

## THE DUBLIN REGULATION:

### TWENTY VOICES – TWENTY REASONS FOR CHANGE

The Dublin II Regulation replaced an earlier agreement (the Dublin Convention) and is designed to ensure that asylum seekers can only claim asylum in one European Union (EU) state. Its application is linked to Eurodac, a tool that stores and compares the fingerprints of asylum seekers entering Europe. It is a system that decides which state is responsible for deciding an asylum application. Usually this will be the country through which an asylum seeker first entered EU territory, whether irregularly or with a visa. So if for example a Chechen asylum seeker enters the EU via Poland before moving on to Austria to apply for asylum, he would be liable to be returned to Poland.

In March 2006 ECRE produced a major report showing that the Dublin II Regulation is failing to guarantee asylum seekers a fair hearing, putting refugees at risk and causing unnecessary suffering to families, children and survivors of torture. Although EU states are trying to harmonise their asylum systems, conditions for granting refugee status still vary hugely from one country to another. Some grant protection to almost 50% of applicants, others to less than 1%. Under these conditions, preventing asylum seekers from choosing their host country represents an obvious injustice.

ECRE through its member agencies across Europe has collected over 50 case studies demonstrating the devastating impact of the Dublin system on individual lives. These testimonies will be presented in a dossier to the European Commission in order to help inform its current review of the Dublin Regulation. ECRE has also identified ten key recommendations for immediate reform to ensure that all asylum seekers in Europe receive a fair hearing. In the longer term ECRE believes that the Dublin system needs to be replaced with an alternative solution enabling Europe to better share its responsibility to protect refugees.

Below are twenty individual voices which heard together are compelling evidence of the need for reform. These stories have been grouped according to four recurrent themes that ECRE found in its research: denial of a fair hearing, detention, lack of access to reception conditions, lack of safeguards for separated children and families being kept apart. All the stories have been anonymised to protect identities.

## DENIAL OF A FAIR HEARING

Although the Dublin system is based on the assumption that one single state will take responsibility, there is plenty of evidence that some states fail to respect the right of transferred people to receive a proper examination of their asylum request. Such practices expose these people to the risk of being sent on to face persecution in their country of origin. This often happens because states close the file of an asylum seeker who moves on to another country (even if the claim has not yet been examined) and then refuse to re-open it when the person is transferred back. The reality is that often asylum seekers feel they have no choice but to move on in order to receive proper assistance or a fair hearing of their claim, or to join a close family member.

**GUMAN:** Guman, a Kurdish man from Turkey, fled to Germany via Malta. He had been arrested and tortured several times in Turkey because of his political activities. After applying for asylum at the airport he was taken to a detention centre. Two weeks later he was interviewed at the German Immigration and Refugee board. After a further two weeks he was released from detention and moved to a reception centre for several months. Even though doctors certified that Guman was suffering with serious psychiatric illness and thus unable to travel, the German authorities decided to apply the Dublin II Regulation and sent him back to Malta. Although the Maltese authorities had agreed to take Guman back, upon arrival they denied him entry and refused to consider his asylum request. He was beaten up by the police and sent back to Istanbul by plane. When he arrived in Turkey he was arrested at the airport. His family does not know if he is still under arrest or if he is hiding somewhere from the Turkish police.

Provided by XENION:  
Psychosoziale Hilfen für politisch Verfolgte e.V. / Germany

Ali's new asylum claim was rejected because it was found that there were no new facts or circumstances that justified examination of the claim. Thus the merits of his application were never considered by either the UK or the Netherlands. Ali was expelled from the Netherlands to Somalia, and after less than six months he was killed in unclear circumstances in Mogadishu.

Case highlighted in a letter from the Meijers Committee to the European Commission dated 12.07.06

**NAEEM:** Naeem fled the Darfur region following the onset of the civil war, leaving behind his wife and children. All males in his village older than 11 years of age were reportedly killed. Naeem entered Greece illegally, which resulted in his arrest and detention for three months. After his release he applied for asylum. However, after sleeping in the streets for two weeks, he decided to go to the UK where, according to a friend, the reception would be better. In the UK he applied for asylum. The UK authorities requested Greece to take him back in accordance with the Dublin II Regulation. Upon return to Greece, Naeem was detained and the authorities notified him of the interruption of his asylum procedure due to his departure. His request for re-examination of his claim based on the developments in Sudan was rejected on the ground that it concerned a repeat application, although his original claim had never been examined on its merits. Provided by UNHCR (Greece)

**RAMZAN:** Ramzan, an asylum seeker from Chechnya, travelled to Belgium via Slovakia. Under Dublin II rules he received an order transferring him back to Slovakia. UNHCR and NGOs assisting him asked the Belgian authorities not to transfer him because the refugee recognition rate of Chechens in Slovakia is close to zero, and consequently there was a real risk that he would be returned to Chechnya without having his asylum request properly considered. Eventually the authorities agreed to consider Ramzan's asylum application and issued him a document cancelling the previous transfer decision. However, he was kept in detention and without warning he was suddenly expelled to Slovakia, potentially in breach of the principle of non-refoulement and without proper legal procedures having been observed.

