

Dublin after Schengen: Allocating Responsibility for Examining Asylum Applications in Practice*

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Introduction

In the 1980s the Member States of the European Union were faced with a substantial increase of the inflow of migrants and refugees which was, to say the least, perceived¹ by policy makers as being a threat to security and stability. It also increased the belief that this movement was overloading the capacity of the nation states to receive immigrants and was, furthermore, responsible for the emergence of resistance and fear, and even of xenophobic and racist feelings, among the host populations forcing the governments to take restrictive legislative and administrative measures.

Along with this inflow, the number of asylum applications dramatically increased which led to the competent authorities being overloaded, to the exhaustion of resources and to unacceptable backlogs and delays in the examination of asylum applications. The Member States individually adopted restrictive measures to deal with the high volume of applications. In an effort to reconcile humanitarian concerns with economic and political imperatives, reform mainly focused on procedures rather than on substance. The individual restrictive action, however, was not only revealed to be insufficient and ineffective but also had immediate negative effects in neighbouring countries. These countries, as a consequence, experienced an increase in the volume of claims they received, which led to a race for the most restrictive policies with serious results for the right of asylum. This situation called for a coordinated response at European Union level. Moreover, the creation of the single market and the expected abolition of internal border controls accentuated the need for a common approach, since it was believed it would facilitate the intra-community movements of asylum seekers.

This was the context in which the Convention Determining the State Responsible for Examining the Applications for Asylum Lodged in one of the then twelve Member States of the European Communities (the Dublin Convention) was signed by eleven of the then twelve Member States at the meeting of the Immigration Ministers held in Dublin on the 15 June 1990.² It was the first legal instrument signed with the purpose of achieving the free movement of persons, which was imperative for the establishment of the internal market. The third paragraph of the preamble of the Convention states that it is intended as a back-up measure to enable checks on persons at internal borders to be abolished.

The Dublin Convention was designed to avoid long delays in the adjudication process and to respond to two

kinds of phenomenon:

- Firstly, the problem of so-called “refugees in orbit” (refugees that fail to find a state willing to take responsibility for examining their asylum applications and are therefore shuffled from country to country in a constant quest for asylum).
- Secondly, it addresses the problem of multiple asylum claims, simultaneously or successively lodged in different Member States by the same alien.³

The Dublin Convention, like the Schengen Convention’s provisions on asylum, is not aimed at harmonising substantive or procedural rules of asylum but rather is limited to fixing uniform criteria for the allocation of responsibility to one single State for the examination of an asylum application.⁴

On 1 September 1997, seven years after its signature, the Dublin Convention finally entered into force in the twelve European Union Member States which had originally signed the instrument.⁵ In Sweden and Austria, the Convention entered into force on 1 October 1997 and in Finland on 1 January 1998. The Dublin Convention has replaced the Schengen provisions on asylum.⁶ The replacement was decided by the Schengen Executive Committee meeting in Bonn on 26 April 1994, by means of the so-called Bonn Protocol. In the future, according to the Amsterdam Treaty, the Dublin Convention will have to be replaced by a binding Community (“First Pillar”) instrument, probably a regulation.⁷ This new instrument is likely to improve both its substance and the involvement of the European Union institutions.⁸

The objective of this article is to outline the main aims and features of the Dublin Convention and to briefly compare them with the Schengen provisions on asylum. Secondly, it will report on the experiences of the Convention’s first year of implementation: the problems and limitations of the Convention as well as relevant lessons drawn from the practical application of Schengen. Thirdly, it will confront the aims with the results so far and it will comment on necessary future developments.

The Dublin Convention on Asylum: Aims and Features

Why was the Convention signed?

The aim was to establish the principle that one single Member State is responsible for dealing with an alien’s (i.e. a national of a third country according to Art. 1 of the Convention) asylum application, by agreeing that one Member State only is responsible for handling an asylum claim made by an individual. By introducing this definite responsibility of a particular Member State, it avoids the

* *Un bref résumé de cet article en français figure à la fin.*

situation of refugees in orbit⁹ and multiple applications of asylum, a situation which would otherwise have been facilitated by the creation of the internal market. Moreover, wasteful duplication of Member States' resources is avoided and backlogs and delays in the examination of asylum procedures are reduced.

WHY?

- Increase of asylum applications/ delays in processing/ exhaustion of resources
- "a space without internal frontiers"

CALLED FOR A COMMON RESPONSE TO TACKLE

- Intra-Community movements of asylum seekers determined by the choice of the "best" asylum state
- "Refugees in orbit"
- "Asylum shopping"

How is the responsibility allocated?

The Convention sets out the criteria that determine which Member State is responsible for examining an asylum application in a hierarchical order. The first criterion relates to family reunification¹⁰ and meets a concern expressed by the UNHCR. The State where certain members of the family of the asylum applicant already have refugee status is the State responsible, provided that the persons concerned so desire it. The members of the family are restricted to the spouse, unmarried children under eighteen, and the parents of the applicant if he/she is unmarried and under eighteen. In this respect, the UNHCR has already called for a wider interpretation of "family member" in the application of the Convention. Secondly, the Member State who issued a valid residence permit¹¹ is responsible. Thirdly, the Member State who issued a valid visa is the competent authority. The Convention provides several exceptions and modifications that might occur in practice, e.g. responsibility in cases where the applicant is in possession of more than one residence permit or visa. Fourthly, in cases of illegal entry,¹² the Member State entered is responsible unless the applicant has been living in the country where he/she lodged the application for six months. Fifthly, if the alien entered legally, the Member State responsible for the control of that entry¹³ is the one who should examine the application, unless the application was lodged in another Member State and in both States the visa obligation is waived. Finally, in cases where none of the above criteria applies, the first Member State¹⁴ where the application claim is made is called upon to examine the claim. It is ensured that applications made at the embassy of a Member State are deemed to be lodged in that Member State (if the legislation of the Member State in question permits an asylum application to be made abroad). The selection of the criteria does not therefore take into consideration the choice of the asylum seeker¹⁵ but rather the conditions of his/her access to the European Union and to some extent the personal conditions of the asylum seeker.

HOW?

- One single state is responsible for examining an asylum application
- No harmonisation of substantive and procedural rules of asylum
- Uniform criteria for the allocation of responsibility
 - Family reunification
 - Residence permit
 - Visa
 - Illegal entry
 - Control of entry
 - Application lodged

BUT

- Opt-out clause
- Humanitarian clause

What does the responsibility imply?

The Member State responsible for examining the application will process the application in accordance with national legislation and international obligations.¹⁶ As the national laws are not harmonised, this agreement presupposes mutual confidence in each other's legislation and adjudication processes, which relies on the fact that there is a common framework for the different national laws constituted by the Geneva Convention as amended by the New York Protocol. As we will argue later, although this might be a sound beginning, further harmonisation on substantive and procedural rules of asylum have to follow in order to avoid the possibility of applicants perceiving variability in their chances of success depending on the country in which they make the application. Such a perception might encourage them to apply in the most lenient country.

