

The Dublin Procedure

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Abstract: From its beginning, the European Union was concerned about the refugee problem and, therefore, asylum seekers. According to the current legislation it is confirmed the fact that EU wants a common asylum system respecting the 1951 Geneva Convention on refugees status and the New York Protocol of 1967. By establishing the state responsible for examining the asylum application, it prevents the person to "choose" one country to properly examine an application for determining a form of protection. The Dublin Convention, founded the principle of responsibility of examining the asylum application by one member of the European Union, establishes the responsible state and under which conditions. "Eurodac" System is intended to enable implementation of the Dublin Convention. Member States have implemented these rules in their national policies, thereby attempting to control also the immigration phenomenon.

Keywords: Dublin Convention; immigration phenomenon; European asylum system

1. Introduction

Important by its significance in contemporary society, migration refers to the legal status of foreigners and refugees. The policies of justice, freedom and security, the European Union has stressed the relevance of the measures taken regarding border control, asylum and migration, preventing and combating crime in the context of human rights and fundamental freedoms.

Progressive creation of an area without internal frontiers in which free movement of persons is ensured in accordance with the Treaty regarding the European Community and establishing community policies regarding the conditions of entry and residence of third country nationals, including joint efforts to manage external borders have resulted inevitably in increased movement of asylum seekers from third countries from Member States of the European Community. One of the objectives of the European Union is to develop a common asylum policy, including a common European asylum system.

The principle of responsibility of examining an application for asylum by a single Member State of the Union has been the object of stipulations in Dublin Convention¹ of June 15, 1990 and in the Council Regulation EC no. 2725/2000 of 11 December 2000 regarding the establishment of "Eurodac"² to compare fingerprints for the practical application of the Convention. On February 18,

¹The implementation of the Dublin Convention of 1990 has stimulated the harmonization process of the asylum policies.

²Database for comparing digital fingerprints for the effective application of Regulation 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one Member State by nationals of third countries or a stateless person.

2003 Convention was replaced by Council Regulation EC no. 343/2003¹ regarding the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in a Member State by a citizen of a third country².

Member States examine the request of a citizen of a third country which apply to their borders or territory to any one of the asylum forms³. Finally, the application will be examined by a single Member State.

2. How to Establish the Member State Responsible for Examining an Asylum Application

The procedure for determining the Member State responsible for examining an asylum application lodged by a citizen of a third State in a country member of the EU has the main objective to determinate a single Member State responsible for examining an asylum application lodged in one Member States⁴.

However, the active regulations in the EU speak about the possibility of each Member State to examine an application for asylum lodged by a citizen of a third country, even if such examination is not its responsibility. In this case, the Member State shall become the Member State responsible and will assume the obligations associated with this responsibility. It shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been asked to assume responsibility and take back the applicant⁵. In conclusion, any Member State reserves the right, following its national laws, to send an asylum seeker to a third country, respecting the stipulations of the Geneva Convention regarding Refugees and the Protocol from New York.

Regulation 343/2003 also states what will happen if the asylum application is lodged with the competent authorities of a Member State by an applicant who is in another Member State, determining the Member State responsible shall be made by the Member State on whose territory the applicant is present⁶. The second Member State shall be informed, without delay, by the Member State which received the request that he is considered the Member State applied for asylum. The applicant is informed in writing of this transfer and the date on which it is to be done.

¹ Necessary measures to implement this Regulation should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 which outlines procedures for the exercise of implementing powers conferred on the Commission.

² In applying this regulation it was approved the Commission Regulation EC no. 1560/2003 of 2 February 2003.

³ Law 122/2006 - on asylum in Romania covers, in art. 22, the forms of protection that can be recognized to the asylum seekers.

⁴ For example, a citizen of a third country applies for asylum for the first time in Greece. The application is reviewed by the Greek authorities, and during the processing of the application this citizen leaves unlawfully the Greek territory and reaches Austria. This person also applies for asylum in Austria. At this time this person appears with a request for asylum lodged in Greece but also in Austria. Given that the application for asylum lodged in Greece was the first application filed in Member States, Greece will be the Member State that will analyse the request for asylum lodged by third-country national in Austria. Therefore, that citizen will be transferred to Greece.

⁵ The decision of the responsible authorities in each Member State will be conunicated in writing to the applicant for asylum in a language that is assumed, reasonably, that he knows. The procedure for determining the responsible Member State starts in the moment of submission, by the applicant, of the application for asylum in a Member State.