Provided by Coordination et Initiatives pour et avec Les Réfugiés at Etrangers (CIRE)

**ALI:** Ali was a Somali asylum seeker who absconded from the Netherlands to lodge an asylum claim in the UK. His asylum application was subsequently declared unfounded by authorities in the Netherlands for having left with an 'unknown destination' even though at the moment of this decision a request had already been received by the Dutch authorities from the UK authorities that Ali be transferred back under the Dublin Regulation. Following transfer back to the Netherlands,

**SHATHA:** Shatha is a single Iraqi woman from Baghdad with two children. She was granted humanitarian stay in Denmark on the basis of a diagnosis of Post Traumatic Stress Disorder (PTSD) including psychotic hallucinations and epilepsy. However, after two years the stay permit was withdrawn on the grounds that it was no longer evident that she was psychotic. This happened notwithstanding the fact that recent specialist medical reports concluded that she was still suffering from PTSD to the extent that she was disabled. On learning this news, and fearful for her safety, Shatha fled to Norway as she was told that Iraqis from Central and South Iraq were granted protection there. But the Norwegian authorities returned her to Denmark under the Dublin procedure. Shatha is now back in Denmark where she has been told that she will either have to accept voluntary return to Iraq or stay in a Danish asylum camp with hundreds of other Iraqis

Provided by the Danish Refugee Council

## DETENTION

Although the Dublin Regulation does not contain any provisions requiring detention, many states are increasingly detaining asylum seekers in order to enforce Dublin transfers, while some states also detain returnees. Asylum seekers often have already suffered torture and imprisonment in the country from which they have fled so the consequences of further detention may be additionally harmful. Of particular concern is evidence of the increasing detention of children.

**YERODIN:** Yerodin is a seven-year-old boy from the Republic of Congo. He was detained on arrival in Belgium because he held a forged passport. It soon emerged that Yerodin's mother was legally residing in France. The authorities considered his continued detention was justified to expedite the Dublin II process, as they could ask France for an urgent reply according to Article 17(2) of the Dublin II Regulation. However, after three weeks a Court ordered the boy's release and he was placed in a foster home. France finally accepted the request to take charge of the case and soon afterwards, Yerodin was reunited with his mother in France.

Provided by UNHCR (Belgium)

**SARA:** A sixteen year old girl, Sara, from Eritrea came to the UK via Greece. She had claimed asylum in Greece but was detained for eleven months and her asylum claim eventually rejected. After arriving in the UK she was cared for by social services and allocated a Children's Panel Adviser who helped her claim asylum. Her lawyer initially advised her that she would almost certainly be allowed to remain in the UK. However, a week later he telephoned to correct this advice and informed Sara that in fact she was at risk of being transferred back to Greece under the Dublin II Regulation. Sara was understandably very shocked to hear this and fearful that she would again be detained in Greece. The Panel Adviser complained strongly to the lawyer. The next day Sara disappeared from the care of Social Services and was reported to be a missing person to the police.

Provided by the British Refugee Council

## LACK OF ACCESS TO RECEPTION CONDITIONS

All EU states are supposed to provide similar standards of support to asylum seekers under the terms of the EU Reception Directive. However, in reality huge disparities remain from one Dublin state to another in relation to accommodation, material benefits and access to health care. Some states do not offer any social assistance, let alone specialised support (for those having suffered trauma for example) to asylum seekers placed under Dublin procedures. This can have devastating consequences in some cases.

**MAIA:** After escaping attacks and Mafia death threats in Ukraine, Maia, together with her husband and young son, fled westwards. The quickest and easiest visa to obtain was a Spanish one. However, the family then travelled to the Netherlands to find protection. The family stayed in the Netherlands for two years before being forced to return to Spain under the Dublin Regulation. They spoke no Spanish and could not find anyone to help them. Maia's husband was suffering from severe depression and was suicidal. He had been undergoing treatment in the Netherlands when they were deported, but when they sought help in Spain no medical assistance was immediately available. After nine days without receiving medical attention Maia's husband committed suicide. Suddenly alone with her son in an alien culture, Maia crumbled and for ten days had to stay in hospital while her son was taken into care. Eventually, Maia recovered, collected her son and applied for asylum. Maia was finally given permanent residence status in Spain for humanitarian reasons.

