



AS/Mig/Inf (2011) 01

21 February 2011

aminf01_2011

Committee on Migration, Refugees and Population

HEARING
**Dealing with Dublin: ensuring
fairness for asylum-seekers
and Member States**

Paris, 7 December 2010

9 am – 12.30 pm

Council of Europe Office, 55 avenue Kléber, Paris 16^e

PROCEEDINGS OF THE HEARING

The sitting opened at 9.10 am with Mr Santini (Italy, EPP/CD), Committee Vice-Chair, in the chair.

Mr Giacomo SANTINI (Italy, EPP/CD) – As first Vice-Chair of the Committee, it is incumbent on me to open this sitting. I would inform you that we shall be electing the new Chairperson tomorrow morning.

We shall begin today with a hearing on a very important subject, namely the implementation of the Dublin Regulation. I would like to welcome all the participants.

Europe is very directly affected by immigration issues. This involves not only such States as Italy, Spain, Portugal and Greece which are located along the external borders of the European Union, but all the other countries as well. Immigrants arrive at the external borders, but they then move on to other destinations such as France or Germany, and all Member States are therefore concerned.

Without further ado I shall give the floor to the moderator for this morning's proceedings, Mr Tadeusz Iwiński.

Moderator **Mr Tadeusz IWIŃSKI**, Poland, SOC

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – I am honoured to be acting as moderator for this hearing on asylum-seekers and the Dublin Regulation. I am a veteran of this Committee, having been a member since its inauguration in 1992. I am particularly pleased to welcome our former colleague and Chair Corien Jonker, who made a major contribution to our work and organised several exceptional meetings, including the one we held in The Hague two years ago. Two years ago, after closely monitoring the Chechen question for many years, we began dealing intensively with the humanitarian issues bound up with movements of persons following the war between Russia and Georgia.

However, I shall now broach the subject which we are to discuss this morning, and I would welcome all our guests who have managed to join us despite the disastrous weather conditions.

The fact that we are discussing the Dublin Regulation obviously has nothing to do with the serious crisis in Ireland at the moment. It does, however, remind me of the former Polish President Lech Wałęsa's intention of making Poland another Japan or Ireland: fortunately he didn't manage it... Seriously, though, I am always pleased that European States remain optimistic during the worst crises. In fact, that is the message which our new Belgian colleague has just delivered: even in adversity, Belgium is still standing and keeping hope alive.

The Dublin Regulation requires any State in which an asylum-seeker arrives to contact the country which he or she reached first in order to ensure that the latter takes responsibility for considering his or her asylum application within a reasonable time. This provision is supposed to help identify such abuses as multiple applications and prevent asylum-seekers from being shunted around from country to country. It seemed particularly important to improve the quality and consistency of decisions on asylum applications and to eliminate disparities in the practices of the various States.

Since a number of problems have unfortunately emerged in applying the Dublin Regulation, we have adopted a resolution inviting the European Union to urgently revise the Dublin II texts, particularly the so-called "safe country" mechanism, which is based on spuriously egalitarian criteria. I hope that our discussions this morning will give us a clearer insight into these problems and, above all, guide us towards the optimum means of solving them.

Given the European Commission's central role in the Dublin Regulation, I regret that the Polish expert who was to represent it has been unable to join us today.

SESSION 1 – The challenges of Dublin

Speakers:

- **Mr Paul HARVEY**, European Court of Human Rights, Council of Europe
- **Mr Michele CAVINATO**, Administrator, UNHCR Office for Europe, Brussels

Mr Tadeusz IWŃSKI (Poland – SOC), Moderator – Our first sitting of the morning is given over to the background to the Dublin system and the main deficits to be noted today. We shall first of all hear Mr Paul Harvey, representing the European Court of Human Rights.

Mr Paul HARVEY, European Court of Human Rights, Council of Europe – I have no idea of what will become of the case of *M.S.S vs. Belgium and Greece*, or of any of the other parallel cases currently under scrutiny in Luxembourg, or for that matter the national proceedings still pending in a number of Member States.

I shall therefore speak mainly about the background to the applications relating to the Dublin System before the European Court of Human Rights (hereafter "the Court") and the lessons which we can draw from them at this stage.

In the context of these European proceedings, a distinction should be drawn between the possible difficulties encountered with asylum procedures in the Contracting States – as well as the associated risks of the asylum-seekers being expelled from these States – and the problems that can arise from reception conditions for asylum-seekers in the Contracting States themselves.

These proceedings began in summer 2008 when the UNHCR began investigating returns of asylum-seekers to Greece after a negative decision from the British courts on Dublin II in the *Nasseri* case.

This led the Court to apply Rule 39 of the Rules of Court, which authorises it to indicate interim measures to the States, to all the cases of returns to Greece of asylum-seekers who had found refuge in the United Kingdom, and to request additional information from the British Government. In the wake of the case of *KRS v. United Kingdom*, however, the Court cancelled the application of Rule 39, as its conclusion had been strengthened by the conviction that Greece was not sending those concerned back to such problem countries as Afghanistan or Somalia.

A series of unprecedented developments ensued. First of all, the publication of a number of reports led the Court to reconsider the question whether Greece was returning individuals to such problem countries as Afghanistan and whether the conditions of reception were not worse than had been thought. The Court devoted particular attention to the February 2009 report by the Council of Europe's Commissioner for Human Rights. Subsequently, faced with implementing Dublin II, the British, Dutch and Irish courts put preliminary questions to the EU Court of Justice. This led the Court once again to apply interim measures under Rule 39, although this was not always done consistently.

It was in this context that the *M.S.S.* case took on symbolic status. Brought before the Grand Chamber, this case became a Court priority. Representatives of the British and other governments, as well as, for the first time, the UNHCR and the Commissioner for Human Rights, spoke during the hearings. We are currently awaiting the judgment, but the preliminary procedure is continuing before the Luxembourg Court, which is dealing with similar cases and is now at the written observations stage.

Most countries have stopped sending individuals back to Greece, and in accordance with Article 3.2 of the Dublin Regulation, they are themselves closely examining asylum applications from refugees who entered Europe via Greece. Last week, in its judgment *BS and others v. United Kingdom*, the Court stated that 200 cases had been settled in this way and that they required no further discussion.

What lessons can we learn from all of this?

It would first of all appear problematical to allow disputes to be adjudicated simultaneously in the Member States, in Strasbourg and in Luxembourg. All these operators must remain in their allotted places, without encroaching on each other's functions, and no judicial authority should ever hurry its decisions through.

This means, and this is the second lesson of the Dublin "saga", that the Court is, perhaps more than any other, dependent on other bodies, which must provide it with objective, impartial and up-to-date information. The most recent information supplied facilitated the final decision in the *KRS* case. The form and content of such objective information are also important.

Furthermore, for the judgment in the case of *NA v. United Kingdom*, the Court published guidelines on the proper wording of such information. It should obviously be objective and impartial. Above all it must be expressed in the language of the Convention as interpreted by the Court. A number of reports, particularly UNHCR ones, have had to be rejected simply because they use overly general terms and do not incorporate the wording of Article 3.

This case has also once again shown the uneven and incomplete nature of relations between the European Union and the European Court of Human Rights. It is unsatisfactory for proceedings relating to these cases to be conducted simultaneously before the Strasbourg Court, the Luxembourg Court and the national courts.

Moreover, the Committee may not be wrong in considering that Dublin is based on erroneous presumptions. For instance, in the context of the EU Third Pillar, the Member States presume that each party provides for equal respect for human rights, and can therefore set up all kinds of obstacles to individuals' access to justice in order to challenge this presumption.

Perhaps your Committee should re-examine this subject once the judgment has been delivered in the *M.S.S.* case.

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – Thank you very much. I shall now give the floor to our second expert, Mr Michele Cavinato, of the Office for Europe of the United Nations High Commissioner for Refugees.

Mr Michele CAVINATO, Administrator, UNHCR Office for Europe, Brussels – on behalf of the UNHCR, I would like to thank your Committee for inviting us to this session.

The UNHCR Statutes as adopted in 1950 by the United Nations General Assembly mandate it to ensure the implementation of the international conventions for the protection of refugees. This responsibility has been extended to the 1951 Convention on the status of refugees and its 1967 Protocol.

The UNHCR has an obvious interest in the Dublin Regulations, particularly because of the legislative and practical problems encountered by States in implementing these international instruments. The treatment of asylum-seekers and refugees under the 1951 Convention and its 1967 Protocol cannot be considered in isolation from the human rights instruments, particularly the European Convention on Human Rights.

