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After Dublin – the urgent need for a real European asylum system

Committee Opinion¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Boriss CILEVIČS, Latvia, Socialist Group

A. Conclusions of the committee

1. The Committee on Legal Affairs and Human Rights congratulates the rapporteur of the Committee on Migration, Refugees and Displaced Persons, Mr Michele Nicoletti (Italy, SOC), on his comprehensive report, and supports by and large the proposed draft resolution. The committee notes that this report was issued at the right time, in view of the current refugee crisis in Europe which puts into question the effectiveness of the European Union's Common European Asylum System (CEAS), and in particular the Dublin system.

2. The committee nevertheless proposes some amendments to further strengthen the draft resolution regarding some legal and human rights aspects and to stress the urgent need to reform the Dublin system.

B. Proposed amendments to the draft resolution:

Amendment A (to the draft resolution)

In paragraph 3, at the end of the first sentence add the words: “, and in particular in the last few weeks”.

Amendment B (to the draft resolution)

In paragraph 5, replace the first two sentences by the following:

“Furthermore, the implementation of the Dublin system has in a number of instances given rise to violations of asylum seekers’ human rights, such as the right not to be subjected to inhuman or degrading treatment, the right not to be detained arbitrarily, the right to respect for private and family life, the right to an effective remedy and the prohibition of collective expulsions. Some of these violations have been confirmed by court judgments at the national or European level; it is noteworthy that in its judgment M.S.S. v. Belgium and Greece and in a few other cases, the European Court of Human Rights has criticised the refoulement of some asylum seekers to Greece, because of flawed asylum procedures and poor conditions of detention of irregular migrants.”

1. Reference to committee: [Doc. 13592](#), Reference 4083 of 3 October 2014. Reporting committee: Committee on Migration, Refugees and Displaced Persons. See [Doc. 13866](#). Opinion approved by the committee on 28 September 2015.

Amendment C (to the draft resolution)

In paragraph 7, replace the first sentence by the following:

“The Parliamentary Assembly has already expressed criticism about the functioning of the Dublin system, in particular in Resolution 2000 (2014) on the large-scale arrivals of mixed migratory flows on Italian shores, Resolution 1918 (2013) “Migration and asylum: mounting tensions in the eastern Mediterranean” and Resolution 1820 (2011) “Asylum seekers and refugees: sharing responsibilities in Europe”, and concludes that the Dublin system is dysfunctional.”

Amendment D (to the draft resolution)

In paragraph 9, after the word “recommends”, insert the words “to the European Union and its member States”.

Amendment E (to the draft resolution)

Delete paragraph 9.6.

Amendment F (to the draft resolution)

After paragraph 9.9, add the following new paragraph:

“prompt and full implementation of relevant judgments of the European Court of Human Rights.”

Amendment G (to the draft resolution)

Before paragraph 10.1, insert the following new paragraph:

“ensuring harmonisation of national asylum procedures and standards through the full, effective and coherent implementation of the Asylum Procedures Directive 2013/32/EU, the Reception Conditions Directive 2013/33/EU and the Qualification Directive 2011/95/EU;”

Amendment H (to the draft resolution)

In paragraph 10.1, delete the words “greater harmonisation and”.

Amendment I (to the draft resolution)

At the beginning of paragraph 11, replace the words “As regards revision of the Dublin regulation, the Assembly recommends” by “The Assembly calls on the European Union and its member States to urgently revise the Dublin regulation. For this purpose, it recommends, in particular:”.

Amendment J (to the draft resolution)

After paragraph 11.2, insert the following new paragraph:

“considering the introduction of the notion of ‘manifestly founded claims’ in order to speed up asylum procedures;”

C. Explanatory memorandum by Mr Cilevičs, rapporteur for opinion

1. I can only congratulate Mr Nicoletti on his report, which contains a comprehensive analysis of the Dublin system (which consists of the Dublin III Regulation and the Eurodac) and rightly underlines its deficiencies. The report also proposes ways to improve and revise the Dublin system, which has now become a matter of urgency. In view of the recent increased influx of migrants to Europe, in particular since the end of August 2015, another reform of the Dublin system seems to be unavoidable. The derogation from its provisions by certain European Union member States, such as Austria, Germany and Hungary, shows that the main principle of the Dublin Regulation – according to which usually the State responsible for examining asylum application is the member State through which the asylum seeker first entered the European Union – is ineffective in such a situation of crisis and creates a disproportionate burden on the southern EU member States (in particular Greece and Italy). The Parliamentary Assembly and its Committee on Migration, Refugees and Displaced Persons have already expressed concerns in this respect on numerous occasions. Moreover, certain human rights problems that asylum seekers are facing in Greece (such as flawed asylum procedures and poor

conditions of detention pending the asylum procedure) have also been pointed out by our committee colleague Mr Klaas de Vries (the Netherlands, SOC) in his recent 8th report on the implementation of the judgments of the European Court of Human Rights, adopted by the committee on 23 June 2015.²

2. I should like to propose a few amendments to the draft resolution with a view to completing it mainly with regard to compliance with human rights and fundamental freedoms. I would also like to put more emphasis on the need to speedily reform the current EU policies and legislation on asylum matters, including the Dublin system itself.