Provided by ACCEM Spain



**KASIM:** Kasim is 39 years old and was forced to flee Iraq. He escaped to Turkey where he paid someone to arrange his journey to Italy. Kasim arrived in Italy by boat, landing in the port town of Crotona. The journey had taken its toll on his health and he was immediately taken to hospital. Seventeen days after his arrival Kasim was interviewed together with ten other people from different ethnic groups in Iraq. He was too frightened to speak in the presence of others so he gave a false name and a false story. He had no opportunity to speak in private about his own individual circumstances. Soon afterwards he was made to leave the reception centre and forced to live destitute in a park together with hundreds of other men and women. In search for a way out of this situation, Kasim used his remaining money for a plane ticket to Sweden. He applied for asylum but was informed that his asylum application made in Italy under a false name had been traced, and he would therefore be sent back to Italy according to the Dublin system. For the following two and a half years, Kasim was left in a state of complete uncertainty about his situation that caused a psychological breakdown and led him to attempt suicide. After eventually being transferred to Italy he was granted humanitarian status, but he is appealing the decision in order to gain recognition as a refugee.

Provided by the Italian Refugee Council

claims would be processed in different countries according to the EU Dublin procedure. Will was told he would be transferred to Greece within a week.. On arrival in Greece, Will was handcuffed and taken to a detention centre where he stayed for seven days. He spoke French but not Greek, he did not understand the procedure and received no information. He was given a 'pink card', released and told to come back after six months. He was forced to rely on the charity of fellow asylum seekers who gave him somewhere to live. Will was granted refugee status five years after being sent back to Greece.

Provided by the Greek Council for Refugees

**ISA:** Isa was born in Chechnya, but already before the outbreak of the war he went to Poland, in the hope of a better life. He lived in Warsaw legally for 14 years: every three months he would leave the country for Belarus and re-enter with a new tourist visa. After the war started in Chechnya, Isa applied for refugee status and for a permanent residence permit, but was refused on both grounds. His legal position became untenable and he learned that he risked deportation. Desperate, he took a friend's passport and left for Belgium. On the basis of the Dublin II rules, the Belgian authorities ordered his deportation back to Poland, even though in the meantime doctors had diagnosed he suffered from serious diseases, including hepatitis C, and needed urgent medical treatment. Upon arrival in Poland, he did not receive appropriate medical treatment and border guards confiscated the medicines he had been given by the Belgian authorities. He was locked up in a closed reception centre at Warsaw airport, and then transferred to a detention centre in Lesznów near Radom. For months his severe medical conditions were not properly treated. By the time Isa was finally released, his health had suffered badly and he passed away several weeks after and is now buried at the cemetery in Grozny.

Provided by Amnesty International (Poland)

**WILL:** Will fled the Democratic Republic of Congo when he was eighteen years old, when he and his brother became the targets of his parents' political enemies. After fleeing he had one thought in mind - to find his brother who had fled to France. Having been able to get a visa to South Africa, he traveled on to Greece via Zurich and from there to Belgium, Luxembourg and finally France. On being reunited, Will and his brother went together to apply for asylum. It was at this point that their lives diverged dramatically. Having escaped the same situation, the different papers they presented determined their

## LACK OF SAFEGUARDS FOR SEPARATED CHILDREN

Article 6 of the Dublin Regulation states that if a separated child has a close family member in another Dublin state, the child's application should be considered in that country. If there is no close family member the application will be considered in the first country in which the child claimed asylum upon entering the EU. Separated children are not subject to return to a state if they did not lodge a previous claim there. Although more generous than for adult claimants, this formulation does not properly respect the best interests of the child which will rarely be served by being uprooted and sent to another country. This problem is compounded by the fact that some states do not have proper facilities to look after unaccompanied asylum seeking children, including even basic access to Social Services.

**WALI:** Wali, a sixteen year old boy from Afghanistan, came to the UK via Greece where he had not applied for asylum. His age was disputed by the Home Office and by a social services department and he was placed in detention. Whilst in detention, Wali attempted suicide twice. A second social services department then re-assessed him as being seventeen years old. However, removal directions were set and Wali was placed on a plane back to Greece. A campaign group was involved and lobbied the airline overnight and the pilot decided that Wali should not be on his flight. Wali was placed back in detention. The Home Office Third Country Unit (TCU) records showed that Wali had not applied for asylum in Greece. However, the Home Office Immigration Service records were different and they believed he had applied for asylum in Greece. The Refugee Council Children's Panel lobbied the Home Office that he should be released from detention because the second social services assessment had found him to be a child. This was successful and Wali is now in care receiving a high level of support due to his vulnerability. The UK is considering his asylum application.