In exercising its mandates, the UNHCR has been monitoring the application of the Dublin Regulations ever since they came into force. This has led it to conclude that these Regulations, as they are currently conceived and applied, may infringe European and international standards, including the 1951 Convention and the 1967 Protocol.

The right of asylum is a subjective right recognised under Article 18 of the Charter of Fundamental Rights, whose content has been clarified by EU secondary legislation, especially Articles 13 to 18 of the Qualification Directive, which enshrine the duty of Member States to guarantee protection.

One of these duties is clearly stated in Article 3 (1) of the Dublin Regulations: "*Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum*". However, this obligation must be referred to one single Member State. From this angle, Dublin is an operational instrument through which Member States fulfil their obligation to guarantee right of asylum for anyone requesting it.

As an operational rather than a substantive instrument, the Dublin Regulations cannot override the subjective rights of individuals as recognised in the European texts. However, the main difficulty lies in the fact that Member States can prioritise the application of the Dublin system as an operational instrument over such a fundamental individual right as the right of asylum.

As the European Court of Human Rights pointed out in the case of *TI v. United Kingdom*, every Contracting State is responsible under the European Convention on Human Rights and cannot hide behind any international sharing of responsibilities. In the light of this judgment, the Dublin Contracting States must ensure that the transfer decision does not expose the person in question to a risk of ill-treatment in the event of return to his or her country of origin. From this angle, the UNHCR agrees with the Court that procedures to provide effective safeguards against such risks must be available in the country where the asylum-seeker submits his or her request, in order to protect them against such expulsion. This, however, is not always the case.

The Dublin Regulations are based on the idea that the participating States must examine asylum applications under a fair, effective procedure guaranteeing protection in accordance with international and European law. The Dublin System is also based on the presumption *juris tantum* that all the participating States comply with the principle of non-refoulement and can be deemed safe for nationals of third countries. This presupposes prior harmonisation of legislation and practice in the asylum field.

Dublin is also based on the simple assumption that all Member States respect the fundamental values underpinning the European Union, including the fundamental rights. This requires all States to be safe and to guarantee the right of asylum in the same way.

But this is wrong for at least two reasons. First of all, the Member States are very far from sharing a joint interpretation of the *acquis* in terms of asylum and a common approach to providing international protection. This can be seen from the differing rates of admission to asylum in Member States. Even though the deadline for formulating a common asylum system in Europe has been set at 2012, the rate of admission to asylum at first instance in 2009 still varied from 0.9% to 25.5%, depending on the State. Several studies, particularly the survey conducted by the UNHCR, also show that the minimum harmonisation requirements for asylum are not fully met in Member States' legislation and practice. For instance, France, Germany and the United Kingdom have different lists of countries of origin

considered safe. France considers 15 countries safe, Germany 29 and the United Kingdom 24. What is more, only one country, Ghana is included on all three lists, and even then the United Kingdom only considers it safe for men. This would suggest that it will be difficult to achieve the harmonisation objective by 2012.

In 2010, some 500 applications for temporary suspension of Dublin returns to Greece were submitted to the European Court of Human Rights. Most of them were granted. This is another signal that the safety presumption on which Dublin was built does not work.

It is incorrect to say that all the States are safe and guarantee the right of asylum in the same manner. How can a presumption *juris tantum* of safety be in conformity with European legislation? How can such a presumption exist when Article 7 of the Treaty of the European Union *de facto* allows a Member State to violate the fundamental values of the Union, including the fundamental rights? How can this be a mere presumption when the European Commission can begin infringement proceedings against a Member State for failing to implement provisions guaranteeing a fundamental rights set out in Articles 13 to 18 of the Qualification Directive? The presumption *juris tantum* of security underpinning the Dublin System seems incompatible with European legislation.

When the Dublin Regulations were adopted, the UNHCR acknowledged the need for a mechanism to determine who was responsible for examining such-and-such an asylum application. Such a mechanism seemed capable of ensuring that refugees had access to international protection and that their applications received the requisite consideration, and of providing safeguards to prevent serial returns and, ultimately, systematic *refoulement* from EU territory.

I only have time to mention some of these safeguards, and so shall give a non-exhaustive list. For instance, there is a facility for suspending transfers to a participating State in which the asylum system is not operating properly and where access to the proper procedures is not guaranteed. The asylum-seeker must also be entitled to be heard and have a right to an effective remedy. He or she must not be sent to third country without procedural guarantees ascertaining, for instance, whether this country is safe for him or her. If we consider for a moment whether the current regulations provide such safeguards, the answer is obvious ...

After consultations, the European Commission has identified the shortcomings in the current regulations and proposed reviewing them. This review must incorporate the need for international protection, including in situations for which the level of protection in the member states responsible appears inappropriate.

However, this proposed review will not achieve its objective unless the Member States advance towards harmonising practices in the asylum field as required by EU primary legislation. In accordance with Article 78 of the Treaty of the European Union, the European Council and European Parliament must adopt measures in favour of a common European asylum system, including a standard international protection status and common procedures. In order to achieve this, the Parliament and Council must approve the overhaul of the asylum package submitted to them by the Commission.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – I hereby open the debate.

When the French, German and British have different lists of countries of origin considered as safe, we can see that there is little stability here, especially since the situation in a given country of origin can change, as we can see from current events in Côte d'Ivoire. These lists are therefore subject to modification, and it is hard to see how they could ever be made permanent.

Mr Christopher CHOPE (United Kingdom, EDG) – When is the final decision expected in the M.S.S. case?

Mr Giacomo SANTINI (Italy, EPP/CD) – Mr Cavinato, you suggested suspending the procedures and establishing a joint system for asylum applications. Could you explain how such a mechanism would work?

Ms Pernille FRAHM (Denmark, UEL) – The European Union links up the individual rights of asylum-seekers with migration issues. Do you consider this a problem? How can we ensure that EU and Council of Europe Member States follow UNHCR recommendations?

Ms Daphné DUMERY (Belgium, NR) – You advocate ensuring that asylum-seekers can be interviewed on their arrival in Europe, before transfer to another Member States. But surely one of the advantages of the Dublin Regulation is precisely that the Member State which is not responsible can very quickly send the person to the country which is responsible. If the person must be interviewed beforehand, which involves conducting inquiries, the procedure will be prolonged.

Mr Valeriy FEDOROV (Russian Federation, EDG) - You said that the only country included on all three lists was Ghana, although the United Kingdom and France draws distinctions according to the applicant's gender. But why are there such discrepancies when the countries of origin are the same and the objectives are shared? How are we ever to secure a common approach?

Mr Paul HARVEY – I have no idea when the judgment in the *M.S.S.* case is due. Proceedings before the Grand Chamber are very long; perhaps they will be completed in the first quarter of next year.

Mr Michele CAVINATO – Several of you asked me about the countries of origin considered safe. Apart from the fact that the lists are often amended in line with developments inside these countries, it is obvious that effective implementation of the Dublin mechanism involves devising an asylum application system common to the whole European Union. Unfortunately, there is no such harmonised system: there are not even any minimum common procedural standards. So the inescapable conclusion is that this precondition for Dublin has not been fulfilled, whereas it is a requirement under the Treaty of the European Union. Under the Stockholm programme, the European Council did set the deadline of 2012 for finding a solution, particularly for securing a common procedure with a mechanism for standard treatment of applications from refugees and requests for subsidiary protection. However, we might really wonder whether we will manage to respect this deadline, because there is still a long road ahead.

It has also been said that in Europe we tend to mix up individuals' rights with migration issues. It is true that the current situation is fairly complex. We must realise in particular that asylum-seekers arrive in the middle of a flow of migrants, many of whom are there for very different reasons. The UNHCR considers that the package currently on offer from the Commission should help towards progress in this area.

How can we ensure that more action is taken on the UNHCR's recommendations? This is an excellent question, and one which we often ask ourselves, especially since the European Union seems to be paying less and less attention to it. We lobby and attend hearings, but we are also devising other strategies, notably via expert assistance for national and international courts in interpreting international texts, including the 1951 Convention. A number of cases are in hand, many of them before the European Court of Human Rights. The UNHCR will shortly be intervening for the first time before the European Court of Justice in the context of two cases relating to the Dublin procedure. This is the line which we are increasingly taking because it enables us to influence Court decisions and encourage Member States to implement our recommendations more carefully.