The rule of exclusive competence is offset by the sovereign right of a Member State to examine an application presented by an alien, as long as he/she agrees, even though it would not be competent according to the criteria set out in the Convention (the opt-out clause). Moreover, any Member State can accept the request of another Member State to examine an application for humanitarian reasons (the humanitarian clause), again with the consent of the claimant. In the same way, a decision to reject an asylum application is not imposed on other Member States, which are free to examine the application. Furthermore, as mentioned, the Dublin Convention does not obviate the right to send an applicant to a safe third country in accordance with the Geneva Convention, which means that it should only take place if it respects the principle of *non-refoulement*. The concept of responsibility does not provide the guarantee that the asylum application will be examined in substance by one of the Member States, and also does not confer on the asylum applicant an individual right to a material examination of his/her application. Therefore both the Dublin Convention and the Schengen asylum provisions have limited importance for the protection of asylum seekers and should be complemented by other instruments aimed at ensuring access to a fair asylum procedure for asylum seekers.¹⁷

Once the responsibility is allocated there are basically

three obligations incumbent upon the responsible State. First of all, they should take charge, that is they should grant entry to the applicant. Secondly, they should complete the examination of the asylum application. Thirdly, they should readmit or take back the applicant who is in another Member State irregularly (pending the examination of his/her application or after its rejection) or who has withdrawn his/her application and introduced a new claim in another Member State. The conditions which ensure that Member States take charge of and readmit applicants according to the Convention are quite informal and flexible. Moreover the delays are relatively short.

What are the practical arrangements set by the Convention?

In view of its application, the Dublin Convention provides for mechanisms of exchange of information, both in terms of general information, e.g. on national legislation and statistics, and in terms of individual information. It also set up, under Art. 18 of the Dublin Convention, a Committee of Representatives of the Member States to follow the application of the Convention (Article 18 Committee). This Committee has adopted a series of guidelines focusing on a number of practical issues, such as time periods for replying to a request for transfers or re-admission, the implementation of transfers, use of means of proof to determine responsibility, etc.¹⁸ However, we will later point to areas in which the adoption of additional guidelines is needed in order to ensure the efficient functioning of the Convention.

Did Schengen provide a blueprint for Dublin?

The Schengen provisions on asylum and the Dublin Convention are inspired by the same philosophy and have the same goals. Moreover, their specific provisions are quite similar, although Dublin, is a more refined and complete instrument. One can still identify some differences while comparing both Conventions.¹⁹

First of all, while the Dublin Convention is applicable in all 15 EU Member States, the Schengen asylum rules were applied fully in seven Member States only, namely Germany, France, the Benelux countries, Spain and Portugal.²⁰ The EU is currently preparing adequate legal solutions for extending the Dublin Convention to Norway and Iceland, who have signed a cooperation agreement with Schengen. The possibility of concluding a parallel Convention to the Dublin Convention is under consideration. Such a parallel Convention is also an option for other non-EU Member States such as applicant countries in Central and Eastern Europe and Switzerland.

Other differences are merely differences in wording which do not seem to lead to different results, e.g. the definition of an asylum application. Some others have been overcome in reality, e.g. in Dublin the criteria are presented in a clear hierarchical order, unlike the Schengen system, though in practice a similar order was applied in the Schengen context. Other differences, however, – e.g. concerning the allocation of responsibility – relate to aspects which though basically the same could lead to divergent practical results. More importantly some differences have an impact on the protection offered to

refugees.

As highlighted previously, the Dublin Convention distinguishes between the criteria resulting from a valid residence permit and a valid visa giving priority to the first, while in the case of Schengen these criteria have equal weight. Moreover, where an asylum seeker is in possession of more than one residence permit the Schengen Agreement establishes that the State that issued the visa that expires last is responsible. Dublin, however, attributes the responsibility to the State having issued the residence permit for the longer period, and only when the period of validity of the permits is identical is the expiry date taken into account.

In both Conventions, the State issuing the visa is released from its responsibility if it has obtained authorisation from another state, or in the case of a transit visa, if it has ascertained from the other State that the applicant fulfilled the conditions for entry into that State. However, the Dublin Convention specifies that the authorisation and confirmation have to be written. This exigency was taken over by the Schengen group initially but abandoned once their visa policies were harmonised. Presumably, this will also happen in the context of the European Union but until harmonisation is achieved the difference will persist.

For asylum seekers possessing a transit visa, but who are not required to have a visa for the Member State where they lodged their asylum application, the provisions in the two Conventions are different. Within Schengen, the State first entered is responsible, while within Dublin the responsibility lies with the State where the application is submitted. In the framework of Dublin, asylum seekers belonging to the limited group for whom visa requirements are waived are therefore free to choose the country in which they present their asylum application. This makes it more in tune with UNHCR Conclusion 15 which states “the intentions of the asylum seeker as regards the country in which he/she wishes to request asylum should as far as possible be taken into account”.²¹

In cases of illegal entry, within Dublin the responsibility of the State whose external (EU) border has been crossed ceases if the applicant has been living in the State where he/she makes his/her application for at least six months. The right of a State to obviate from the allocation according to the criteria set are foreseen in both Conventions, however, under Dublin the wishes of the applicant have to be respected.²² In conclusion, from a refugee protection perspective, the provisions of the Dublin Convention include some important improvements on the Schengen asylum rules.

These examples confirm that Dublin is not merely a copy of the asylum chapter of the Schengen implementation convention.²³ Moreover, as a result of the practical implementation of the Schengen provisions since March 1995, and due to the decisions adopted to resolve problems of interpretation and the application of certain provisions, both conventions have grown even further apart. To some extent the differences were overcome by means of decisions on the interpretation of Dublin and its application. Still actual differences persist and will be mentioned in the following section as they are

problems which the Member States will have to cope with in applying the Dublin Convention, and from which lessons can be drawn on the Schengen experience.

The Dublin Convention in Practice

This section will try to identify the problems that have arisen in the implementation of the Dublin Convention and will explore its shortcomings or limitations. To ensure an effective and smooth application of the Convention a number of implementation measures have been approved by the Council, e.g. a standard form for determining the Member State responsible for examining an application for asylum and the general guidelines for the implementation of the Convention with a common interpretation of the concepts used in it.²⁴ The Article 18 Committee has adopted texts clarifying the Convention.²⁵ However, the process is still not complete. We will first outline some of the necessary instruments and guidelines for the interpretation and application of the Convention which need to be adopted, developed or complemented to ensure a smooth application of the Convention, both from an administrative and a refugee protection point of view.

What further guidelines and instruments are needed?