⁶ However there are countries which foresee in their internal law the obligation of the asylum seeker to personally apply for asylum, for example the case of Romania.

Taken back an asylum seeker will be done if the application contains information enabling the requested Member State to verify that it is responsible. The Member State required to take back the applicant is obliged to make the necessary checks and to answer the demand as soon as possible and not exceed, in any form, the period of one month since mentioning¹. When the requested Member State does not communicate its decision within that period, it is considered to have agreed to take back the asylum seeker.

A Member State which agrees to take back an asylum seeker will be required to allow him to re-entry its territory. The transfer will be made in accordance with national law of the requesting State, after consultation with the Member State concerned, as soon as practicable, and no later than six months from acceptance of the taking over request of another Member State or from the decision on an appeal or review when there is a suspensive effect².

Requested Member State shall notify the applicant of the decision on being received back by the responsible Member State. The decision contains details about the deadline of the transfer. This decision can be appealed and may be revised. Appealing or reviewing this decision does not suspend the transfer except when courts or competent bodies decide so, in a case where national law permits³. If necessary, the asylum seeker shall be supplied by the Member State requesting a permit transfer. The responsible Member State shall inform the requesting Member State of the safe arrival of the asylum seeker or the fact that he didn't come in the time limit.

When the asylum seeker is an unaccompanied minor, the Member State responsible for examining the application shall be that State where a member of his family has legal residence, provided that it is in the best interests of the child. In the absence of a family member, the Member State responsible for examining the application shall be the State where the minor has applied for asylum. If the asylum seeker has a family member who has been allowed to live as a refugee in a Member State, that Member State will be responsible for examining the asylum application, as long as the person concerned desire so.

When the asylum seeker is in possession of a valid residence document, the Member State which issued the document is responsible for examining an asylum application. When the asylum seeker is in possession of a valid visa, the Member State who issued the visa is responsible for examining an asylum application, except when the visa was issued for or acting under written authorization from another Member State. In this case the Member State which gave the authorisation is responsible for examining an asylum application.

There may be situations where the asylum seeker is in possession of one or more valid residence document or visas issued by different Member States, responsibility for examining an asylum application will be undertaken by Member States in the following order: the first Member State will be which issued the residence document conferring the longest period of residence or, when the periods are equal, the Member State which issued the residence document with the latest expiration date; or

¹ When the application is based on data obtained from the Eurodac system, the time limit reduces to two weeks.

² When the transfer is not made within 6 months, the responsibility lies with the Member State which first made the request. This deadline may be extended within a year if the transfer could not be performed because of detention of the asylum seekers in prison or up to 18 months if the asylum seeker absconds the procedure.

³ The new amendment to Law 122/2006 - the law on asylum in Romania, establishes that the transfer is suspended until the statutory period for filing a complaint. By the Constitutional Court Decision no. 604 of 20.05.2008, published in the Official Gazette of Romania, Part I, no. 469 of June 25, 2008, was found unconstitutional stipulations of art. 121 paragraph 1 of the above mentioned law.

the Member State which issued the visa with the latest expiry date when the various visas are of the same type.

Even if the residence document or visa had been issued based on false identity or on submission of false documents, falsified or not valid will not prevent responsibility being allocated to the Member State which issued them. However, the Member State which issued the residence document or visa shall not be responsible if it can be shown that fraud was committed after the document or visa had been issued¹.

There may be situations where a citizen of a third country entering the territory of a Member State which does not require entry visas², that Member State is responsible for examining his application for asylum. When an application for asylum is made in an international transit zone, at an airport, in a Member State by a citizen of a third country, that Member State is responsible for examining the application.

3. Assuming or Taking Back Asylum Seekers

When a Member State, in which an asylum application was applied, considers that another Member State is responsible for examining the application it may call upon the other Member State to deal with the applicant. When an application to deal with an applicant is not made within three months, the responsibility for examining that asylum application will return to the Member State applied for. Requested Member State may require an urgent reply in case when the asylum application was lodged after the permission to enter or remain has been refused, after an arrest or an illegal residence, or after the implementation of a removal order and / or when the applicant asylum seeker is held in detention. The application shall state the reasons for an urgent reply and the period of time while a response is expected, period that can not be less than a week³.