Before any decision to expel a refugee, given that this will affect the whole of the rest of his or her life, he or she must be interviewed on the spot. In particular, it is important to ascertain whether the refugee has family links with anyone living in the country in question. This idea is included in the Commission's proposals.

We ourselves would like to know why the lists of countries of origin considered safe vary so widely. Evidently the States have very different conceptions in this field, which clearly precludes any uniform application of European *acquis* in terms of the right of asylum.

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – I would like to thank all those who participated in this first session.

SESSION 2 – Practices and issues in the Member States

Speakers:

- **Mr Gérard SADIK**, National Officer responsible for Asylum Affairs, Cimade
- **Ms Anne WEBER**, Legal Adviser, Office of the Commissioner for Human Rights, Council of Europe

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – We now come to our second session, on practices and issues in the Member States. This is a very important matter because it is vital that we examine the manner in which theoretical regulations are applied on the ground. And the implementation of the Dublin Regulations is obviously of particular importance to the asylum-seekers themselves.

The location of Greece means that this country is directly confronted with this issue. Unfortunately, the representative of the relevant Greek Ministry whom we invited to this hearing has been unable to attend. Our colleague Nikolaos Dendias will nevertheless take stock of the situation in his country in a few moments' time.

As Ms Brigitte Frenais-Chamaillard, representing the French Ministry of the Interior, unfortunately turned down our invitation, Ms Anne Weber of the Office of the Commissioner for Human Rights of the Council of Europe, who was to speak during the third session, has very kindly agreed to bring forward her statement. However, I shall first of all give the floor to Mr Gérard Sadik, the National Officer responsible for Asylum Affairs with the Cimade.

Mr Gérard SADIK, National Officer responsible for Asylum Affairs, Cimade – I shall begin with a quick presentation of Cimade, which was founded 70 years ago, during the Second World War. It has been dealing with refugees right from the outset, and is still fairly active in this field. Up until 2010 Cimade was present in all French detention centres, where other associations are now also involved. We therefore have a fairly clear picture of French practice under the Dublin Regulations.

France is the main country taking in asylum-seekers in Europe. Paradoxically, under the Dublin procedure asylum-seekers are not asylum-seekers in the full sense of the term, and this leads to serious difficulties. In fact, I too am sorry that Ms Frenais-Chamaillard is not here to represent the Ministry of the Interior, which is now responsible for these matters.

I will be presenting a fairly critical overview of the application of Dublin II, together with some statistical data. These figures are fairly difficult to obtain, but we finally managed to get them from the Ministry.

In 2010, as in 2009, some 45 000 asylum applications were submitted in France, of which 4 650, or 13.6%, as compared with 6.8% in 2005, came under Dublin II and were therefore referred to another Member State. This is not an inconsiderable number, even if the total number of persons transferred to another responsible State did not exceed 21.7% of all referrals.

France, moreover, has the legislative peculiarity of assigning a fairly limited legal basis to the Dublin II Regulation. In 1993, the Constitution was amended to facilitate implementation of the Schengen and Dublin Regulations. The new Article 53-1 permits responsibility to be shared with European States which are bound by commitments identical with its own. Apart from that, however, the provisions are fairly restricted, including in the on Aliens and Right of Asylum Code, only Article L. 741-4 of which provides that asylum-seekers coming under the responsibility of another State must be refused the right of residence. Under an article in another chapter, individuals subject to such refusals may be readmitted to another Member States under a procedure involving "readmission without suspensive appeal".

The main facility in France today for determining which State is responsible is registration in the Eurodac asylum-seekers file. France is the primary contributor to the Eurodac system, with 243 868 individuals fingerprinted. In 2009, 11 783 of them were positively identified, 9 741 being sent to another Member State: some 2 000 to Poland, 1 358 to Italy and 1 238 to Greece. These are much larger numbers than in previous years, given that the total was a mere 300 two years ago.

The main difficulty stems from the fact that the information provided for in Article 18 of the Regulation is not supplied. The main procedures are conducted by the regional prefectures, which are responsible for granting residence rights to asylum-seekers, but there is also activity in the waiting area in Roissy-Charles-de-Gaulle airport and the Calais-Coquelles detention centre, with a number of individuals whom we might call “wandering migrants” waiting in the Calais area to cross over to Britain.

We cannot know either the real aim of the Regulation or the actual addressees of the information. I personally had to conduct intensive investigations in order to ascertain who the latter actually are. In fact, it is the department headed by Ms Frenais-Chamaillard which consults the database and takes the decision, but the latter is not made known to the persons concerned, which means that we cannot know whether the person is the subject of a take-up procedure, for example because he or she has crossed borders illegally, or of a take-back procedure if he or she has already submitted an application for asylum.

For about a year now, as another consequence of Dublin, a number of people have been changing their fingerprints in order to avoid being identified by the Eurodac system. The *Conseil d'Etat* adopted a new position in November 2009 to the effect that those who have been refused residence rights must be dealt with under summary procedure, without access to the normal reception conditions for asylum-seekers and without suspensive appeal facilities.

The information provided for in Article 3-4 of the Regulation has been virtually non-existent for years. It was not until the *Conseil d'Etat* judgment on 30 July 2008 ruling that this was a manifest infringement that the authorities began providing all asylum-seekers with selective information. However, there are still some difficulties. In a recent decision, for instance, the *Conseil d'Etat* found that the information given in Farsi was meaningless. In fact, asylum-seekers only receive highly succinct information on the procedure. What is more, no individualised information is provided: asylum-seekers are left completely in the dark as to when the matter has been brought to the State's attention and what its response has been.

Another French paradox is that the asylum-seeker has a kind of non-status, because persons subject to the Dublin Regulation are entitled neither to a residence permit nor to any physical reception facilities. By stipulating legal residence, the law excludes them *de facto* from access to reception centres and the temporary subsistence allowance which is paid in lieu of accommodation. The *Conseil d'Etat* urgent applications judge had to issue an order on 20 October 2009 to remind the authorities of the need to ensure the material conditions for reception until the State responsible actually took over.

In fact, individuals under the Dublin procedure are subject to an appointments system: instead of information, they are given pieces of paper with appointment dates stamped on them, and overall their status is extremely insecure.

As I said, Eurodac is used as the main criterion for determining the State responsible. This means that France does not comply with the hierarchy of criteria. For instance, it sometimes ignores family criteria: Dublin procedures have been initiated against statutory refugees or asylum-seekers whose families had been granted residence rights in France.

Another negative point is that, while, as we said, it is possible to suspend returns to countries, including Greece, which do not respect the right of asylum, France has not followed all the other countries which have adopted a moratorium on returns to Greece. In order to secure a suspension of returns, the Cimade is forced to commence urgent proceedings before the French administrative courts or to apply to the European Court of Human Rights on the basis of Rule 39 of the Rules of Court. The *Conseil d'Etat* has fairly strict case-law in this field: it holds that the general state of asylum in Greece does not justify suspending returns and that specific circumstances are systematically necessary. Of all the very many decisions submitted to it over the past two years, the *Conseil d'Etat* has only suspended one, in the very specific case of a Palestinian family which had been granted strict UNHCR status in Syria and for which evidence was available of ill-treatment suffered in Greece. Nevertheless, we considered this case as a major victory.

Even if the *Conseil d'Etat* has held that in the event of expulsion a number of safeguards have to be provided and that urgent applications can be submitted to the administrative courts, however urgent this procedure might be, it is not suspensive *ipso jure*. This is one of the major difficulties with applying Dublin in France.

Furthermore, the 2 September 2003 implementing regulation provides for three types of transfers: voluntary, with supervised departure, and with escort. In France, the last two types are prioritised, and very few voluntary transfers are ever effected. This leads to fairly dramatic situations, because individuals subject to a Dublin procedure are often accommodated in hotels, where the police arrive at six o'clock in the morning to take them away, sometimes for journeys of hundreds of kilometres. A case in point was at the beginning of this year, when individuals in a hotel in Dijon were transferred to the Nimes administrative detention centre in order to board a special flight for Poland.

It has also been noted that France is increasingly using extensions of deadlines, particularly where the person is liable to abscond. What is more, in a very recent decision the *Conseil d'Etat* ruled that an individual who attends all appointments for repatriation but is not accompanied by his children can be deemed to have absconded.