Eurodac

Eurodac (European Automated Fingerprint Recognition System) is a system for the collection, storage, exchange and comparison of fingerprints of asylum applicants. This computer system allows for the comparison of asylum seekers' fingerprints with the aim of determining, with certainty, the Member State responsible for examining an asylum request. It aims to avoid multiple asylum applications lodged in several Member States under different names by tracking down applicants who have been refused asylum or who have been removed/expelled from another Member State. The Eurodac system is based on a separate convention and it is currently being discussed but is far behind schedule.²⁶ As with other conventions it has to be first ratified by the Member States, though it is proposed that the convention might enter into force among the ratifying Member States before all of them have completed the process of ratification.

The entry into force of this convention will certainly have an impact on the application of Dublin, as it will facilitate the exchange and use of information in individual cases foreseen in Art. 15 of the Dublin Convention. There have been problems regarding the exchange of this information and efforts are being made to improve the quality of the exchange of information, by improving storage of and access to such information in Member States and by agreeing on principles of best practice in this respect. Moreover, Eurodac permits that the identity of the asylum seeker, and the EU Member State in which they first arrived, can be confirmed. In the meantime, the exchange of asylum seekers' fingerprints is being carried out on a bilateral basis according to national laws and respecting EU principles on data protection.

In this respect lessons have to be drawn from the application of Schengen and administrations should avoid

repeating the same mistakes. Although Schengen did not foresee a computer system containing fingerprints or any other data on asylum seekers, the storage and processing of personal data in the Schengen Information System (SIS) has resulted, in some cases, in preventing individuals from lodging an asylum application in a Member State. In at least two cases, such rejections have been condemned in court.²⁷ In these cases the courts did not oppose the storage of data in the SIS (the registration as undesirable aliens in another Member State was not related to the asylum procedure), but the administrative procedure (based on SIS information) which resulted in the refusal of entry at the border even though the people in question were at risk of persecution on return to their country of origin.

Need for a flexible system of proof

It has already been mentioned that the Article 18 Committee has adopted decisions on the means of proof.²⁸ These are the decisive means by which a Member State decides whether or not to assume responsibility for examining an asylum application. Experience with the application of the Schengen Convention showed that many requests to take charge were based exclusively on the statement of the asylum seeker and were consequently not accepted. As a result, the Schengen States adopted a recommendation to accept, in individual cases, requests based on the statement of the applicant provided that this statement is consistent, sufficiently detailed and verifiable. In the framework of Dublin, the Article 18 Committee decisions on the means of proof states that responsibility for examining the asylum application should be based on as few requirements of proof as possible and that Member States should accept responsibility on the basis of indicative evidence. If the establishment of proof carried excessive requirements, the procedure for determining responsibility would ultimately take longer than the examination of the actual application for asylum. In that case, the Convention would fail to have the desired effect since the delays would create a new category of refugees in orbit, asylum seekers whose applications would not be examined until the Dublin procedure had been completed. In addition, under too rigid a system of proof the Member States would not accept responsibility and the Convention would be applied only in rare instances, while those Member States with more extensive national registers would be penalised since their responsibility could be proved more easily.

Practice has shown that this problem is far from being resolved. In March 1998, half a year after the entry into force of the Dublin Convention, the Justice and Home Affairs ministers acknowledged that the Convention did not work, in particular because of the difficulties in establishing the Member State through whose borders an applicant entered the EU. In May, the Justice and Home Affairs Council again discussed the issue of the assessment criteria and Southern countries argued for decisions to be based on serious and more reliable grounds.²⁹ The conclusion of the Eurodac convention and its application will certainly contribute to solving this problem which is still contentious among the Member States.

Need to adjust time limits

The Dublin Convention includes provisions related to the obligation to take charge of an applicant (and to transfer or take him/her back and to reply to a request) within certain time limits. If a Member State, where an application for asylum has been lodged, considers that another Member State is responsible for examining the application it may, within six months, ask the other Member State to take charge of the applicant. A delay of three months from receipt in answering the request to take charge is provided for.³⁰ In the Schengen Convention there were no fixed time limits, though the contracting states initially agreed to exactly the same time limit. In practice this deadline proved to be too long, as it did not prevent the disappearance of applicants. Consequently, the Schengen Executive Committee adopted two recommendations which were: first, a time limit of, in principle, one month to reply to a claim was fixed; and, second, for urgent requests (e.g. refusal of entry) that the States shall try to reply within the time limit set by the requesting State. The Article 18 Committee has reduced the initial deadline of three months to one month taking into account the Schengen experience.³¹

After acceptance of the request to take charge, or take back, the transfer of the applicant has to take place within one month (Art. 11(5)) under Dublin. This time limit was taken over by the Schengen States initially, but it seemed it was impossible to comply with in practice in spite of the efforts of the requesting State. For that reason the Schengen Executive Committee decided that the requested State remain responsible even if the time limit is not respected when this is due to exceptional circumstances, such as illness, pregnancy or criminal detention. Also in such cases the States determine, by common agreement, the time limit for each concrete case, even when the applicant has disappeared. In practice, the Dublin authorities in Member States have also applied the same principles, this being another of the areas in which the Dublin authorities have benefited from the previous Schengen experience. Nevertheless, this is an issue which still raises some problems in practice, and further guidelines on how to tackle them should follow. Moreover, the time limits to reply to a request for information on individual cases have to be adjusted to permit greater speed in the exchange of information.³²

Treatment of members of the same family

One of the problems that the Dublin Convention faces relates to the division of responsibility for examining the asylum applications of members of the same family. A problem particularly arises when couples lodging an application for asylum in the same country are separated as a consequence of the application of the Dublin criteria for the allocation of responsibility. A situation like this may appear, for example, when members of the same family are in possession of a visa issued by embassies of different Member States, or where they have crossed different external borders when entering EU territory in an irregular manner. This is an undesirable situation that also occurred in the application of the Schengen asylum chapter.³³

Within Art. 9 of Dublin a responsible State can request that another State assume responsibility on humanitarian grounds based on family and cultural reasons, in so far as the person concerned so wishes. There is, however, no guarantee that the requested State will agree to the transfer of responsibility. In addition, Art. 9 can be applied only at the request of another Member State.

Hence, it has been argued that this article does not establish an individual right for the asylum applicant entitling him/her to have his/her application examined by a given Member State, but merely refers to an administrative possibility for contracting parties to arrange for a transfer of responsibility.³⁴ The asylum applicant could only prevent Art. 9 being applied by not giving his/her consent to the transfer, but could not claim the application of this provision him/herself. However, asylum applicants have successfully appealed in court against such an administrative decision, by claiming a right to have their application transferred on the basis of Dublin Art. 9 and Schengen Art. 36.³⁵

Another question relates to the scope of the application of this humanitarian clause: to what types of family reunion does it apply? In April 1997, the Schengen Executive Committee adopted a Decision identifying situations in which the humanitarian clause could be applied. The Decision points out, that the clause can be invoked in cases in which a family member is gravely ill, has a serious handicap, is old, is pregnant or has a newborn child, or where minors risk being separated and left unattended. The Article 18 Committee also adopted, in September 1998, a similar decision clarifying the application of this humanitarian clause.

