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The Dublin Convention on asylum applications: What it means and how it's supposed to work

Introduction

The Dublin Convention is a piece of European law that has two main aims: to establish a common framework for determining which country in the European Union (countries which are part of the European Union are known as member states) decides an asylum seeker's application and to ensure that only one member state should process each asylum application.

Its full title is *The Convention determining the State responsible for examining applications for asylum lodged in one of the member states*. It was first agreed as part of a European Union meeting in Dublin, Republic of Ireland, in January 1990, and this is why it is more commonly known as the Dublin Convention.

European Union (EU) governments agreed the Convention in 1990, and the UK signed up to it in July 1992. Yet the Dublin Convention is a piece of European law and could only come into force once all the member states had signed up to it by passing it in their own parliaments. The Convention was eventually ratified in 1997.

Before the Dublin Convention came into force, most EU member states used another piece of European law, called the *Schengen Agreement*, to decide whether or not they would accept and examine someone's asylum application. In many cases, countries had readmission agreements with each other, which meant asylum seekers could be sent back to another European state if they had passed through it on their way to the country in which they had claimed asylum.

In the UK, this meant that any asylum seeker who passed through a 'safe' third country before reaching the UK was likely to be returned there and was expected to apply for asylum in that country (except where the asylum seeker had close family members already in the UK). In these circumstances, the UK government would refuse to even look at the substance of someone's asylum claim, as it argued it had no obligation to under the terms of the *1951 UN Convention on Refugees*.

In practice, the UK government considered that 'safe' third countries included any member state of the EU (Republic of Ireland, France, the Netherlands, Belgium, Luxembourg, Germany, Spain, Portugal, Italy, Greece, Denmark, Sweden, Finland and Austria), the USA, Canada, Switzerland and Norway. These countries were included in the list of 'safe' third countries set up by the Asylum and Immigration Act 1996. This meant that any asylum seeker who had passed through any of those countries on the way to the UK would be refused immediately and returned to that third country. Appeals against that refusal were only allowed after the asylum seeker had been removed to the 'safe' third country. The Nationality, Immigration and Asylum Bill 2002 proposes that asylum seekers in such a position can only appeal once they are returned there.

From the end of September 1997, the Dublin Convention replaced the Schengen Agreement as the governing piece of European law, which sets out which EU country examines someone's asylum claim. This bulletin seeks to explain the basics of the Dublin Convention and how it is supposed to work.

What the Dublin Convention means

The Dublin Convention confirms the right of EU member states to return asylum seekers to 'safe' third countries. It is much clearer than the asylum chapter of the Schengen Agreement in setting out exactly which country has responsibility for examining someone's asylum application within the EU.

The following are the main points of the Dublin Convention:

- Article 3(2) and 3(3) provide that only one EU member state will examine a claim and that they have to do this in line with both the Dublin Convention and their own national laws. This means that the measures brought in with the Asylum and Immigration Acts of 1996 and 1999 still apply in the UK.
- Under Article 3(4) - commonly known as the 'opt out' clause - any EU member state has the right to examine an asylum claim even if it falls outside the Dublin Convention's guidelines, provided the asylum seeker involved agrees to this.

This is confirmed by Article 9 which states that any member state, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on family or cultural grounds, examine an application for asylum at the request of another member state, provided that the applicant so desires. However, no EU member state has a duty to assume responsibility for an asylum application in this way.

- The Dublin Convention does not mean that the first EU member state that an asylum seeker may pass through has the responsibility to examine that claim. In fact, articles 4 to 8 set out the criteria for determining responsibility. These apply in the order that they are given below:
 - if a close family member of the asylum seeker (usually defined as a spouse or unmarried child under 18) already has refugee status in a particular EU member state, that country will be responsible for determining the asylum application;
 - in general, where an asylum applicant has a valid residence permit for a particular member state, that country will examine the asylum application;
 - in general, where an applicant has a valid visa for a particular member state, that country will examine the asylum application;
 - the member state in which the asylum application is lodged assumes responsibility in cases where the asylum seeker has a long-expired visa (more than two years previously) or residence permit (more than six months previously);
 - the member state which an asylum seeker illegally enters from a non-member state is responsible (unless s/he has been living for at least six months prior to applying for asylum in another member state, in which case that country assumes responsibility);
 - where an asylum application is made while passing through a member state, that country shall be responsible;
 - only after all the above criteria have been exhausted does the first member state where the asylum seeker made the application become responsible for examining it.
- Article 15 of the Dublin Convention means that countries in the EU can exchange information about an asylum seeker for the purposes of deciding which country examines the claim, or to help in making a decision on the claim. Only basic details may be exchanged unless the asylum seeker approves the communication of further details about the grounds of his/her asylum application.

What the Dublin Convention means in practice

The Third Country Unit at the Home Office handles cases relating to issues raised under the Dublin Convention. Where it seems that an applicant may have passed through a third country in getting to the UK, there will be a 'Dublin Convention screening interview'. All records from this interview are sent to the Third Country Unit, which may pursue inquiries with the authorities of the third country involved.