However, quite paradoxically, whereas 45% of the individuals concerned in Germany are transferred, the corresponding rate for France is only 20%. Of 460 persons subject to a transfer procedure to Greece, only 39 were actually transferred.

In fact, Dublin II seems to serve as a kind of punishment for persons who have transited through a different State to submit an asylum application: they have non-status for a period of between 7 and 23 months – in the event of extension of deadline for absconding. For a while, the prefectures dealt with them under a so-called “priority” procedure. Although the *Conseil d'Etat* put an end to this on the grounds that such a procedure infringed the right of asylum, there is an obvious temptation to pull these persons out of the system, depriving them of access to the OFPRA (French Office for the Protection of Refugees and Stateless Persons) procedure and normal reception conditions.

In conclusion, I would just like to quote the example of a Russian family which arrived in France in 2004 and for which Italy was responsible. They took six years to secure refugee status, after four years of Dublin procedure.

It is very clear that the problem here is the Dublin system, and that it would probably be useful to abolish the rule that the State which admitted the person in question is responsible for him or her, replacing it with allowing the asylum-seeker a free choice of host country, which would, in particular, prevent people from undertaking dangerous clandestine crossings, not only between Greece and Italy but also between France and the United Kingdom. Pending such times, we must intensify the information drive and introduce a suspensive appeal.

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – Thank you for this interesting introduction.

I would once again like to thank Ms Anne Weber for speaking sooner than scheduled and ask her to take the floor now.

Ms Anne WEBER, Legal Adviser, Office of the Commissioner for Human Rights, Council of Europe – I should like to remind you of how the Commissioner for Human Rights, an independent non-judicial institution within the Council of Europe, came to be involved in this issue.

It all began during a visit to Greece from 8 to 10 December 2008, when the Commissioner noted the critical situation of asylum-seekers in this country. In his report on *Human rights of asylum-seekers* published in the wake of this visit, on 4 February 2009, the Commissioner stressed the vital need to improve protection for refugees and access to asylum procedure, particularly in such border regions as the Prefecture of Evros. He noted “grave, systemic deficiencies in the Greek asylum practice” jeopardising the fundamental rights of asylum-seekers.

This report has since been used by a number of national courts to justify suspending or cancelling transfers of asylum-seekers to Greece. In April 2009, for instance, the urgent applications judge of Paris Administrative Court clearly ruled, on the basis of this report, that there were grave deficiencies in the Greek asylum system and that it was incumbent on the French authorities to take responsibility for considering the asylum application.

During a second visit to Greece in February 2010, the Commissioner noted that asylum-seekers were still encountering enormous difficulties in acceding to asylum procedure and were not always granted the basic safeguards, especially in terms of interpretation and legal assistance. Moreover, the remedies available to them to challenge decisions rejecting their asylum applications could not be considered effective. The Commissioner also stressed on this occasion that asylum and immigration affairs could only be dealt with efficiently by means of concerted European action, and that other EU countries should therefore show more solidarity. This second visit gave rise to an exchange of letters with the minister concerned.

Meanwhile, following an invitation from the European Court of Human Rights, the Commissioner has submitted a third-party intervention – his first intervention before the Court – in a group of cases concerning transfer of asylum-seekers from the Netherlands to Greece under the Dublin Regulation, concluding that legislation and practice on asylum in Greece are not in conformity with international and European human rights standards.

He also addressed the Court on 1 September 2010 during the Grand Chamber hearing in the now famous case of *M.S.S. v. Belgium and Greece*.

The Commissioner holds that transfers of asylum-seekers to Greece must be discontinued because of the grave, systemic deficiencies in this country's asylum system. He notes that the application of the Dublin Regulation forces some countries to deal with a number of asylum applications far exceeding their capacities. A review of the Regulation is therefore urgently needed.

The Commissioner has publicly backed the European Commission's proposal to introduce a mechanism which would suspend transfers, promptly relieve particularly hard pressed States from their responsibilities under the Dublin Regulation and enable them to apply for financial and technical assistance to cope with the situation. Such a mechanism could help ensure that asylum-seekers retain the right to a full and fair examination of their applications.

The Greek case revealed the inherent weakness of the Dublin system. This regulating mechanism does not allow for genuine sharing of the burden. The States located at the points of entry into Europe remain responsible for asylum-seekers registered in their national territory.

A review of the Dublin Regulation is therefore urgently required in order to ensure that responsibilities are equitably shared among Member States. The new regulation should also incorporate the principle of non-detention of asylum-seekers.

Under his ongoing dialogue with the Greek authorities, the Commissioner has voiced his support for the Greek Government's decision and efforts to reorganise the system for protecting refugees and remedy its grave systemic deficiencies.

The Commissioner also took advantage of his meetings with the authorities and his visits to other Council of Europe member countries to stress the need to suspend transfers of asylum-seekers to Greece. On 3 August 2010 he sent the following letter to the French Minister responsible at the time for immigration affairs: *I consider it necessary to improve the sharing of responsibility for dealing with asylum applications among European Union Member States. My visits to France and other European States have shown me that the Dublin II Regulation imposes a disproportionate burden on border States. This overload and the temporary or structural deficiencies in the asylum systems of certain European States only further emphasise the need to revise these procedures in order to guarantee full international protection for asylum-seekers throughout the European territory. As regards the specific current situation of asylum in Greece, I have noted the 20 May 2010 decision of the French Conseil d'Etat to suspend the return of a family of asylum-seekers to this country (...). I hope that the example set by this decision will be followed by all the French administrative courts. In my view, when a national asylum system is structurally incapable of providing adequate protection for asylum-seekers,*

suspending expulsions is the optimum solution. The Minister responsible for immigration replied that in France the plan, which would in fact be implemented, was not to introduce a general suspension but rather to examine applications on a case-by-case basis.

The Commissioner also paid a brief visit to the Netherlands this autumn. On this occasion, he told on 28 September 2010 the Senate Judiciary Committee that he considered it *necessary to suspend transfers of asylum-seekers to Greece under the Dublin Regulation until this country is capable of guaranteeing protection for refugees.*

He has also met with the European Commissioner for Home Affairs, Cecilia Malmström, and had extensive contacts with the UNHCR and a number of NGOs.

The Dublin II Regulation has had a negative impact on the perception of migrants among the authorities responsible for asylum. They no longer begin by listening to the person's history or trying to ascertain whether they have been persecuted, but rather concentrate on establishing which country is responsible for carrying out this task. In extreme cases, asylum-seekers are shunted back and forth between different States, with each country denying responsibility for these persons. The current debate on reforming this Regulation should take account of its pernicious effects on the international system for protecting refugees.

Mr Tadeusz IWÍŃSKI (Poland – SOC), moderator – Thank you for this interesting statement.

I would propose that we now call on our parliamentary panel to speak, with an eye to a subsequent general debate.

Parliamentary panel

- **Mr Giacomo SANTINI**, Italy, EPP/CD
- **Mr Christopher CHOPE**, United Kingdom, EDG
- **Mr Nikolaos DENDIAS**, Greece, EPP/CD

Mr Giacomo SANTINI, (Italy, EPP/CD) – I find it very interesting and important to compare all these statements from the experts, having spent a long time dealing with this subject, with what is actually happening in the various countries, particularly those which are at the forefront of asylum and immigration policy receiving these refugees: I am thinking in particular of Italy, Portugal and Greece, which really are on the front line.

Italy is currently involved on many fronts, including its joint patrols with the Libyan police forces along the southern coasts of the Mediterranean: Libya, Morocco and Tunisia. These patrols are conducted with boats loaned by the Italian navy to their Libyan counterparts, which do not have the right kind of vessel. Despite some difficulties of understanding, the police forces from both countries are working hand in hand.

On 9 November last, the Italian Government published a decree clarifying the role of Dublin II and implementing the EU framework programme for solidarity and management of migration flows for the period 2007-2013. The plan is to invest € 11 000 000 every year in this field, particularly in order to fuel the assistance fund for voluntary returns of refugees and also to improve protection, reception facilities and the everyday lives of migrants. This is the policy currently being implemented by the Italian Government.