These decisions do not contemplate other situations in which Dublin Art. 9 could be applied, for instance to reunite family members who risk being separated from one of their members who is already in possession of humanitarian, temporary, or de facto, status and therefore legally residing in a Member State; or couples who have not concluded a legally valid marriage yet live in a long-term relationship.³⁶ Thus, the Article 18 Committee could take further steps to apply this humanitarian clause in a more generous manner.

Furthermore, in the framework of Dublin, it seems also that in those cases the Member States could use the right to examine an application submitted to it even if it is not responsible under the criteria set out in the Convention, provided that the asylum applicant agrees to it. The opt-out clause, which we will mention next, can therefore also apply for family reunification purposes.

Application of the opt-out clause

The Dublin Convention provides for an opt-out clause,³⁷ which allows a State to examine an asylum application submitted to it even though it is not responsible according to the Convention.³⁸ In the case of the Schengen Agreement, the corresponding provision³⁹ limited the possible use of the clause to special circumstances, particularly those derived from national legislation. This is not the case with the Dublin Convention⁴⁰ which could, therefore, be applied in a wider sense. This opt-out clause

has been applied for very different reasons and purposes: sometimes in the interest of the applicant, for medical (serious illness and pregnancy) and humanitarian reasons: in other cases in order to accelerate the handling of an application.⁴¹ Art. 3(4) stipulates that a Member State can examine the application, provided that the applicant for asylum agrees to this. The Schengen agreement did not include such a provision, so in this respect Dublin is a better instrument from an asylum seeker's perspective. However, it cannot be guaranteed that this rule of the Dublin Convention is always applied in the best interest of the asylum seeker only. Some EU Member States' authorities consider that the mere fact of having lodged an asylum application in a Member State indicates the applicant's agreement to the claim being processed in that particular State.⁴²

In other cases, it was applied to avoid the application of the "safe third country" clause by the Member State responsible for the examination of the application. Lower Courts in the Netherlands obliged the administrative authorities to apply this clause when the responsible Member State according to the Dublin criteria would not follow the general Dutch policy of not expelling a particular group of asylum seekers.

Also in other cases, the State may undertake to examine the asylum application if, during the procedure of determining which is the responsible Member State, it has already examined the substance of the claim. In any case, guidelines on its application should be provided as suggested by the UNHCR.

Application in time

Another question that arises related to the application of the Dublin Convention concerns "application in time". In the absence of any provisions setting its retroactive application, Dublin is not (nor was Schengen) retroactively applicable.⁴³ However, the question remains, whether in relation to the facts that determine the responsibility of a country to examine an asylum application the same understanding applies. That is whether only the facts occurring after the entry into force of the Convention can be taken into account or whether, conversely, facts happening before that date can also be considered for the allocation of responsibility. The Schengen States reached a pragmatic consensus on the consideration of certain facts relevant to the allocation of responsibility, even though they may be antecedent to the entry into force of the Convention. Those are: visas and residence permits issued before the date of the entry into force of Schengen but valid on and after that date; asylum proceedings initiated but not concluded before the date of its entry into force; the recognition of refugee status and permission given to a family member of the applicant to reside is relevant to the determination of the responsible Member State even when this recognition was made prior to 26 March 1995. The Schengen States did not, however, come to a common agreement regarding the allocation of responsibility based on a previous rejection of a refugee status made before 26 March 1995.

In respect to the Dublin Convention retroactive application to asylum applications submitted before the

Convention entered into force is clearly excluded but it does not provide any guidance regarding the retroactive application of facts related to events which occurred before its entry into force. However, it would hardly make sense to exclude every fact, which may be relevant for the application of the Dublin Convention from its scope of application, because it already existed before 1 September 1997.⁴⁴ Otherwise, as argued, Dublin would only cover persons born after September 1997.⁴⁵ For this reason, the flexible implementation of the application of time limits stipulated in the Convention is needed.

What are the limitations of the Convention?

Limited scope of the Convention

One of the shortcomings of the Dublin Convention lies in the fact that it only contemplates asylum applicants that seek protection under the Geneva Convention of 1951 from a Member State by claiming refugee status. It does not include those persons who seek some kind of temporary or humanitarian status according to national legislation or other international conventions. It has also to be noticed that the applicants frequently do not distinguish clearly between political persecution, within the meaning of Art. 1 of the Geneva Convention and other forms of persecution, like inhuman treatment and torture or risks of violence or civil war. They normally seek protection on whatever grounds it might be granted. This limitation is quite relevant specially when it has been recognised that the number of these kinds of refugees looking for temporary protection is considerable and has risen due to the adoption of the restrictive asylum laws and policies. Anyway, it is clear that Dublin is not applicable in cases where any other form of protection is applied.⁴⁶ Furthermore, it raises some problems concerning the application of the Convention.

The Dublin experience has provided some cases in which an asylum application is withdrawn and replaced by a claim for temporary protection. In these cases does the Convention still apply and should the transfer to the competent State take place? If an asylum applicant withdraws a claim Dublin becomes in principle inapplicable. The Legal Service of the Council gave its opinion of the application of the Dublin Convention in these cases and pointed out that the aim of the Convention is to determine the State responsible for examining applications for asylum.⁴⁷ Thus, it can be assumed that the provisions of the Convention do not apply where an application has been withdrawn, because there is no need to determine the State responsible for examining an application that no longer exists.⁴⁸ It must therefore be concluded that the provisions of the Dublin Convention do not apply in cases where asylum applications are withdrawn, apart from the two cases covered by the Art. 3(7)⁴⁹ and Art. 10(1)(d),⁵⁰ when the applicant lodges a new application in another Member State. Although the Convention applies solely to asylum applicants and not to persons seeking other kinds of protection, there is one exceptional case in which the Convention applies to persons who are not asylum applicants. This is the case of Art. 10(1)(e), which provides that the State responsible

must take back “an alien whose application it has rejected and who is illegally in another Member State”. But that is only the logical consequence of the rejection of the application.⁵¹ From a legal point of view this provision cannot be used as an argument to extend the scope of the Convention. This does not provide any guidance regarding situations in which, before the withdrawal of the asylum application, another Member State has given a positive reply to a request to take over or to take back the applicant.⁵² There is neither a clear solution to cases in which the transfer has taken place before the withdrawal. Therefore guidelines regarding the application of the Convention to asylum applicants who withdraw their claim should be agreed upon.

Lack of substantive and procedural harmonisation

This has been pointed out as one of the most serious issues raised by the Convention. As we mentioned above the responsible Member State is due to examine the asylum application in accordance with its national law and international obligations. As the national legislations of the Member States are not harmonised, this agreement presupposes mutual confidence in each other’s legislation and adjudication processes, which relies on the fact that there is a common framework to the different national laws constituted by the Geneva Convention as amended by the New York Protocol. Indeed, it has been acknowledged that although all Member States apply the same international rules regarding refugees very important divergences persist among them (e.g. agent of persecution, competent authorities, appeal rights). In the absence of harmonisation, the probability of success of a claim varies from Member State to Member State. Applicants seek to apply to the most liberal State which in turn cannot maintain the standards for very long. This situation will eventually result in an undesirable de facto harmonisation according to the lowest standard.

