent the translated documents to the German authorities, but as of May 2018 no reply was received. Akram must therefore continue staying at a refugee camp in central Greece without the support of his sister, whom he feels would be the best suited sibling to take care of him.

Legal aid is essential for asylum seekers to navigate in the Dublin procedure

Another obstacle for families seeking to reunite in Europe is administrative issues such as delays, prolonged case handling times, lack of information and insufficient guidance from the national Dublin Units to the asylum seekers and refugees.

The Dublin III Regulation leaves room for interpretation and the Member States have each their national practices. Most Member States do not have guidance on how the hierarchy of criteria should be assessed,⁴¹ which makes it difficult to ensure uniform application of the Dublin III Regulation.

The non-transparent national practices, which sometimes allow for one person to unite with their family, while another person's similar request is rejected by the same Member State, makes the asylum seekers distrust the system and sometimes travel to another Member State on their own.⁴²

To be able to navigate in the complex rules that make up the Dublin system and in the divergent and restrictive national practices on the application of the family and discretionary clauses, it is crucial for all asylum seekers and refugees in the Dublin-procedure to have access to highly quality and free legal assistance.⁴³

Although the purpose of the Dublin III Regulation is for asylum seekers to rapidly get effective access to the asylum procedure in a Member State, the reality is that many asylum seekers must wait a very long time in the Dublin procedure before they actually can have their asylum claim examined.⁴⁴ One reason is that only a limited amount of Dublin procedures result in actual transfers. In Germany, 89% of the Dublin procedures did not result in transfers.⁴⁵ Statistics like this illustrate that although a country sends many requests, only few are accepted by the receiving Member State.

A persisting problem in many Dublin cases is the issue of lacking deadlines for re-examination requests. The Dublin III Regulation determines that take charge requests should be sent as quickly as possible within three months from the date of the asylum application⁴⁶ and the requested Member State must reply within two months.⁴⁷ In case the Member State rejects the request, the requesting Member State can send a request for re-examination within three weeks, which the requested Member State should answer within two weeks.⁴⁸ Hereafter, there are no time limits and the Dublin procedure can drag out for months and hinder families from uniting.

CASE

WHEN RIGID PROCEDURES KEEP FAMILIES APART

Mina and her eight minor children are Syrian nationals. They came to Greece in November 2016 and applied for asylum. Mina's husband, Mohammed, was forced to flee Syria before the rest of the family, and he had been granted refugee status in Austria.

The family asked to be reunited and the Greek authorities sent a request for family reunion to the Austrian authorities in February 2017. The Austrian authorities rejected the request, because Mohammed did not know that he – according to the Dublin III Regulation – was required to confirm in writing that he wished for his family to join him in Austria.

With the assistance of DRC, Mohammed submitted a signed consent form to the Austrian authorities. But the Austrian authorities again rejected the request for family reunification under the Dublin III Regulation; this time due to lack of sufficient documentation about Mina's and Mohammed's marriage.

In September 2017, the family submitted the requested documents, but more than nine months later the Austrian authorities still have not replied.

Mina and her eight children thus continue to live in limbo in Greece where the children cannot access school. The family is devastated to have been separated for several years without knowing when they will be reunited.

The average waiting time for families to be reunited under the Dublin III Regulation is 103 days from the time they have been accepted until the actual transfer is carried out.⁴⁹ Additionally, the families often have been waiting for many months from the day of entry into a Member State until the receiving Member State has accepted to take responsibility for the examination of their asylum applications. The Member States have reported that lack of staff and logistical challenges can hinder transfers from being carried out in an efficient manner.⁵⁰

National administrative practices in the Member States also play a major role in obstructing families' possibilities to reunite. An example is the German cap on family reunification transfers from Greece in 2017,⁵¹ which – despite being denied by the German authorities⁵² – has been deemed illegal by the German courts.⁵³ The Dublin III Regulation stipulates that transfers must be carried out within six months of acceptance of the take charge request⁵⁴, but many families experience having to wait much longer.

Lawyers and organizations such as DRC assist asylum seekers and refugees in taking these cases to court, but the practice is still being implemented and families are forced to live separated many months after the six month-deadline of the Dublin transfer. The lengthy waiting times for transfers between Member States such as Greece and Germany especially have an impact on the children, who are left waiting to be reunited with their parents or other family relations. Keeping family relations from unaccompanied children without any justifiable reasons can never be in the best interests of the child.

CASE

WHEN FAMILIES ARE SEPARATED DUE TO DELAYED TRANSFERS

Layal fled Syria with her husband, Fathi, but they were separated en route. While Fathi came to Germany, where he was granted residence permit as a refugee, Layal was registered as an asylum seeker in Greece.

The Greek authorities requested the German authorities to take charge of the responsibility of Layal's asylum case because her husband was residing in Germany and she was accepted in June 2017. Although Layal has been accepted, she still has not been able to travel to Germany due to administrative issues. No clear explanation has been provided, but Layal expects that her delayed transfer is caused by German administrative cap on Dublin transfers.