Obviously, this is happening against the background of the general EU policy geared to developing a common system of risk assessment, providing standard safeguards and harmonising the management of the various communities. A total of nine programmes will be implemented in order to:

- publicise these mechanisms among potential beneficiaries, most of whom are unaware that they can submit a legal immigration application and, for fear of making mistakes themselves, often resort to people-smugglers, at the risk of never arriving at their destination and being lost at sea;

- provide beneficiaries with information on the applicable legal provisions in the different countries;
- specify the categories of vulnerable persons who are transferred to Italy under the Dublin system;
- ensure the reception and rehabilitation of migrants, particularly victims of torture and violence, and their integration into suitable schemes;
- ensure the international protection of persons with disabilities;
- organise the various services in the refugee reception centres;
- provide staff with suitable training programmes, including courses in anthropology and psychology, so that those coming into contact with refugees and asylum-seekers can act professionally rather than solely on the basis of what they feel;
- involve bodies which already exist at the national level;
- monitor and assess the implementation of all these measures.

More generally, we are endeavouring to understand the whole issue of why migrants leave their countries of origin, analyse migration flows, grasp the social and economic context and assess whether the implementation of appropriate measures in these countries could curb departures. I also feel that a similar policy should be conducted in the European framework.

Italy prioritises voluntary returns, on which it runs a specific programme. Training programmes facilitate reintegration into the country of origin.

We also need a genuine exchange of information among all the bodies involved – NGOs, reception centres, assistance and training organisations, etc – in order to pinpoint the types of action which attain the best results and to improve their mutual co-ordination. The fact that migrants have to cope with widely differing systems undoubtedly hampers their integration.

Directive 38 of April 2004 of the European Parliament and of the Council on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States also provides a number of facilities for nationals of third countries. In attempting to block illegal immigration and providing fresh prospects for legal immigrants, the Dublin system emphasises a very specific point in this new philosophy. Several Italian politicians have loudly expressed their concern about these attempts to promote integration, claiming that the utmost has to be done in order not to take in migrants, to keep them away from the European Union. But the fact is that the way forward in this field is to establish clear criteria.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Thank you for the very full information which you have provided, and which also covered the most recent moves. As they say, better late than never.

I now give the floor to our British colleague and possible future Committee Chair, Christopher Chope.

Mr Christopher CHOPE (United Kingdom, EDG) – I would like to concentrate on what the new British Government is intending to do in the refugee field.

Last June, a member of the House of Commons asked how many asylum applications had been submitted by persons who had transited through another safe country on their way to the United Kingdom. When he heard that there had been 2 655 in 2009, he asked what was happening to all these people, since asylum had to be granted to those who were genuinely fleeing persecution but not to “tourists” who had already passed through a safe country. We have the feeling that if someone is desperate enough to apply not just for immigration but for asylum, he very obviously should do so in the EU country where he arrives rather than deciding which country he might prefer.

In his reply, the Minister announced his determination to do better. This would seem quite possible under the Dublin Regulation, which we use as our framework for action in this regard. In 2009 the United Kingdom rejected 625 cases more than it accepted. However, it is true that there are some malfunctions. The Government is intending to send more people back to Italy, and is hoping to get a clearer picture of the situation in Greece.

On 15 November, the Government reported to Parliament on the European Council meeting of Interior and Justice Ministers, which had heavily stressed the need for practical co-operation. The United Kingdom emphasised the vital need for the aid plan to Greece and for energetic measures from the Commission. Under these conditions, it would be possible to send back to this country the asylum-seekers for which it is responsible. Furthermore, instead of adopting general legislation to increase the rights of all asylum-seekers, it would be better to attempt to improve the situation of those who really need it and to combat abuse.

All of this is a fair reflection of the Government's response to the public concern that too many unentitled people are applying for asylum. It could also help us cater better for genuine asylum-seekers.

A great many appeals have been lodged with the courts, sometimes in several courts simultaneously. In the *Saadi* case, the administrative court rejected an appeal by an Afghan national against his return to Greece. Having been detained in Greece, he had travelled through various other European countries before reaching the United Kingdom and submitting an asylum application. Quite naturally, the general public wondered why, if he was a genuine asylum-seeker, he had not stayed in the country where he first arrived and why he had been allowed to move freely around the European Union.

I quite understand that for the representative of the Commissioner for Human Rights, no one should be detained anywhere. However, let us try to see the situation as it is: the fact of holding a person who has been refused the right of asylum, pending his return or transfer, is merely designed to prevent him from proceeding to another EU country. In the *Saadi* case, the court held that there were no grounds for considering that returning this person to Greece would lead to his being ill-treated. An appeal has been submitted not only in the United Kingdom but also before the Court of Justice and the European Court of Human Rights. I am surprised at this accumulation of applications because I thought that in order to submit a case before these courts all available remedies in the country of origin had to have been exhausted.

The United Kingdom has not ratified Dublin II and therefore does not have to implement the amendments which it comprises. We nevertheless consider that a consensus is needed among all the countries concerned in order to achieve a uniform system.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Thank you for this information on the position of the new British Government.

I give the floor to our colleague Nikolaos Dendias, who will describe the situation in his country, whose geographical location gives it a special role to play in the asylum field. I remember that a few years ago a proposal emerged for setting up an asylum application observatory, and that Greece volunteered to house this institution, even setting aside an old university building for it. Unfortunately, this very good idea never came to anything.

Mr Nikolaos DENDIAS (Greece, EPP/CD) – The situation is increasingly difficult for Greece, and I shall give you some statistics – from Frontex, not the Greek authorities – to show you what we are up against.

In the first ten months of 2010, over 7 000 illegal migrants were apprehended. Some 90% of the arrests of such migrants at the EU external borders took place in Greece. Whereas such persons used to arrive mainly by sea, they now predominantly travel overland, from Turkey. Use of this mode of transit has increased by 400%.

It is obvious that Greece will not be able to cope on its own: it lacks the requisite structures, human and material resources and funding. Anyone claiming otherwise is a liar! We have fewer than 100 officials to deal with all these problems.

Under Greek procedure, asylum-seekers must submit their applications to a police officer. They have a right of appeal. The application may be communicated to the Ministry of the Interior. A further appeal is possible before the State Council.

The number of applications has boomed: there were 3 083 in 2000, 4 000 in 2001, 5 600 in 2002, 8 700 in 2003, 9 500 in 2005, 12 000 in 2006, 25 000 in 2007, 30 000 in 2008, and the figure is continuing to rise. Our system, and the hundred or so civil servants working on it, cannot cope with such an influx of applications.

The first problem is identifying those who really need international protection.

The second obviously concerns detention conditions for these unfortunate people, because we have very little appropriate infrastructure, and conditions in some of the centres are absolutely appalling. Under such conditions, there is reason to fear that all these difficulties will worsen the more the situation drags on.

Greece can hardly do any more on its own than what it has already done under its action plan geared to amending procedures in line with the UNHCR's justified observations. Additional resources will be earmarked for the commissions responsible for deciding on appeals. Fresh funding will also go to the detention centres. I repeat, however, that our country will never be able to manage on its own, and none of this will be sufficient to meet European standards.

The Dublin system looks quite reasonable on paper. In practice, however, the whole burden is on the countries located on the EU external borders, particularly in the South. The truth of the matter is that these countries are facing severe crises, and a weakened society is liable to turn to xenophobia. In fact, we are currently witnessing racist phenomena which had previously been unknown in Greek society.

It is vital for the other European countries to feel more involved, to realise that this is a pan-European problem which challenges human rights and which must be addressed as such.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Thank you. I think we shall have an opportunity to come back to the latest estimates during our third session.

Mr Arcadio DIAZ TEJERA (Spain – SOC) – We have heard two different viewpoints on the Dublin mechanism. Either we consider that it is not working and we need a different text, or, like Mr Chope, we think it should be used differently, perhaps by reinterpreting the existing texts. In fact, it would appear that it is mainly in continental Europe that the legal experts see a need for new legislation.

Ms Doris FIALA (Switzerland – ALDE) – I would first of all like to voice my sympathy with Mr Dendias, who has explained to us that his country is on the verge of explosion with all the problems it is facing. Italy, Spain and Portugal are also up against major problems. Of course, Dublin is a legal instrument which has been ratified by a number of States, including Switzerland, but we apparently failed to gauge the problems it would represent for Greece. Unless all the countries involved realise this and accept their share of the burden, we are heading for disaster, and the Dublin mechanism will quite simply explode. The whole problem is that when an asylum-seeker passes through a given country he or she must be sent back to it, even if this solves nothing.