In the procedure for determining the Member State responsible for examining an asylum application there are used evidence and circumstantial evidence⁴. Evidence refers to proof which determines responsibility as long as it is not refuted by proof to the contrary. Member States will make available models of different types of administrative documents. Circumstantial evidence refers to indicative elements which, when denied, may be sufficient in some cases, in accordance with their probative value.

When the Member State who informs called for stepping up, the Member State informed shall make every effort to comply with the time limit requested. In exceptional cases, when it can be demonstrated

¹ When is determined, on the basis of proof or circumstantial evidence as described in the two lists mentioned in art. 18. 3, including the data referred to in Chapter III of the EC Regulation no. 2725/2000, that an asylum seeker has illegally crossed the border into a Member State by land, sea or air coming from a third country, the Member State where they entered shall be responsible for examining the asylum application. This responsibility shall cease 12 months from the date of the occurrence of crossing the border illegally.

² To see in this regard Council Regulation EC no. 539/2001 of 15 March 2001 establishing a list of third countries whose nationals must have visas when crossing the external borders and the list of third countries whose nationals are excepted from this requirement

³ In both cases, the application for taking back by another Member State is prepared using a standard form and includes proof or evidence of fact and / or relevant elements of the asylum seeker's statement, enabling the requested Member State authorities to verify whether he is responsible based on the criteria presented.

⁴ If there is no formal proof, the requested Member State shall assume responsibility only if circumstantial evidence is coherent, verifiable and sufficiently detailed to establish responsibility.

that examining the application is complex, the Member State informed may give the answer after the deadline indicated, but in any case by not more than a month¹.

When the Member State accepts that it has to deal with the applicant, the Member State in which asylum application was lodged shall notify the applicant about the decision of not to examine the application and about the obligation to transfer the applicant to the Member State responsible².

4. Administrative Cooperation

Article 21 of Regulation 343/2003 provides that "each Member State shall communicate to any Member State which so requests, appropriate personal data on asylum seeker, relevant and not excessive, for determining the Member State responsible for examining the asylum application, for examining an asylum application and for implementing any obligation arising from regulation".

Besides, if necessary for examining an asylum application, the responsible Member State may request another Member State to inform it about the grounds on which the applicant based his application for asylum and, if applicable, the reasons for any decision taken on regarding the applicant. The Member State may refuse to respond to the request received, whether the communication of information is likely to endanger the essential interests of the Member State or the protection of fundamental rights and freedoms of the person concerned or others. In any case, the information requested will be subject to written approval of the applicant for asylum.

The exchange of information is performed at the request of a Member State and it only takes place between authorities whose delegation by each Member State has been communicated to the Commission³, which will inform the other Member State. The exchange of information may be used only for purposes expressly provided by law. In each Member State, such information, according to the type and the powers of the authorities receiving them, can be communicated to the authorities, courts or tribunals charged with determining the Member State responsible for examining an asylum application.

Asylum seeker has the right to be informed, upon request, of any data that is processed in connection with him. If he believes that the information was processed by violating Regulation 343/2003 of the European Council of 18 February 2003 concerning the criteria and mechanisms for determining the Member State responsible for examining applications lodged in one Member State by a citizen of a third country, or Directive 95/46/EC of the European Parliament and of the Council from 24 October 1995 regarding the protection of individuals with regard to processing personal data and the free

¹ Failure to act within the period of two months and the mentioned one-month period is considered acceptance of the application, and requires an obligation to deal with the persons, including arrangements for arrival.

² The transfer of the applicant from the Member State in which his application for asylum was applied to the responsible Member State is made under national law of the first Member State, after consultations between the two Member States concerned, as soon as possible, not later than six months from the acceptance of the application to deal with the applicant or from the decision of an appeal or review when they suspend.

³ Member States shall notify to the Committee the responsible authorities and ensures that these authorities have the necessary resources to fulfill their duties and in particular for the deadline response indicated for information applications, assuming applications and requests to take back asylum seekers.

movement of such data, especially because it is incomplete or inaccurate, he is entitled that this data is corrected, to be removed or to be blocked¹.

Member States are allowed, on a bilateral basis, to establish administrative arrangements between themselves concerning the practical details. Such arrangements may relate to: the exchange of liaison officers or simplifying procedures and shortening the deadlines for submitting and reviewing requests to take charge or take back asylum seekers².