It is true that some progress has been achieved in this respect since the signature of the Dublin Convention. Harmonisation efforts regarding asylum procedural rules were crowned by the adoption of the resolution on manifestly unfounded asylum applications; the resolution on a harmonised approach to questions concerning host third countries; conclusions on countries in which there is generally no serious risk of persecution⁵³ and also the resolution on the minimum guarantees for asylum procedures.⁵⁴ With respect to the harmonisation of substantive law an important breakthrough was achieved by the adoption in March 1996 of a Common Position on the notion of “refugee”. More recently, in May 1998, the Council adopted two joint actions concerning the financing of specific projects to assist displaced persons, asylum seekers and refugees, which is a first small step to bringing reception and integration facilities and practices in the EU Member States closer. Most of these instruments are, however, not legally binding and therefore do not guarantee a substantive or procedural equivalence of the asylum decisions in all the Member States. The Amsterdam Treaty introduced some improvements regarding cooperation in the fields of Justice and Home Affairs and it allows room for expectations towards faster

progress regarding harmonisation of asylum policies and procedures. Asylum, as well as other policies related to the free movement of persons, has been transferred to the First Pillar and the measures to be adopted in this field have been listed in Art. 63 of the TEC, which also states a deadline of five years for its implementation.

Safe third country

The Preamble of the Dublin Convention states that it provides a guarantee for all asylum applicants that their applications will be examined by one of the Member States.⁵⁵ This is not, however, the case as each Member State retains the right to send the applicant to a third State. The Dublin Convention⁵⁶ allows any Member State to send an applicant for asylum to a third State, once a Member State has been assigned the responsibility to process an asylum claim. This possibility has been heavily criticised due to the absence of explicit stated requirements for the Member States to inquire into the conditions in the third country before sending the applicant there. Human rights and other pressure groups have expressed the concern with this situation, which might undermine the objective of reducing the number of refugees in orbit and lead involuntarily to the *refoulement* of an asylum seeker. In combination with the increasing number of readmission agreements signed, this concept represents an attempt to create a buffer zone around Western Europe. This might be a legitimate way of stimulating the creation of reliable systems for refugee protection, which are also financed by the agreements, in neighbouring countries, namely in Central and Eastern Europe. However, it should not be a way for Western Europe to neglect its role in ensuring refugee protection.

In this respect there are court cases, in which asylum seekers have appealed against a transfer decision arguing that the EU Member State responsible for processing their asylum case, would return them to a third country, from where they would risk being sent back to their country of origin and subjected to persecution. Avoiding such persecution being the original reason why applicants sought asylum in a certain Member State. The possibility of appealing against the transfer is not based on the Dublin Convention but on national law, and thus it is not available in all of the Member States. Just to give one example, according to the Finnish Aliens’ Act, applications for asylum are considered manifestly unfounded and are not subject to appeal, if the applicant can be sent to another State which is responsible for examining the application according to the Dublin Convention.⁵⁷

It has been argued that the possibility of appealing against being transferred to the responsible Member State should be granted to asylum seekers, and that the appeal should have a suspensive effect. However, this would not be compatible with the principle that the Dublin Convention is based on mutual trust in Member States’ asylum procedures. Therefore, the solution should be found in a common approach by the European Union Member States towards safe third countries. The harmonised application of the “safe third country” notion, expressed in the 1992 London resolution, is already a step

in that direction. In Paragraph 3(a) it indicates that the Member State in which asylum has been submitted is to examine whether or not the principle of the third country can be applied. The procedures for sending the applicant to the host third country are to be set in motion before considering whether or not to transfer responsibility to another Member State pursuant to the Dublin Convention. This option would, however, create a risk of the passport control authorities in some Member States proceeding to make arrangements for the return of the applicant to a third country before considering the criteria of the Dublin Convention (e.g. Art. 4, the applicant having a family member who is a recognised refugee in another Member State).⁵⁸ This particular problem does not appear in Finland because, according to the Finnish Aliens' Act (Art. 39), whenever an alien applies for asylum in Finland the decision on refusal of entry is always made, not by the passport control authorities, but, by the Directorate of Immigration, i.e. the same authority which is responsible for processing the asylum application and the procedures pursuant to the Dublin Convention. In this context, the relevant Dublin elements of the application are to be processed first in Finland.

In any case Western Europe should preserve its commitment to granting protection and reaffirm its role and responsibility as regards the refugee problem. The removal to a third host country should only take place if it has been established that the receiving country will indeed admit the asylum seeker, will observe the principle of non-*refoulement* and will consider the claim. It should be noted that the Dublin Convention stipulates that the processing of an asylum application by the responsible State should be undertaken in accordance with its obligations under the 1951 Convention.⁵⁹

Judicial control

As with Schengen, the Dublin Convention excludes the jurisdiction of the Court of Justice to ensure uniform interpretation and application of its provisions and to resolve any differences arising between Member States or between individuals and national authorities. The Article 18 Committee (Art. 18) is charged with examining any question regarding the application or interpretation of the Convention at the request of one or more Member States. The Decisions and actions of this Article 18 Committee are also not subject to judicial control by the Court of justice, even though the operative decisions adopted by it may indirectly affect the rights of an individual.

A question also arises about the direct applicability of the Dublin Convention; whether the Dublin Convention does in itself establish individual rights. The Council Secretariat, as mentioned previously has looked at this issue at the request of the Austrian delegation which stated that the Convention is addressed to Member States, i.e. it lays down a procedure between Member States to which the asylum applicant is not a party. Therefore, although the applicant's interests and special links with a particular Member State might be taken into account, no provision entitles an asylum applicant to have his/her application examined by a particular Member State, not

even Arts. 3(4) and 9 requiring the asylum applicant's agreement to apply certain criteria.⁶⁰ Individuals may appeal against a transfer decision according to national laws.⁶¹ However, this possibility of resorting to the national courts, if the possibility is granted by national law (and we have already mentioned cases in which this possibility is granted, in contrast with others when it is not), does not promote uniformity or consistency in the interpretation and application of these provisions.

In the future this situation will change in view of the replacement of the Dublin Convention by a Community instrument as a result of the implementation of the Amsterdam Treaty. This is a necessary and welcome development from the perspective of asylum seekers and refugees but also from the point of view of the administrations in charge, which can rely on a uniform application and interpretation of the instrument in contrast with the enforcement resulting from national case law.