The current statistics are terrifying, and we can expect the nationals of the 26 countries of sub-Saharan Africa, which are facing the effects of climate change and many other difficulties, to be increasingly attracted to Europe. Unless we tackle the causes rather than the symptoms, we are doomed to failure. The 44 readmission agreements which Switzerland has concluded with various countries of origin are all well and good, but we must concentrate on promoting peace, the rule of law and prosperity in these countries. If we fail to do this and simply do on implementing the Dublin Regulations, we are liable to intensify the xenophobic tendencies already observed in not only the

Netherlands, Belgium, Denmark, Hungary and Slovakia, but also Switzerland: as showed by a recent referendum, there is currently a marked drift towards nationalism in my country.

I would add that we did not realise that the countries along the external borders of the Union would suffer so badly under the Dublin system. If we ignore the need to help them and to share the burden, there is a major risk that Greece and other countries will soon have had enough and decide to open their borders to let the migrants move around at will. Of course we must defend human rights, but if we fail to tackle the causes, things are liable to degenerate.

Lastly, if Italy has concluded an agreement with Libya to prevent migrants from trying to reach the European coastline from Africa, we must realise that those who can no longer cross the sea will try to go overland through Turkey, which will once again leave Greece, with its dire economic situation, in the front line.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Thank you for these compassionate words. The attitude of Switzerland, whose economy is far from under threat and which is not part of the European Union, is worrying because, as we well know, when it closes its borders the migrants will turn to other countries of destination.

Ms Corien W.A. JONKER (Netherlands) – I am grateful to Ms Fiala for her comments.

In my view, suspending the Dublin mechanism would amount to sending the Greeks a negative message in that they might feel released from their responsibility to amend their system. It is probably because of the pressure currently being exerted on this country that it has, for the first time, adopted an action plan and requested European Union aid, something which it had never done before. Greece has received EU aid; it is a Frontex beneficiary; the Commission is considering the possibility of granting it €10 000 000 per year; and experts are being sent to attempt to find solutions.

Surely, at the end of the day, one of the effects of Dublin is to spotlight a number of major difficulties.

Ms Daphné DUMERY (Belgium, NR) - I would like to thank Mr Dendias for the statistical information he has provided. I myself asked the Belgian Government why we are not sending back more Afghans to Greece, but I got no reply.

Could you tell us what you think of Frontex? Have you noticed any improvements since its intervention?

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Poland is primarily a transit country where not many migrants wish to settle. Even though Frontex is based in my country, we have still not managed to establish relations between our Parliament and its directors!

Mr Giacomo SANTINI (Italy, EPP/CD) – The situation of Greece is very similar to that in which Italy found itself a few years ago. The measures which we adopted secured very positive results. The number of illegal migrants and clandestine landings decreased sharply, as did the amount of time spent in the detention centres.

Our colleague was right to stress the need to deal not so much with the symptoms as with the causes, that is to say the situation in the migrants' countries of origin: the lack of economic prospects, persecution, torture, etc. Despite the diplomatic and political difficulties, this is what the Italian Government is striving to do.

Thank you as well for stressing the need to help the countries on the front line: for years now we have been explaining that the main problems arise along the external borders and that we need European Union assistance.

When an asylum application is submitted in a northern European country, instead of sending the asylum-seeker back to Italy or Greece, it would be better to send him directly back home, to Tunisia, Morocco or elsewhere. People who were in other European countries are being sent back to Italy simply because they landed in our country. After that, we have to repatriate them to their country accompanied by two policemen and defray all the expenses. Why should this cost not go to the

United Kingdom, Germany, France, Poland, or some other country? If, in addition to those who arrive by sea, we are going to be sent all those who have spent even only one day in Italy, our situation will become intolerable.

Persons who resort to illegal immigration channels only account for one third of all illegal immigrants: all the rest simply arrive with a three-month tourist visa, after which they fail to return home and then go underground. Perhaps we should begin by dealing differently with visa applications in our consulates and embassies.

Mr Christopher CHOPE (United Kingdom, EDG) – Our colleague Ms Fiala reminded us of the feelings of the general public, and it is true that we must bear this aspect in mind. Switzerland has concluded 44 bilateral readmission agreements, but surely every European State should be doing more to ensure that agreements are drawn up systematically to repatriate illegal immigrants, in return for the assistance granted to their countries of origin. The United Kingdom is considerably increasing its aid to third countries, and it would not be shocking to demand that this be offset by readmissions.

Mr Nikolaos DENDIAS (Greece, EPP/CD) – I would like to thank our colleague Ms Fiala for her very frank words. She is quite right: we must begin by tackling the causes of the phenomenon; this is a long-term process, especially since the situation in sub-Saharan Africa unfortunately does not look set to improve.

Even if we never hear this at meetings of Heads of State or during diplomatic encounters, she was also right to alert us to the risk of certain countries tiring of the effects of Dublin and opening their borders. An extremist party in Greece, the LAOS (Laikos Orthodoxos Synagermos - Λαϊκός Ορθόδοξος Συναγερμός (Λ.Α.Ο.Σ.)), is currently asking the Government to do just that and to stop spending money on receiving and dealing with migrants.

Frontex has only been working in Greece for two or three months now as an operational unit with some one hundred individuals, two or three jeeps and two or three boats. So for the moment it is mainly a case of symbolic moral support for the authorities and the population, who at last feel that the European Union is supporting them. However, much more is obviously needed.

The Treaty which we have concluded with Turkey is excellent in theory, but in practice things are not working out: every month, no less than 12 000 migrants arrive in Greece, whereas we have only accepted 4 000 persons since this treaty was concluded ten years ago. So we can conclude all the contracts we want with countries outside the EU, but if they are not implemented the situation will not improve.

Of course we can turn a blind eye, ignore the problem, but the best way of facing up to it is to gauge its full scope, deal with its causes – even if it is a long haul, we must tackle it – but also, in the shorter term we need to address the symptoms, which means protecting EU peripheral areas. However, we in the Council of Europe should not forget the need to protect the human rights of the unfortunate individuals who arrive on our shores and whom we cannot just send back like rejected goods.

Mr Paul HARVEY – From the viewpoint of the European Court of Human Rights, the problem is not confined to Greece: many applications concern other countries, particularly in the south of the Union.

I think we should differentiate, under the Dublin Regulation, between issues linked to asylum procedure, on which we have so far been concentrating, and questions of conditions of reception and detention, which is perhaps an even more urgent problem, and one which we must not try to cover up. The situation in this regard varies enormously from State to State. In fact, the Council of Europe has highlighted the deficiencies in human rights protection in the field of implementing the Dublin Regulations.

The reason why, as Mr Chope has pointed out, appeals are being examined simultaneously by the British courts and the Luxembourg Court, is simply because appeal courts in England and Wales submitted requests for interpretation of the European texts to the Luxembourg Court, particularly as regards the compatibility of the Dublin Regulations with the Charter of Fundamental Rights and the European Convention on Human Rights. One of the main questions is whether member States “can”

or “must” send the asylum-seeker back to a third country. Evidently these cases should have arrived in Luxembourg earlier, as some have now arrived in Strasbourg.

Mr Michele CAVINATO – Mr Santini said that it would be easier to apply the Dublin Regulation by returning asylum-seekers not to the country through which they entered Europe but to their country of origin. The UNHCR guarantees respect for the 1951 Convention, which Italy has signed. But the fact is that international treaties have a greater value than any national legislation in international law. Italy, like all the Signatory States, is therefore required to analyse all the asylum applications it receives and decide whether or not they are well-founded. We should never forget that all Member States of the European Union must respect the right of asylum as recognised by Article 18 of the Charter of Fundamental Rights, on which the Lisbon Treaty confers the status of primary law, that is to say a value equivalent to the founding treaties. If the States wish to honour the commitments into which they enter on signing the treaties, the Geneva Convention and the European Convention on Human Rights, they cannot simply send back to his country of origin an individual requesting international protection under the right of asylum, if only because such a return could expose him to persecution.

Mr Gérard SADIK – I will attempt to answer the question “is Dublin necessary to make Greece realise its shortcomings in transposing directives?”. Even if the procedures in the different States are increasingly similar, the contexts are still fairly different, and the rates of admission of asylum applications vary considerably. A survey conducted some time ago showed, in the case of Chechen refugees, that the rate was fairly high in France and Italy, but low in Switzerland and virtually non-existent in Greece. We would probably obtain similar results nowadays for Eritreans. I think that whatever their origin, the number of individuals granted refugee status in Greece last year could be counted on the fingers of one hand. Reception conditions are apparently also highly heterogeneous.