Layal is suffering from problems with her spinal cord and needs surgery. She has been hospitalized several times and needs help in everyday life to stand, sit and get down the stairs. She is also in need of psychosocial support, which Fathi would be able to provide her if she was in Germany.

Due to her vulnerable situation, DRC has repeatedly requested for Layal to be prioritized since December 2017. The Greek authorities rejected the request, because many other people also await Dublin transfers and she cannot be prioritized.

Layal has been accommodated in a very run-down four-bedroom apartment together with four other women and their nine children. They have one bathroom to share. The apartment is on the third floor and the elevator is not working due to lack of maintenance, which means that Layal has many difficulties getting out of the building.

The deadline for Layal's Dublin transfer passed half a year ago, but she is still living in Greece without her husband.

DRC CALLS FOR IMPROVEMENTS IN THE CURRENT DUBLIN SYSTEM

The current Dublin system results in families being separated due to the narrow definition of family members and due to the Member States strict interpretation of the dependency clause and the discretionary clauses.

In case the European Institutions do not reach agreement on the proposed Dublin IV Regulation, the current Dublin III Regulation will continue to be in force for the years to come, without alleviating the challenges families and children experience in the current system.

DRC therefore calls upon Member States to remember that:

- **The best interests of the child and the right to family life should always be at the forefront of any decision taken by the Member States.** Albeit being based on international human rights law, the first-hand experiences of DRC clearly illustrate that these considerations are not always respected by Member States when making Dublin decisions and that the access to legal assistance during the Dublin procedure is crucial for asylum seekers to safeguard their rights.
- **Flexibility is essential for a well-functioning Dublin system.** Member States at the external borders of the EU such as Greece receive many asylum seekers who have family in other Member States. The receiving Member States should act fair and flexible when they receive requests for family reunification to ensure that families can be reunited and the best interests of the child are respected.
- **Ensure quick access to a fair asylum procedure in Europe, respecting all legal and procedural safeguards.** A complicated and lengthy Dublin procedure constitutes an obstacle to a quick and efficient access to the asylum procedure.

DRC CALLS FOR A NEW DUBLIN SYSTEM THAT ENSURES THE RIGHTS OF FAMILIES AND CHILDREN

DRC finds that a reformed Dublin system should address the shortcomings of the current system that often result in separation of families. The current proposal on the Dublin IV Regulation by the European Commission and the suggested amendments by the European Parliament include several good initiatives such as the expansion of the definition of family member and the access to quick family reunification, but more needs to be done to ensure the rights of children and families in the Dublin procedure.

DRC therefore calls for the EU Institutions to agree on a reformed Dublin Regulation that substantially improves conditions for asylum seekers in the Dublin procedure. We call for a more sustainable Dublin system that is based on flexible cooperation between the Member States and includes the following:

- to **ensure that all families are kept together or united** taking into account the location of the asylum seekers' close family relations;
- to **develop an expanded definition of 'family member'** in the Dublin IV Regulation that focuses on the actual ties between asylum seekers and their family member and includes siblings, adult children who live with their parents, parents who live with their adult children as well as unmarried couples in a stable relationship and same-sex partners;
- to **consistently include the best interests of the child** assessments in all Dublin decisions involving children;
- to **develop clear guidelines on how the best interests of the child assessments** are made based on a multidisciplinary approach and conducted by staff with the requisite qualifications and included in decisions involving children;
- to ensure that the **Member States are obliged to assess the discretionary clause** in conjunction with the best interests of the child and family reunification;
- to **develop clear guidelines on how the Dublin Regulation should be used to keep families together**, including utilization of the dependency clause and the discretionary clauses;
- to **include input from human rights experts and civil society** when drafting guidelines on the Dublin procedure;
- to be **based on enhanced and flexible cooperation between Member States** that ensures that families are reunited and that asylum seekers get swift and efficient access to the asylum procedure, thus avoiding prolonged case handling times and non-transparent procedures; and
- to provide **access to high-quality free legal aid** to all asylum seekers to ensure quick access to fair asylum procedures.