Provided by the British Refugee Council

**HASSAN:** Hassan is an unaccompanied minor from Afghanistan. He arrived in the UK and claimed asylum immediately but his age was disputed. Hassan was referred to a local authority for an assessment as a child in need. The local authority also disputed his age. However, the Children's Panel of the Refugee Council were shown a document, certified by the Afghan embassy proving his date of birth. While in the process of proving Hassan's age via a medical assessment by a paediatrician the UK authorities transferred him to Greece. Prior to his removal from the UK Hassan was detained for a week. Moreover, after his removal to Greece, he was further detained for a week and then released. He said he was asked to either leave the country or provide an address and present it to the police. Hassan is currently homeless although some Afghans are assisting him.

Provided by the British Refugee Council

**AMIN:** Amin is a 16 year old boy from Afghanistan. He claimed asylum in the UK and his age was initially disputed by the Home Office. Social care services however accepted him as a child and took him into their care. Six months after claiming asylum, at 3am one morning, immigration officials came to his foster home. He was told that the Home Office had arranged for him to be removed to Greece. His solicitors were informed and made urgent representations to the Home Office to the effect that a mistake had been made. On the same day, half an hour after he arrived in Greece, he was flown back to the UK on the instructions of the Home Office. Because Amin had not previously claimed asylum in Greece, and had been accepted by the UK as a child, he should not have been returned under the Dublin II Regulation. The UK Home Office has recognised that it made a mistake and his asylum claim is now being considered. The solicitor is pursuing compensation for damages for the distress the return to Greece caused Amin.

Provided by the British Refugee Council

## FAMILIES KEPT APART

While Articles 7 and 8 of the Dublin Regulation do allow for family reunification in certain prescribed circumstances, the restrictive criteria for allowing this causes great suffering to many families. For example siblings cannot join one another, nor parents be reunited with adult children. The rules also only allow family members to join each other if they have not yet received a first decision on their claim. This means that families can be kept apart for years due to delay with appeal proceedings. Families with identical stories may find themselves in a situation where members in one country are granted refugee status while those in another are refused asylum. This understandably causes great anxiety and bewilderment, and powerfully illustrates fundamental flaws with the Dublin system.

**ZULAY:** Zulay is from Chechnya. She has two daughters, Ayshat and Aminat, who left Chechnya for Belgium, where they were granted refugee status. Zulay was desperate to join her daughters and since a Belgian visa was impossible to obtain, the family managed to get her a Spanish visa, in order to get to Europe. Zulay flew to Belgium, making a short stopover of 30 minutes in Barcelona. Once she arrived in Belgium her daughters tried to get a permit on the ground of family reunification. The Belgian police called her to report four times for this application and the fourth time she was suddenly arrested and jailed in a closed Centre in Bruges. The Court of Liege granted her freedom, but agreed she should be sent back to Spain because it was her first country of arrival and therefore technically responsible for deciding her asylum request under the Dublin Regulation. Zulay was then sent to Barcelona and is now alone and separated from her daughters.

Provided by CEAR, Spain

**THAN:** Than is a Burmese citizen. He and his older brother simultaneously applied for asylum in Portugal. At the time Than was in possession of a valid UK visa as an academic visitor. The Portuguese authorities decided to apply the Dublin rules, which meant sending Than back to the UK. Soon afterwards Than's brother was granted refugee status in Portugal. Than ended up back in Burma. However, after experiencing renewed political persecution he fled to Portugal via Thailand and Spain. He joined his brother, his sister-in-law and his niece who were all living in Portugal as refugees. He applied for asylum. Again the initial position of the Portuguese authorities was that his family ties were absolutely irrelevant under the Dublin II Regulation and that they intended to separate them. A transfer request was issued to Spain, the point of entry to EU territory. Only following a last minute appeal urging for a flexible interpretation and application of the Dublin II Regulation humanitarian clause, Than was allowed to remain and have his asylum claim assessed in Portugal.

Provided by the Portuguese Refugee Council

**ILYAS:** Ilyas along with his mother and brother travelled to Germany when he was 16 after fleeing Chechnya where they had been living in a basement with six other people to shelter from the Russian bombardments. Ilyas was injured in the conflict and treated for his injuries in Germany, but once recovered he and his family were transferred to the Netherlands under the Dublin procedure, since that country had granted them a visa and was responsible for processing their asylum application. Ilyas' father had travelled independently and directly to Germany and as a result was not transferred with the rest of the family to the Netherlands. This separation was very hard for the family to bear. Ilyas was granted refugee status after one year in the Netherlands, but family reunification with his father was possible only three years later.