I feel that the Dublin system is partly responsible. The idea that the State which allowed the refugee into EU territory is responsible leads members countries to try to push migrants outside the Union. This can be seen especially clearly in Italy: with the military support of members of the *Guardia di Finanza*, the Libyans prevent a number of persons who could legitimately be considered as refugees, particularly from Eritrea and Somalia, from entering Italy and therefore Europe. These persons are blocked in holding centres in the middle of the Libyan desert. Despite this unacknowledged aspect of European policy, the Dublin system will probably not be reformed, since the Franco-German joint declaration clearly buried the plan. This means that the rationale of outsourcing asylum procedures to North Africa and the Middle East, that is to say outside the areas to which the European Convention on Human Rights and the Charter of Fundamental Rights apply, has a bright future.

Ms Anne WEBER – The speakers so far have made all the main points. I would just like to go back to Mr Chope’s question about the cases simultaneously submitted to the Luxembourg Court and the European Court of Human Rights. The risk of overlapping is low, in my view, because the two Courts deal with rather different types of questions: the former considers matters from the angle of European law, while the latter bases its judgments on the European Convention on Human Rights. Furthermore, it is impossible to insist on exhaustion of domestic remedies before resorting to the European courts, if only because the Luxembourg Court sometimes takes years to pronounce on preliminary questions. What is more, it is the appeal courts which decide to refer cases to the Court of Justice, not the individual plaintiffs, and so there is no competition between the different judicial channels.

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – We have reached the end of our second session. Thank you to all the participants.

SESSION 3 - What alternatives?

Speakers:

- **Ms Maria HENNESSY**, Lawyer, European Council on Refugees and Exiles (ECRE)
- **Ms Anneliese BALDACCINI**, Amnesty International

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – So we come to our third and last session, devoted to alternatives to the Dublin system. Clearly, this system is encountering serious difficulties and has major shortcomings. What should be done to change it? How are we to bring about such change? How can we apportion responsibilities more equitably among Member States? These are the questions we shall now try to answer, together with our last two experts.

Ms Maria HENNESSY, Lawyer, European Council on Refugees and Exiles (ECRE) – Thank you for inviting us to this hearing. ECRE is a non-governmental organisation with 65 member agencies throughout Europe, providing direct protection assistance to refugees and asylum-seekers. We have a great deal of experience of the problems linked to the system of assigning a Member State responsibility for asylum applications under the Dublin system.

During my allotted speaking time I would like to quickly outline the main elements of our proposals for an alternative system to Dublin.

Why is an alternative system needed? The current mechanism guarantees neither protection for refugees nor equality of treatment throughout Europe. It is based on the erroneous assumption that every Member State is a safe country for the asylum-seeker. In practice, protection for refugees in Europe is neither harmonised nor equitably guaranteed. The major discrepancies in admission rates leads to “asylum pot-luck” for individuals fleeing persecution. In 2007, for instance, the estimated rate of favourable decisions on admission at first instance for persons from Iraq ranged from 0 to 80% in the European Union. Apart from the fact that the system affects the possibility of asylum-seekers securing protection in Europe, the mechanism for allocating responsibility also has an impact on their lives. To asylum-seekers, Dublin ultimately increases vulnerability, extends the deadlines for considering applications, gets them detained, splits up families, and transfers them to countries where asylum procedures and reception capacities are either non-existent or very limited. And for the countries located along the EU borders, this system has created additional burdens and a feeling of lack of solidarity within the Union. I shall not dwell any further on this point as we have already discussed at length the injustices of the system.

What can we do to solve this problem? We must provide responses in line not only with the legitimate interests of the States but also with the European traditions of humanism and solidarity vis-à-vis those in need. It is time we reconsidered the *raison d'être* of the Dublin II Regulation, taking account not only of the cumbersome procedures and the administrative costs of implementation but also of the constant burden it imposes on such countries as Greece. Before going even further, the first step must be to carefully evaluate the application of this text from the angle of apportioning responsibilities, administrative efficiency, and above all, refugee protection. We already have the joint report prepared in 2007 by the UNHCR and ECRE to help us. The current situation in Greece epitomises the flaws in the Dublin system.

ECRE considers that the proposal put forward in 2008 by the Commission for a Dublin III system might constitute a first step towards replacing the Dublin Regulations with a system that facilitates genuine sharing of responsibilities and proper respect for the needs of refugee protection. This is a promising starting point, and we back the amendments proposed to the extent that they are conducive to major improvements. We are particularly pleased that the proposal includes an individual interview, a right to training, an extension of the right to family reunion, specific guarantees for minors, improved access to appeals and facilities for temporary suspension of the mechanism. Such provisions would reinforce the legal and procedural safeguards and promote family reunification.

However, none of this would remedy the main defects: even in a genuinely harmonised European asylum system, the Dublin mechanism would continue to hamper integration because of its effects on asylum-seekers' preferences for member States in which they have the best chances of integrating into the host community.

Ultimately, Dublin should be abolished and replaced with a more humane and just system. Europe must share responsibilities in such a way as to reinforce solidarity among member States and foster the integration of the individuals who are seeking and who deserve international protection. Of course, the framework for solidarity in asylum policy is set out in Article 80 of the Treaty of the Union, but a political will is vital if we are to get past this stage. ECRE's proposal is based on the principles of solidarity and integration. There are two possible channels: a direct relationship with a member State, or freedom of choice on the part of the asylum-seeker.

By refusing to take account of any direct relationships other than family links, the Dublin system wastes resources, curbs integration and may even be encouraging illegal immigration. Efforts to determine responsibility must combine the interests of individuals with those of the member States. Better networks would speed up the mechanism. One of the main principles in the ECRE proposal is that responsibility must be assigned on the basis of direct relations between the asylum-seekers and the member States. So care should be taken to respect the asylum-seekers' choice so that they can go and live in a State with which they have clear links. This would not only reinforce integration but would also help asylum-seekers to comply with the rules, ensuring that they were not dragged into underground systems with major risks of exploitation and radical influences.

It has often been said that freedom to choose where to submit one's asylum application is liable to lead to abuse of the procedure. However, studies have shown that factors other than economic considerations determine the place where the person requests asylum. These considerations include old colonial links, language, proximity to the country of origin and the existence of community networks.

Drawing on relational criteria could change the bases for determining responsibility without casting doubt on the whole process. As is the case today, asylum-seekers would be interviewed on arrival at their first point of contact with a member State. If they had no family in this country, a concept which would include parents and other close relatives who are not normally taken into consideration, another criterion would be used. This criterion might be language skills; a previous period of residence in the EU; links with a specific community and a member State's previous experience of integrating this community; competences corresponding to economic needs in a given member State; or time spent in an education system similar to that of a given member State. It is only in the absence of indicators for such a special relationship that responsibility would fall by default on the member State where the application was submitted.

The alternative proposed by ECRE represents freedom of choice. In fact, it would be easier and cheaper to leave the choice of host country to the asylum-seeker. It would reduce any incentive to move around unlawfully before official recognition and exempt the authorities from any potentially complex and expensive efforts at determining responsibility. It would also comply with conclusions No. 15 on refugees without countries of asylum, published in 1979 by the UNHCR Executive Committee. In the context of a harmonised asylum system with balanced responsibilities, it would be difficult to imagine any influx of refugees massive enough to make a mechanism based on freedom of choice inoperable. It should be remembered that the European Commission considers that freedom of choice as a possible option for reviewing the Dublin Convention. In its document entitled "revisiting the Dublin Convention", it explores this idea, concluding that a system based on different principles could probably only be envisaged in the context of subsequent finalisation of a joint procedure and a standard status. This time would appear to have come on the new legal basis provided by Article 78 of the Treaty of the Union, which calls for a common asylum policy and joint procedures, as well as a uniform status for asylum and subsidiary protection. Policy choices are therefore required, with shared responsibilities and solidarity in mind.

Such an alternative system would require a financial and administrative burden-sharing system to reflect the real cost of creating and implementing an asylum system administratively supported by all member States, in this spirit of shared responsibility and solidarity. The European Asylum Support Office (EASO) could also help the States to meet this challenge.