Endnotes

- 1 The European Parliament and the Council, [Dublin III] Regulation (EU) No 604/2013, 26th June 2013 (hereafter Dublin III Regulation).
- 2 DRC, Danish Refugee Council's position on the reform of the Dublin system, March 2017.
- 3 In the Dublin III Regulation recitals 13, 14, 16 and 17 of the preamble as well as in Article 6 references are made to the 1989 United Nations Convention on the Rights of the Child, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Charter of Fundamental Rights of the European Union.
- 4 1989 United Nations Convention on the Rights of the Child Article 3(1) and the Charter of Fundamental Rights of the European Union Article 24.
- 5 Charter of Fundamental Rights of the European Union Article 7 and European Convention for the Protection of Human Rights and Fundamental Freedoms Article 8.
- 6 Dublin III Regulation Articles 9 and 10.
- 7 Dublin III Regulation Article 2(g).
- 8 United Nations High Commissioner for Refugees (UNHCR), *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 100 and 102.
- 9 Dublin III Regulation Article 16(1).
- 10 Dublin III Regulation Article 17(2).
- 11 CJEU, Case C-245/11, K. v. Bundesasylamt, C 245/11, 6th November 2012, paragraph 35, 40, 48 and 54.
- 12 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 108-109.
- 13 AIDA, *The Dublin system in 2017 - Overview of developments from selected European countries*, March 2018, page 3, states that "41,850 of the record-high 64,267 outgoing requests (65.1%) issued by Germany in 2017 were based on Eurodac 'hits', 11 while 3,200 of the 3,654 requests (87.6%) sent by Sweden were based on a 'hit' in Eurodac or the Visa Information System (VIS)".
- 14 See for example UNHCR, *The Dublin II Regulation - A UNHCR Discussion Paper*, April 2016, and ECRE, *Dublin II Regulation - Lives on Hold*, European Comparative Report, February 2013.
- 15 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 116 and 131-132.
- 16 AIDA, *The Dublin system in 2017 - Overview of developments from selected European countries*, March 2018, page 3-4, and UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 129 and 131.
- 17 Communication from the Commission 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, 13th May 2015.
- 18 Dublin III Regulation Articles 8-10 and 16 (the dependency clause).
- 19 Dublin III Regulation Articles 17(1) (the sovereignty clause) and 17(2) (the humanitarian clause).
- 20 European Commission, *Proposal for a [Dublin IV Regulation]*, COM (2016) 270, 4th May 2016 (hereafter COM(2016) 270).
- 21 COM(2016) 270, recital 19 and Article 2(g).
- 22 European Council on Refugees and Exiles (ECRE), *ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270*, October 2016, page 14-15.
- 23 International Detention Coalition (IDC), *Does Detention Deter?*, April 2015, page 4, , and UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 101. DRC, *Danish Refugee Council's position on the reform of the Dublin system*, March 2017.
- 24 European Parliament, *Position on Dublin IV*, 2016/0133(COD), 6th November 2017.
- 25 European Parliament, *Rapporteur Cecilia Wikström, Report on the proposal for a Dublin IV Regulation*, 6th November 2017.
- 26 Dublin III Regulation Article 7(2).
- 27 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 102.
- 28 ECRE, *ECRE Comments on the Commission Proposal for a Dublin IV Regulation COM(2016) 270*, October 2016, page 14 with reference to UNHCR, *EXCOM Conclusions No. 1(XXVI) 1975 (F); No9 (XXVIII) 1977; No 24 (XXXII) 1981; No 84 (XLVIII) 1997; UNHCR 'Integration - A Fundamental Component in Supporting Diverse Societies'* January 2016. See also ECtHR, *Maslov v. Austria*, Application No 1638/03, Judgment of 23 June 2008, para 62.
- 29 Dublin III Regulation Article 2(g).
- 30 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 102.
- 31 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 104.
- 32 *The Dublin Implementing Regulation No. 1560/2003 and list A and B of Annex II of the Implementing Regulation (EU) No. 118/2014 of 30th January 2014.*
- 33 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 88.
- 34 1989 United Nations Convention on the Rights of the Child Articles 3 and 12 and the Charter of Fundamental Rights of the European Union Article 24.
- 35 The UN Committee on the Rights of the Child General Comment 14 on the right of the child to have his or her best interests taken as a primary consideration.
- 36 Dublin III Regulation recital 13 and Articles 6 and 8.
- 37 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 52-53.
- 38 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 55.
- 39 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 72.
- 40 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 86.
- 41 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 100.
- 42 DRC and others, *Legal Aid (Individual Legal Representation in Asylum/Refugee Context) for Migrants, Asylum Seekers and Refugees in Greece: Challenges and Barriers*, Legal Aid Actors Task Force, 24th January 2018, page 2, and UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 106.
- 43 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 101 and 144.
- 44 AIDA, *The Dublin system in 2017 - Overview of developments from selected European countries*, March 2018, page 6.
- 45 Dublin III Regulation Article 21(1).
- 46 Dublin III Regulation Article 22(1).
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- 48 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 147.
- 49 UNHCR, *Left in Limbo: UNHCR Study on the Implementation of the Dublin III Regulation*, August 2017, page 151.
- 50 Joint Agency Briefing Paper, *Transitioning to a Government-run Refugee and Migrant Response in Greece*, A joint NGO roadmap for more fair and humane policies, December 2017, page 11-12.
- 51 AIDA, *Country Report Germany 2017*, page 27-28.
- 52 Germany, *Wiesbaden Administrative Court*, 6 L 4438 / 17.WI, 15th September 2017.
- 53 Dublin III Regulation Article 29(1).

ABOUT DRC

The Danish Refugee Council (DRC) is a humanitarian, non-governmental, non-profit organisation working in more than 30 countries throughout the world.

The Asylum Department in Denmark has for decades provided legal assistance to asylum seekers in all phases of the Danish asylum procedure, including in the Dublin-procedure. Since January 2014 – and with the implementation of the Dublin III Regulation – DRC represents most asylum seekers in the Danish Dublin procedure.

DRC initiated its activities in Greece in November 2015 due to great humanitarian needs following the large influx of displaced populations in need of international protection. DRC currently implements a broad range of activities including Legal Aid to asylum seekers in the Dublin procedure.