Provided by the Dutch Council for Refugees

**LEILA:** Leila is a Kurdish woman who was beaten and mistreated not only by strangers but also by her family because of her beliefs, which went against the traditions of her community. Leila fled her country thanks to her husband, who already lived in Denmark and was able to arrange this for her. She had to travel via Germany and upon arrival Leila was detained at the airport for having entered illegally. She begged the officials to allow her to travel on to Denmark to join her husband, but her pleas were ignored. Her application for asylum was denied as being "manifestly unfounded" because the adjudicator did not believe that her life was in danger for offending the family's honour. Facing deportation, Leila was assisted through her appeals process by an organisation providing advice and support to asylum seekers. Eventually the German authorities agreed to request that Denmark take charge of her application so she could join her husband. However, the Danish authorities refused. Many months passed and, becoming increasingly distraught, Leila attempted to commit suicide. Finally, one year after having arrived in Germany she was granted asylum and thereafter able to travel to be reunited with her husband.

Provided by Pro Asyl, Germany

**SAID:** Said is an Iraqi asylum seeker who sought protection in Sweden. He had previously passed through Germany so the Swedish Migration Board decided to transfer him back to Germany under the Dublin II procedure despite the fact Said was already married to a woman residing in Sweden. His wife had severe cancer and was receiving intense treatment during this time. Said appealed the decision to the Alien's Appeals Board claiming, with support from the hospital, that he needed to stay in Sweden in order to support and help his wife. She needed practical assistance as well as psychological support. He also claimed that there were no guarantees that he would be allowed to stay in Germany during the time it would take the Swedish Migration Board to process his family reunification application. He also claimed that there were no guarantees that he could actually make the application from the Swedish Embassy in Germany. Notwithstanding all these circumstances supporting Said's claim, the appeal was rejected stating that his wife had support from her brother and his family.

Provided by Caritas Sweden

**MILANA:** Milana and her two children fled Chechnya and arrived in Belgium in April 2006. They passed through Poland where their fingerprints were taken but they did not apply for asylum. The children's father, Ahmet, travelled independently to Belgium, without passing through Poland. The family chose Belgium because their daughter was living there and married to a recognised refugee. On the basis of the Dublin II Regulation Belgium asked Poland to take back Milana and her two children. Poland agreed but at this stage there was no mention of Ahmet. Then, instead of applying the family unification clause to allow the family to remain with Ahmet in Belgium, the Belgian authorities instead decided to send the entire family to Poland, father included, under the pretext of keeping the family together.

Provided by Vluchtelingenwerk Vlaanderen

1. ECRE is an umbrella organisation of 76 refugee-assisting organisations in 30 countries working towards fair and humane policies for the treatment of asylum-seekers and refugees.

2. For comprehensive information on ECRE's findings on the operation of the Dublin system in 20 states see ECRE/ELENA, Report on the Application of the Dublin II Regulation in Europe, March 2006 available at [www.ecre.org](http://www.ecre.org)

3. For ECRE's key recommendations for reform see The Dublin Regulation: Ten Recommendations for Reform, ECRE, March 2007 at [www.ecre.org](http://www.ecre.org)

4. For ECRE's findings and policy recommendations concerning asylum systems in Europe see ECRE, The Way Forward, Europe's role in the global refugee protection system. Towards Fair and Efficient Asylum Systems in Europe, September 2005 at [www.ecre.org](http://www.ecre.org)

5. ECRE is grateful to its member agencies listed who provided case studies. ECRE also wishes to acknowledge two cases originally cited in The Dublin II Regulation: A UNHCR Discussion Paper, April 2006.

6. For further information contact the European Council on Refugees and Exiles (ECRE) at:

Chris Nash, Senior Legal Officer, ECRE London  
103 Worship Street, London EC2A 2DF, UK  
Tel: +44 (0) 20 7377 7556, Fax: +44 (0) 20 7377 7586  
E-mail: [cnash@ecre.org](mailto:cnash@ecre.org)

Richard Williams, EU Representative, ECRE Brussels  
Rue Belliard, 205 - Box 14, B- 1040 Brussels  
Tel: +32 (0) 2.514.59.39, Fax: +32 (0) 2.514.59.22  
E-mail: [rwilliams@ecre.org](mailto:rwilliams@ecre.org)