1. Amendment A (to the draft resolution)

Explanatory note:

The amendment aims to add the words “, and in particular in the last few weeks” in order to stress the fact that the biggest influx of migrants has reached EU member States (Greece and Hungary, and from there, Austria and Germany) since the end of August/beginning of September 2015.

2. Amendment B (to the draft resolution)

Explanatory note:

The amendment aims at rephrasing the first two sentences of paragraph 5, by using more precise language as regards human rights violations related to the treatment of incoming migrants/asylum seekers by EU member States. Thus, the amendment aims to stress that it is the implementation of the Dublin system (and not the Dublin system itself) which gives rise to violations of human rights, align the wording with the terminology of the European Convention on Human Rights (ETS No. 5) and add the “prohibition of collective expulsions” (as enshrined in Article 4 of Protocol No. 4 (ETS No. 46)) as another example of possible human rights violations in this context (see, for example, the judgment *Sharifi and Others v. Italy and Greece*³). It is also proposed to add a sentence concerning the European Court of Human Rights’ judgment *M.S.S. v. Belgium and Greece*, in which the Court found deficiencies in the functioning of the Dublin II Regulation following the applicant’s transfer from Belgium to Greece (see paragraph 16 of the report).

3. Amendment C (to the draft resolution)

Explanatory note:

This amendment aims to add, at the beginning of paragraph 7, references to previous resolutions of the Assembly in which it has raised concerns about the manner in which the Dublin system has operated.

4. Amendment D (to the draft resolution)

Explanatory note:

This amendment aims to specify that the Assembly’s recommendations contained in paragraph 9 are addressed to the European Union and/or its member States (and not all Council of Europe member States).

5. Amendment E (to the draft resolution)

Explanatory note:

This amendment aims to delete paragraph 9.6 and move it from the middle of paragraph 9 to the end. As paragraph 9.6 refers to the implementation of judgments of the European Court of Human Rights, it is better to refer to this issue after the proposals concerning a better implementation of the Dublin system, which is a part of EU legislation (see amendment F below).

2. [Doc. 13864](#).

3. Application No. 16643/09, judgment of 21 October 2015.

6. Amendment F (to the draft resolution)

Explanatory note:

Amendment F proposes to move the call to ensure “prompt and full implementation of relevant judgments of the European Court of Human Rights” to the end of paragraph 9. The implementation of Court judgments, and in particular the taking of general measures (aimed at preventing new violations of human rights), are essential to ensure full respect of the European Convention on Human Rights when implementing the Dublin system. For example, Greece is required to reform its asylum procedures and improve conditions of detention of irregular migrants following the *M.S.S. v. Belgium and Greece* and other similar judgments (see the *S.D. v. Greece*⁴ group⁵). It is also proposed not to refer to the Court of Justice of the European Union in this context, as it has a different role and follows different procedures than the European Court of Human Rights and as its judgments have different legal effects depending on the procedure followed (in both cases mentioned in Mr Nicoletti’s report⁶ – *N.S. v. Secretary of State for the Home Department* and *MA, BT, DA v. Secretary of State for the Home Department* – the judgments of this court were issued following national jurisdictions’ requests for preliminary rulings on the basis of Article 267 of the Treaty on the Functioning of the European Union).

7. Amendment G (to the draft resolution)

Explanatory note:

This amendment aims to put emphasis on the need to fully implement EU directives concerning the CEAS and to harmonise national procedures and standards in this area. As there are still discrepancies between asylum procedures and standards between EU member States, migrants prefer not to follow the rules fixed by the Dublin Regulation, which require submitting their asylum applications in member States where the rate of acceptance of asylum requests is low and reception conditions poor. Thus, the Dublin system would appear to be dysfunctional without a full harmonisation of rules on asylum.

8. Amendment H (to the draft resolution)

Explanatory note:

The amendment aims to delete the words “greater harmonisation”, since the idea of promoting this has already been referred to in the previously proposed amendment (see Amendment G above).

9. Amendment I (to the draft resolution)

Explanatory note:

This amendment aims to slightly rephrase the beginning of paragraph 11, by adding a call on the European Union and its member States to urgently revise the Dublin Regulation. Although the draft resolution and the proposals contained in paragraphs 11.1 to 11.3 refer to the revision of the Dublin Regulation, in view of the most recent and the ongoing massive influx of migrants from Syria and other Asian and African countries to some EU member States, the reform of the EU legislation in this field has become a matter of urgency. Therefore, the Assembly should make a stronger call on the European Union and its member States for the revision of the Dublin Regulation.⁷

4. Application No. 53541/07, judgment of 11 June 2009.

5. See Department for the Execution of Judgments, Pending cases: state of execution, [Greece](#).

6. Paragraphs 20 and 22.

7. See, for example, the [position of the European Council on Refugees and Exiles](#) (ECRE).

10. Amendment J (to the draft resolution)

Explanatory note:

This amendment aims to add a new paragraph 11.3 in order to propose to the European Union and its member States to introduce the notion of “manifestly founded claims” in order to speed up asylum procedures in cases of war-torn countries like Syria, whose nationals are presumed to need international protection.