In conclusion, I would say that the Dublin system is clearly not working, as is particularly well illustrated by the problems facing such countries as Greece, the number of member States (United Kingdom, Belgium, Netherlands, Norway, Sweden and Iceland) which have suspended transfers to Greece and the need for judicial supervision at the national and European levels. The whole system must be overhauled. Any mechanism intended to replace Dublin should guarantee full and fair consideration of all applications submitted in the EU. It must also combine efficiency and cost-cutting with high-quality reception and protection standards in conformity with the international obligations of member States.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – Thank you for this frank and direct message.

Ms Anneliese BALDACCINI, Amnesty International – I would like to thank the Committee for inviting me to this hearing.

Before proposing any solutions in the debate on alternatives, I should like to go back for a few moments to the basic principles underpinning any effective asylum system. We should remember that Dublin is an *acquis* in terms of the right of asylum. However, while the European Union established the Dublin system in order to jointly regulate asylum procedures, the basic principles look fairly few and far between. And yet they are very important. I am thinking in particular of access to asylum procedures, compliance with appropriate rules, individual interviews and information. What is more, any restriction on freedom of movement should be subject to the principles of legality, proportionality and necessity. Reception facilities must also comply with the requisite standards. Effective remedies must be provided, and returns must be suspended pending the result of any appeals lodged. The right to free legal assistance must be guaranteed. Lastly, the asylum-seeker must be protected against refoulement.

If all the States Parties to the Dublin system agreed on these key principles we would be unlikely to be here discussing the system's weaknesses and failures. It is because these principles are not respected in practice that the asylum system is not working.

In order to get round to the individuals directly affected by this system, I think I could usefully remind you that behind the case of *M.S.S. v. Belgium* pending before the European Court on Human Rights there is an Afghan asylum-seeker who arrived in the European Union in 2008 via Greece, and who then moved on to Belgium. Despite an appeal against his transfer under Dublin II, he was sent back to Greece in June 2009 and detained under the most appalling conditions. Today he is still awaiting his first interview with the national authorities. He therefore submitted an application to the Court for violation of the right of asylum, inhuman and degrading treatment and Article 13, which lays down the right to an effective remedy. The decision is still pending. And this is no isolated case: Amnesty International has publicised many others, including in its March 2010 report entitled "The Dublin II Trap: Transfers of asylum-seekers to Greece", which comprises a highly detailed analysis of the weaknesses in Greek legislation and the discrepancy between the requirements of national, regional and international law and the treatment actually meted out to asylum-seekers in this country.

Without going into detail, we must emphasise the high risk of refoulement: asylum-seekers may be sent back to countries where they are liable to be persecuted and ill-treated. The lack of protection against refoulement is compounded by poor reception and detention facilities under appalling conditions, which fall far short of European and international standards. The Parliamentary Assembly of the Council of Europe has voiced its concern about wrongful detention of asylum-seekers and illegal migrants, and has listed all the resultant problems.

We welcome the efforts being expended by the European Commissioner for Human Rights and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment in monitoring what is happening in Europe, especially in Greece. We are nevertheless alarmed by the entry into force of the "Return Directive", particularly because a return after six to twelve months' detention could obviously mean very long detention periods and therefore deteriorating reception conditions. We shall be extremely vigilant in this field.

As has been repeated several times over, the reason why the Dublin system does not work is because of the manner in which it is implemented. The European Court has examined the very interesting case of an asylum-seeker whom the Netherlands decided to take in. This country considered the merits of her application and then sent her back to Italy. This pregnant Somali's partner had been granted official legal status in the Netherlands. This is a clear illustration of the fact that it is the application of Dublin II which raises problems, because this woman's return to Italy should never have even been envisaged!

People are increasingly resorting to the courts for provisional safeguards. However, this is obviously the wrong way of addressing the problem, because the real way ahead does not involve such individual ventures. We know that people are often expelled at the very last moment and that the decisions are taken just before they are put on the aeroplane, under totally arbitrary conditions in breach of their rights to a lawyer and appeal facilities.

The Regulations do comprise a number of alternatives, including the sovereignty clause, which enables member States to derogate from the Dublin criteria and decide to take responsibility for a specific case themselves. This clause has already been applied, albeit in a wide variety of conditions. Usually, the States do so under the pressure of judicial proceedings rather than voluntarily. In a number of cases before the national courts, it has been argued that it is vital to interpret Article 3-2 of the Dublin Regulations in the context of the non-refoulement principle set out in Article 18 of the Charter of Fundamental Rights. The Dublin provisions come under secondary legislation which applies in accordance with the provisions of primary legislation. This is why, under the case-law of the European Court, if the conditions of reception and detention are not in conformity with the Charter, member States must take responsibility for the corresponding cases and adjudicate on applications.

In applying the Dublin criteria, balance must be preserved between the rights of the asylum-seeker and those of the State concerned; this was evidently not done in the case of the Somali woman I just mentioned.

The European Commission has proposed revising the Dublin II Regulations. We agree that the existing provisions must be further clarified, particularly in order to prevent the rights of asylum-seekers from being flouted.

Mr Tadeusz IWIŃSKI (Poland – SOC), moderator – This message is just as frank and direct as the previous one.

We unfortunately have no more time for a debate on this subject. I nevertheless note that our new colleague, who is particularly active, would like to put a brief question.

Ms Daphné DUMERY (Belgium, NR) - The possibility has been mentioned of leaving asylum-seekers the choice of country in which to apply for asylum. But how is such a provision to be implemented in practice?

Ms Anneliese BALDACCINI – The person's choice of country to consider his or her application for asylum would be registered when he or she arrives at the EU borders and applies for asylum. Perhaps a mechanism would be required to ensure that the person does not submit applications in any other countries.

CONCLUSIONS

Mr Tadeusz IWŃSKI (Poland – SOC), moderator – I would like to thank all those who have contributed to our discussions this morning. Their contributions have been most valuable. Solutions are obviously urgently needed to the many problems highlighted.

All three debates were fairly similar in tone. We emphasised the fact that a number of countries located along the EU borders are under heavy pressure, especially Malta, Italy, particularly the island of Lampedusa, Spain, notably the Canary Islands, and Greece. It has emerged that these States are very often unable to provide asylum-seekers with support and protection, even though the latter are liable to be persecuted if they are sent back to their countries of origin.

Our discussions have also shown that the Dublin Regulation and its mode of application do not always protect asylum-seekers' rights, that asylum applications are unfairly distributed among member States, that the right of appeal cannot always be exercised, that too many people are detained prior to transfer and that too many families are split up.

The ECRE and Amnesty International representatives have made clear that the system does not work. For his part, our colleague Mr Dendias has explained that Greece cannot manage because of the lack of human and material resources.

We must draw the lessons from all of this and propose a number of measures at our modest level.

Mr Giacomo SANTINI (Italy, EPP/CD) – It is obviously no coincidence that the hardest hit regions are those closest to Africa. In Italy we often say that Sicily and Lampedusa are the closest parts of Africa to Italy. In any case, this is where the problems of both continents interlink.

You can rest assured that your valuable contributions to our debates will not be wasted: the new draft Declaration which we will be examining tomorrow in committee will reflect the entirety of our discussions this morning.

My particular thanks go the excellent moderator for this morning's proceedings, **Mr Tadeusz IWŃSKI**. This role will be taken over this afternoon by Pernille Frahm, for an interesting debate on reinforced protection for women migrants' rights.

The hearing ended at 12.30 pm.

APPENDIX

PROGRAMME OF THE HEARING

Moderator : **Mr Tadeusz IWINSKI**, Poland, SOC

9 – 10.15am

SESSION 1 – Dublin challenges

Keynote speakers :

- **Mr Paul HARVEY**, European Court of Human Rights, Council of Europe
- **Mr Michele CAVINATO**, Policy Officer, UNHCR Bureau for Europe, Brussels

10:15 – 11:30

SESSION 2 – Practice and problems in Member States

Keynote speakers :

- **Mr Gérard SADIK**, National expert in asylum issues, Cimade
- **Ms Anne WEBER**, Legal Adviser, Office of the Commissioner for Human Rights of the Council of Europe

Parliamentary panel

- **Mr Giacomo SANTINI**, Italy, PPE/DC
- **Mr Christopher CHOPE**, United Kingdom, EDG
- **Mr Nikolaos DENDIAS**, Greece, EPP/CD

11:30 – 12:30

SESSION 3 – What alternatives?

Keynote speakers :

- **Ms Maria HENNESSY**, Lawyer, European Council on Refugees and Exiles (ECRE)
- **Ms Anneliese BALDACCINI**, Amnesty International

Conclusions by the rapporteur