PROBLEMS AND LIMITATIONS

- Completion and development of implementation measures
- Limited scope of the Convention
- Lack of material and procedural harmonisation
- Safe third country
- Judicial control

Conclusions

Though the impact of the Dublin Convention on the refugee problem is not crucial⁶² its importance should not be underestimated. As one can observe from the graphs at the end of this article Dublin does not apply to the vast majority of asylum claims although this statistical data shows that the number is increasing. Nevertheless, it is the first binding instrument in force in the European Union in the field of asylum, confirming the Member States' will to ensure protection for those in need, by sharing the responsibility of examining an asylum application. After being applied for one year, it is quite hard to draw conclusions on its application or on the question of whether it has fulfilled its aims.

Further comparative study is needed on its implementation by the various Member States' administrations and enforcement by national courts. One can, however, attempt to point out the positive aspects of the Convention for the protection of the asylum seekers and also for the administrations in charge of asylum procedures, as well as the negative points.

The Convention is an important instrument for the Member States' authorities in processing asylum applications, by providing legal prerequisites for the exchange of information about applicants. In this respect it certainly contributes to fighting abuses of asylum procedures and situations of multiple asylum applications, even in a preventive way. Moreover, it has established practical cooperation between the administrations in charge and permits an increase in knowledge of others' asylum procedures. The Convention has also brought to light the differences between Member States' policies, procedures and standards which need to be tackled in the future, not only for the sake of the smooth application of

the Convention itself, but, in order to provide the EU with its own answers and strategies to the asylum dilemma.

From the perspective of asylum seekers, the application of the Convention is a challenge both for practitioners and decision-makers as it leaves the door open to a more restrictive or, conversely, a more generous application. In practice, the application by the various Member States differs. Much depends on how it is tackled in practice: for example, concerning the issue of claims of members of the same family or how the concept of the third safe state is applied. Both questions have been handled differently by the Member States. In this respect the timing of the entry into force was important and the climate might even have been somewhat more favourable than in previous years of crisis.

The decrease in the number of asylum claims in almost all European Union Member States does not exclude having goals for hastening asylum applications. In addition, delays and backlogs should be reduced, rejected applicants should be sent back to their home country and abuse should be deterred. These important goals are, however, secondary to the real objectives of asylum, which are to provide protection to the persecuted, to grant asylum seekers an individual examination of their claim, to achieve procedural fairness and to meet humanitarian concerns. We can only hope that these concerns will be reflected in the future development of instruments, guidelines of interpretation and applications, which will ensure an efficient and common approach in the application of the Convention. Some limitations of the Convention will be overcome in the long term. It is still not known when, although a time limit was set by the Amsterdam Treaty, and to what extent the European Court of Justice will be granted jurisdiction regarding the interpretation of disputes arising from the application of the Dublin Convention. The development of binding instruments at the level of the European Union to harmonise procedural and substantive asylum rules has a long way to go, although an important breakthrough was achieved in Amsterdam. Furthermore, a comprehensive European Union strategy in the field of asylum is based on an ideal solution of fighting the root causes. As the Commission suggests in its Communication, true solidarity and burden sharing between the Member States and objective public information will take time to emerge. The Dublin Convention's entry into force, with all its limitations and problems was a welcome first step on the long path the European Union has to take to develop its refugee strategy. This strategy will, as stated by the High Commissioner for Refugees, "reaffirm Europe's leadership and solidarity with the global refugee problem".

RÉSUMÉ

La Convention de Dublin sur l'asile, conclue en 1990 entre 12 Etats membres et à laquelle les nouveaux Etats membres, l'Autriche, la Finlande et la Suède étaient tenus d'adhérer au moment de leur adhésion à l'UE, est entrée en vigueur le 1er septembre 1997. Cette convention fut conçue à une époque de très forte augmentation des demandes d'asile afin de réduire les longs délais dans les

procédures de traitement des demandes d'asile et d'éviter de gaspiller les ressources des Etats membres à cause d'une redondance d'efforts. En outre, elle se voulait une réponse coordonnée aux situations des réfugiés "en orbite" et aux demandes d'asile multiples, qui étaient facilitées par la création du marché intérieur. Dès lors, la Convention de Dublin fixe des critères communs afin de déterminer l'Etat membre qui sera responsable de l'examen d'une demande d'asile. Elle ne visait pas à harmoniser les règles de procédure ou de fond en matière d'asile dans les Etats membres. La Convention de Dublin contient six critères de base classés par ordre hiérarchique, ainsi que des modifications et exceptions qui servent à identifier l'Etat qui sera chargé de l'examen. Ces critères sont les suivants : regroupement familial, visa ou permis de résidence en cours de validité délivré par un Etat membre déterminé, franchissement irrégulier de la frontière d'un Etat membre, responsabilité du contrôle à l'entrée et Etat membre dans lequel la demande est introduite en premier lieu. L'Etat qui est responsable selon les critères de la Convention, examine la demande en vertu de ses lois nationales et de la Convention de Genève de 1951 et son Protocole de 1967. L'Etat membre responsable a l'obligation de conduire la procédure à terme jusqu'à ce qu'une décision définitive ait été rendue et des dispositions sont prévues pour réadmettre le demandeur d'asile dans l'Etat membre responsable s'il se trouve sur le territoire d'un autre Etat membre.

Bien que la Convention de Dublin n'ait pas un impact vital sur le problème des réfugiés, il ne faut cependant pas sous-estimer son importance. Il s'agit en effet du premier instrument contraignant en vigueur dans l'Union européenne dans le domaine de l'asile, confirmant ainsi la volonté des Etats membres d'assurer la protection des personnes concernées au moyen d'un partage de la responsabilité du traitement de la demande d'asile. Un an à peine après son entrée en vigueur, il est difficile de tirer des conclusions sur ses applications ou de répondre à la question de savoir si elle a atteint ses objectifs. Il faudrait pour cela une étude comparative approfondie sur sa mise en oeuvre par les différentes administrations des Etats membres et sur son interprétation et son contrôle par les juridictions nationales. On peut, toutefois, tenter de déceler les problèmes d'application et les limites de la Convention, en mettant en évidence les autres instruments et lignes de conduite en matière d'interprétation et d'application qui sont nécessaires pour en améliorer le fonctionnement.

La Convention représente un important instrument au service des autorités des Etats membres pour instruire les demandes d'asile, dès lors qu'elle pose le cadre juridique requis pour un échange d'informations sur les demandeurs d'asile et, sous cet angle, elle contribue certainement à lutter contre les abus en matière de procédure d'asile ainsi que contre les situations de demandes multiples, et ce même à titre préventif. En outre, elle instaure une coopération pratique entre les administrations compétentes et permet d'accroître les connaissances des procédures d'asile de chacun. Du point de vue de la protection des demandeurs d'asile, la Convention laisse une certaine marge de manoeuvre, du

moins pour l'instant, pour une application plus généreuse ou plus restrictive, selon le cas, et l'on rencontre dans la pratique des exemples de ces deux approches. La Convention a aussi mis au jour les différences entre les politiques, les procédures et normes des Etats membres qu'il faudra résoudre à l'avenir, non seulement pour une application harmonieuse de la Convention, mais aussi pour tenter d'esquisser les réponses et stratégies de l'Union européenne face au dilemme de l'asile.