If there is inadequate evidence to allow the UK government to remove an asylum seeker, then the port immigration authorities will immediately carry out an asylum interview and continue with the normal asylum application procedure. If the Third Country Unit subsequently uncovers evidence of a stay in a third country, they may stop consideration of the case and restart the standard 'third country procedure.'

However, if evidence does emerge from the Dublin Convention screening interview, the port immigration authorities will proceed with a 'third country interview' to establish the applicant's travel route and means of entry to the UK. If this results in the asylum claim falling into one of the Dublin Convention's criteria, or within the law as set out in the Asylum and Immigration Act 1999, then the authorities will refuse to further examine the asylum claim and seek to remove the asylum seeker to the 'safe' third country.

Problems with the Dublin Convention

Since the Dublin Convention came into force in 1997, numerous practical difficulties have been identified in its implementation. In the UK, it has made swift removals of asylum seekers under 'safe' third country rules a more complex and lengthy process, and it has had very little impact on numbers of asylum seekers.

For example, the 'gentlemen's agreement' between the UK and France, in which France would re-admit asylum seekers who had passed through its territory in getting to the UK, no longer applies. The UK government must now justify any removals to France under the rules of the Dublin Convention - the practical effect of this is seen in the many cases that pass through the Red Cross Centre in Sangatte en route to the UK. In the past, France would have taken back many of these asylum seekers, however, under the Dublin Convention the French government can disclaim responsibility for them unless the UK can find tangible proof of the applicants having passed through France.

It is almost impossible to prove which countries an asylum seeker has passed through on the way to the UK or another EU member state. This leaves asylum seekers in limbo while member states wrangle over who is responsible for examining their applications. In addition, the Dublin Convention contains strict time limits on requesting the readmittance of an asylum seeker to another EU member state, which are very difficult to comply with.

It is also unclear exactly when a country can no longer remove an asylum seeker under the terms of the Dublin Convention if they have started examining his/her claim in detail. What's more, once removed or transferred to another EU country under the Dublin Convention, there is no Europe-wide system for monitoring what happens to the person removed.

The Dublin Convention also allows EU member states to apply their own national laws. One member state may return an asylum seeker to another member state, which then returns him/her to a country outside of the EU, which the first EU country involved would not have considered 'safe.' So there is still a significant possibility of asylum seekers being returned to the country they have fled from, and to renewed danger (this is called *refoulement*).

While the Dublin Convention is meant to provide all asylum applicants with a guarantee that their applications will be examined by one of the member states, Article 3(5) of the Convention allows EU

member states to remove asylum seekers to non-EU third countries. The Convention makes no reference to challenging such removals on the grounds of whether or not that country is truly safe for the asylum seeker concerned.

There is no single Europe-wide body responsible for setting out exactly what the Dublin Convention means in practice. Throughout the EU, different countries will interpret the Dublin Convention in different ways, and where there is disagreement as to which country should examine a particular asylum application, there is no procedure for resolution.

There are also serious concerns over the provision in the Dublin Convention, which allows exchange of information on an asylum seeker between member states and whether it takes adequate account of the particular need for confidentiality in handling asylum applications. Currently, the UK Home Office is exchanging personal information on asylum seekers with other EU member states, but refusing to tell the asylum seeker involved exactly what information it has passed on.

In short, the Dublin Convention is impracticable and ineffective, and puts access to protection for asylum seekers at risk.

Dublin II

Due to the ineffectiveness of the Dublin Convention, the European Commission issued a staff working paper entitled "Revisiting the Convention" on 21 March 2000¹. In July 2001, the Commission adopted a proposal for a council regulation on the matter (also known as "Dublin II") which is intended to replace the Dublin Convention². However, there is widespread concern that being based on the same principles as the Dublin Convention, the regulation will not adequately address the failings of its predecessor.

Links to further information

Read the Commission staff working paper, the proposal for a council regulation and ECRE's comments on both at the ECRE website. Go to www.ecre.org, select EU developments from the Policy and Research options on the left of the screen and go into the section on state responsibility for examining asylum applications where you will find all of the above (http://www.ecre.org/eu_developments/stateresp.shtml).

Read the House of Lords Report on Dublin II on the UK Parliament's site. Go to www.parliament.the-stationery-office.co.uk, then go to the section on parliamentary publications and archive to go to the Select Committee publications link, and find the *Nineteenth Report - Asylum appeals, Who Decides*, published on 28 March 2002 (<http://www.parliament.the-stationery-office.co.uk/pa/ld200102/ldselect/ldcom/100/10001.htm>).

¹ *Revisiting the Dublin Convention: developing Community legislation for determining which member state is responsible for considering an application for asylum submitted in one of the member states* (SEC(2000) 522)

² *European Commission's Proposal for a Council Regulation establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third-country national* (COM(2001) 447 final)