5. European System of Automatic Fingerprint Identification: Eurodac

Eurodac is an established information system in order to identify the Member State responsible for examining an asylum application lodged in the European Union to speed up the asylum process³. Eurodac system enables Member States to identify asylum seekers and people who have crossed illegally an external border of the Community. By comparing fingerprints Member States can determine whether an asylum seeker or a foreign national, who is illegally in a Member State, has previously lodged an application for asylum in another Member State. In addition, the possibility to check if an applicant has presented a claim for asylum in another Member State, serve to avoid making applications in other member states as a result of a rejected request from another Member State - the so-called phenomenon “asylum shopping”.

European Automatic Fingerprint Identification System Eurodac⁴ was released on January 15, 2003 in European Union member states⁵ but also in Norway and Iceland. The system allows comparison of fingerprints of asylum seekers and certain groups of illegal immigrants to determine the State responsible for processing the asylum application.

In accordance with the Eurodac Regulation, all asylum seekers over 14 years of age must be fingerprinted when submitting the application. Fingerprints are then transmitted digitally to the Eurodac Central Unit, which is established within the European Commission. The system compares the fingerprint with those already stored in the database, allowing authorities to determine whether the applicant has presented a claim in another Member State or whether he entered the EU territory without the necessary documents.

This database was created to develop a common European policy at the asylum level. This system usually identifies as processor of the asylum application the State responsible for the entry or the residence of the asylum seeker. That Member State is responsible for examining the application in accordance with its national law and is obliged to take over the asylum seekers of which are responsible and which are unlawfully in another Member State⁶.

¹ Authority which correct, delete or block data shall inform, as appropriate, the Member State which receives or transmits the information.

² Arrangements will be communicated to the Commission. The Commission verify if the arrangements are in accordance with the Regulation 343/2003.

³ EC Regulation no. 2725/2000 of 11 December 2000 regarding the establishment of Eurodac sistem for the comparison of digital fingerprints. Implementing rules for Eurodac are laid down in the Regulation EC no. 407/2002 of 28 February 2002. Eurodac works from January 2003.

⁴ Eurodac is an EU database that contains fingerprints of asylum seekers and illegal immigrants, and its role is to help establish the EU Member State responsible for examining an asylum application.

⁵ This system is not applicable in Denmark.

⁶ To see: www.europa.eu.int and www.EUobserver.com.

6. Conclusions

Materialising the common European market and travel facilities related to it, have led, in the last years, to an increasing movement of asylum seekers from third countries in the Member States of the European Community. As a result, it has appeared the possibility for the asylum seekers to start simultaneously or consecutively, the specific procedure for asylum in several Member States or to become, on the Community territory so-called "refugees on orbit", because no Member State is considered responsible for examining the asylum application.

One of the objectives of the European Union is to develop a common asylum policy, including a common European asylum system.

Member States shall examine the request of a citizen of a third country which applies to their borders or territory to any one of the asylum forms, the application being examined, finally, by just one Member State.

EU regulations on this issue speak of the possibility of each Member State to examine an application for asylum lodged by a citizen of a third country, even if such examination is not its responsibility. In this case, the State will become the responsible Member State and will assume the obligations associated with this responsibility. Any Member State reserves the right to send an asylum seeker to a third country, respecting the stipulations of the 1951 Geneva Convention on Refugees and of the Protocol from New York in 1967.

For proper functioning of the process of determining the Member State responsible for examining an asylum application, the exchange of information between countries is essential. This exchange is performed at the request of a Member State and takes place only between authorities whose delegation by each Member State has been communicated to the Commission, which will inform the other Member State. In each Member State, such information, according to their type and the power of the authorities receiving them, can be communicated to the authorities, courts or tribunals charged with determining the Member State responsible for examining an asylum application.

European Automatic Fingerprint Identification System Eurodac was released on January 15, 2003 in European Union member states but also in Norway and Iceland. The system allows comparison of fingerprints of asylum seekers and certain groups of illegal immigrants to determine the State responsible for processing the asylum application.

7. References

Council Regulation EC no. 539/2001 of 15 March 2001 establishing a list of third countries whose nationals must have visas when crossing the external borders and the list of third countries whose nationals are accepted from this requirement.

Council Regulation EC no. 343/2003 of 18 February 2003 establishing criteria and mechanisms for determining the Member State responsible for examining applications lodged in one Member State by a citizen of a third country.

EC Regulation no. 2725/2000 of 11 December 2000 regarding the establishment of Eurodac sistem for the comparison of digital fingerprints.

Concil Decision 1999/468/EC of 28 June 1999 which outlines the procedures for the exercise of implementing powers conferred on the Commission.

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