NOTES

- ¹ See for a discussion on the real and perceived threats posed by immigration into Western Europe, Sarah Collinson, *Beyond Borders: West European Migration Policy Towards the 21st Century*, (London: Royal Institute of International Affairs, 1993).
- ² Denmark signed and ratified the Dublin Convention in the following year.
- ³ The Preamble of the Dublin Convention mentions the objectives of avoiding situations of "refugees in orbit" – in which the applicants for asylum are left in doubt for too long as regards the likely outcome of their applications – and of ensuring that applicants are not referred successively from one Member State to another without any of these States acknowledging themselves to be the competent authority to examine the asylum application. The preamble is mute, however, in relation to the problem of so-called "asylum shopping".
- ⁴ The Schengen Agreement was signed in 1985 by Germany, France and the Benelux countries and was intended to allow for the removal of internal border controls among its signatories. The Schengen Implementation Convention (SIA) was signed in 19 June 1990. It contains, not only provisions on asylum, but also on the control of external borders, visas, police and judicial cooperation and the setting up of an information system.
- ⁵ The ratification process was delayed in some of the Member States. In the Netherlands the delay was due to discussions on the competence of the Court of Justice. Eventually, the initial demand by the Dutch First Chamber to attribute competence to the Court of Justice (which would have required that all the other EU Member States ratify an additional protocol) was replaced by an alternative solution, that of adding a unilateral declaration which states that any decision of the Committee charged to supervise the implementation of the Dublin Convention, has no binding effect on the Dutch Courts. Ireland, ironically, was the last country to ratify the Convention. An Asylum Bill and its implementation regulations had first to be approved.
- ⁶ Title II, Chapter 7, Arts. 28-38 of the Schengen Implementation Convention
- ⁷ Johannes van der Klaauw, The Dublin Convention: a difficult start, paper presented at the 6th colloquium 'Schengen's Final Days? Incorporation in the New TEU, External Borders and Information Systems (EIPA, Maastricht 5-6 February 1998), p. 2.
- ⁸ Communication from the Commission, towards an area of Freedom, Security and Justice, COM (1998) 459 final, Brussels, 14.07.1998.
- ⁹ On the basis of Art. 3(1), every asylum seeker is assured that his/her application will be examined by one of the Member States. As will be pointed out later, this might not always be the case as each Member State retains the right to send the applicant to a third State.
- ¹⁰ Art. 4.
- ¹¹ Art. 5.

- ¹² Art. 6.
- ¹³ Art. 7.
- ¹⁴ Art. 8.
- ¹⁵ Position defended by the European Parliament, Resolution on the Right of Asylum, O.J. of the European Communities No. C 99 of the 12 March 1987, and Resolution of 15 March 1990.
- ¹⁶ This is stated explicitly in Dublin Art. 3(5) and Schengen Art. 29(2).
- ¹⁷ See for example Van der Klaauw (1998), p. 5.
- ¹⁸ O.J. 1997 L 281/1 of 14 October 1997.
- ¹⁹ The Spanish Presidency of the Schengen Group drafted a comparative analysis of the two texts back in 1992.
- ²⁰ The United Kingdom and Ireland have not joined the Schengen Group, wishing to maintain border controls. In Greece provisions relating to the lifting of land border controls have not yet been implemented, and in the Nordic countries a number of technical arrangements need to be made, such as the implementation of external border control measures in airports, or participation in the Schengen Information System. The Nordic countries include EU Member States (Denmark, Finland, Sweden) and non-EU Member States (Norway, Iceland). Those countries established an area of freedom of movement within the Nordic Passport Union back in 1957 and agreed to implement the provisions of the Schengen Agreement on 19 December 1996 in order to preserve the integrity of the Nordic Passport Union. See, for example, Lars Bay Larsen, *Schengen, the Third Pillar and Nordic Cooperation*; in Monica den Boer (ed.) *The Implementation of Schengen, First the Widening, Now the Deepening*, (Maastricht: European Institute of Public Administration, 1997), pp.17-23.
- ²¹ As pointed out by Roel Fernhout, Schengen and the Internal Market: An Area Without Internal Frontiers – Also Without Refugees?, *The International Spectator*, (November 1990), p. 687.
- ²² Art. 3(4) and Art. 29(4).
- ²³ These differences have no practical consequences as the coexistence of both Conventions was excluded by means of the Bonn Protocol, which established the replacement of the Schengen provisions on asylum, by the Dublin Convention. This was foreseen in the Schengen Convention itself, Art. 134. Schengen fulfilled its aim in being a laboratory for the European Union. The question which remains concerns the incorporation of the Schengen *acquis* regarding asylum in the framework of the EU.
- ²⁴ Furthermore, a text was adopted on the way in which means of proof are used in the framework of the Convention, i.e., on the calculation of periods of time; providing a flow chart on the distribution of responsibility; conclusions on the transfer of the asylum applicants; the form of a *laissez passer* for the transfer of applicants. All these texts are available in: *Compilation of texts on European Practice with respect to asylum*, O.J. C 274, 19 September 1996, which were partially replaced and adapted by decisions of the Article 18 Committee mentioned next.
- ²⁵ Decisions No. 1/97 and No. 2/97 of the Article 18 Committee concerning provisions for the implementation of the Dublin Convention, 9 September 1997, O.J. L 281/1, 14 October 1997; Decision No. 1/98 of the Article 18 Committee, 2410/3/98 rev. 3.
- ²⁶ The problematic issues regarding the establishment of this convention concern whether there is an obligation or not to take the fingerprints of asylum seekers and the extension of the system to the collection of fingerprints of illegal immigrants. Other problems relate to questions of whether Community management and funding would be agreed upon, the role of the Court of Justice, provisions regarding protection of personal data and the right of access to documents by the persons concerned.

²⁷ Igel vs. France, Administrative Court Strasbourg, 3 April 1995 and Ciuciu vs. France, Administrative Court Lyon, 5 April 1995.

²⁸ Decisions No. 1/97, No. 2/97 and No. 1/98.

²⁹ Agence Europe, 21 March 1998 and 30 May 1998.

³⁰ Art. 11 (4) of the Dublin Convention.

³¹ “The Member State which is requested ... should make every effort to reply to the request within a period not exceeding one month”, Art. 4 (1) of Decision 1/97. The possibility of fixing the delay of one month as maximum time limit is under consideration.

³² Art. 28 of the decision 1/97 and Art. 15 of the Dublin Convention.

³³ Migration News Sheet, November 1996.

³⁴ Draft reply to questions put by the Austrian delegation in compilation of texts on European practice with respect to asylum.

³⁵ Van der Klaauw (1998) p. 6.

³⁶ See UNHCR Handbook on Procedures and Criteria for Determining Refugee Status, paragraph 185 and Van der Klaauw (1998) p. 5.

³⁷ Art. 3(4).

³⁸ This clause was introduced to respect the Member States constitutional obligations related to the right of asylum.

³⁹ Art. 29(4) of the Schengen Implementation Convention.

⁴⁰ Art. 3(4).

⁴¹ Accelerated procedures are applied according to Member States’ legislation, for example, in cases when asylum seekers destroy or withhold documentation without a reasonable excuse.

⁴² Van der Klaauw (1998) p. 4.

⁴³ Hailbronner, Kay, The Schengen II/Dublin Rules on Asylum Problems and Prospects, paper presented in the 5th colloquium “Schengen, Policy Coordination and Judicial Cooperation” (EIPA, Maastricht, 23-24 January 1997), p. 7.

⁴⁴ The Dublin Convention entered into force on 10 January 1997 in relation to Austria and Sweden and 1 January 1998 in relation to Finland.

⁴⁵ Hailbronner (1997), p. 7.

⁴⁶ It is a matter of national law and bilateral agreements whether a humanitarian refugee seeking protection can be returned or deported to another Member State or to a Third State. For example, between Nordic countries the Nordic Passport Union can be applied. It stipulates the conditions when a person who has illegally entered one Nordic country from another can be returned or deported within the Nordic countries.

⁴⁷ The Legal Service of the Council has given its opinion on the application of the Dublin Convention in cases where asylum applications are withdrawn, see O.J. No. C 254, 19 August 1997 (13304/97 ASIM 246).

⁴⁸ Ibidem.

⁴⁹ Art. 3(7) of the Dublin Convention provides that: “An applicant for asylum who is present in another Member State and lodges an application for asylum there after withdrawing his/her application during the process of determining the State responsible shall be taken back, under the conditions laid down in Art. 13, by the Member State with which that application for asylum was initially lodged, with a view to completing the process of determining the State responsible for examining the application for asylum.”

⁵⁰ Art. 10(1)(d) refers to: “an applicant who has withdrawn the application under examination and lodged an application in another Member State”.

⁵¹ See Art. 10(4) of the Convention, which reads: “The obligations specified in paragraph 1, points (d) and (e) shall cease to apply if the State responsible for examining the application for asylum, following the withdrawal or rejection of the application, takes and enforces the necessary measures for the alien to return to his/her country of origin or to another

country which he/she may lawfully enter”.

⁵² Academics have argued that the withdrawal, or change, of arguments in those cases does not prevent a transfer of responsibility which has already taken place (either in cases where the transfer of the asylum seeker has not yet been carried out or in cases where the applicant is already in the country accepting responsibility). See, Kay Hailbronner (1997), p. 11.

⁵³ In London, 30 November and 1 December 1992.

⁵⁴ Adopted in June 1995.

⁵⁵ See also Art. 3(1) of the Convention, which reads: “Member States undertake to examine the application of any alien who applies at the border or in their territory to any one of them for asylum.”

⁵⁶ Art. 3(5).

⁵⁷ Arts. 34 and 34 a (19.12.1997/1269) of the Finnish Aliens Act. However, the administrative decision (the rejection of the asylum application, the application for a residence permit attached to it, and the decision to refuse entry, which are all made at the same time) by the Finnish Directorate of Immigration, is submitted to the District Administrative Court of the province of Uusimaa, and the asylum applicant has an opportunity to be heard, as regards of refusal of entry, before the decision is submitted to the Court.

⁵⁸ Van der Klaauw (1998), p. 7.

⁵⁹ It has been argued that the Geneva Convention is violated if not in substance at least in its spirit by permitting a return to a third State, which may not provide sufficient access to asylum procedures.

⁶⁰ As was pointed out, it will be for the national courts to have a final word on whether the Dublin Convention creates individual rights beyond those determined by national laws: Kay Hailbronner (1997), p. 16.

⁶¹ Art. 11(5).

⁶² The impact of the Schengen provisions was also limited and it did not apply to the large majority of the asylum claims submitted in the European Union.

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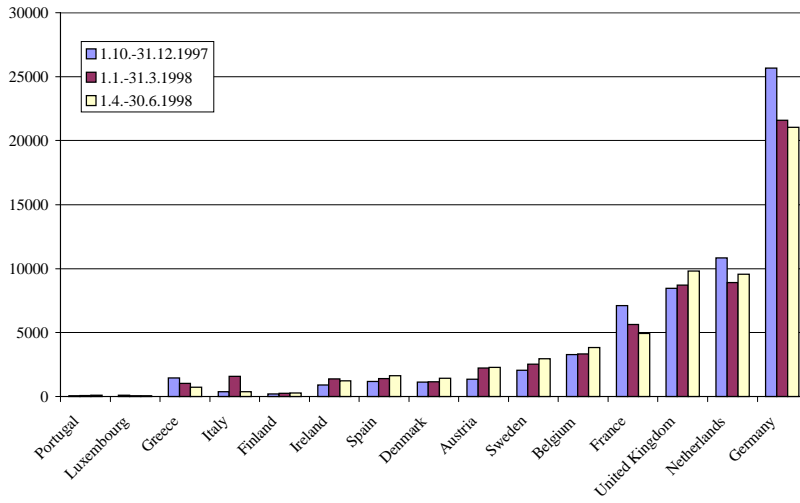
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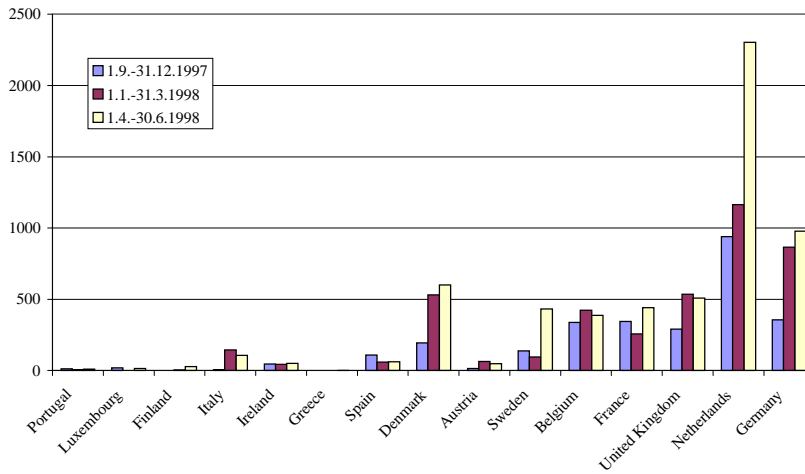
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**Statistical data on the total number of asylum applications
in the EU Member States**



Statistical data on the application of the Dublin Convention

Total number of transfer requests (of persons) submitted by a given Member State to the other Member States



Statistical data on the application of the Dublin Convention:

Total number of transfer requests submitted by Member States to a given country

