PROTECTION INTERRUPTED

THE DUBLIN REGULATION’S IMPACT ON
ASYLUM SEEKERS’ PROTECTION
(The DIASP project)
Cover photo: The Hangar Open Centre Hal-Far, in Malta. People sent back to Malta via Dublin procedures are often returned here to this ‘container village’.
© JRS EUROPE/JRS MALTA

PROTECTION INTERRUPTED

THE DUBLIN REGULATION’S IMPACT ON ASYLUM SEEKERS’ PROTECTION
(The DIASP project)

The DIASP project was coordinated by JRS Europe in partnership with:

JRS Belgium
Forum réfugiés (France)
JRS Germany
Halina Niec Legal Aid Centre (Poland)
Hungarian Helsinki Committee
JRS Italy
JRS Malta
JRS Romania
JRS Sweden
JRS United Kingdom

Published in June 2013
Author of national report: Nicolette Busuttil
Principal author/editor: Philip Amaral, JRS Europe
Cover designer: Simona Zucca

The Jesuit Refugee Service (JRS) is an international Catholic organisation established in 1980 by Fr Pedro Arrupe SJ. Its mission is to accompany, serve and defend the cause of forcibly displaced people.
INTRODUCTION

This report was prepared by JRS Malta as part of the DIASP project. The objective of this project, coordinated by JRS Europe, was to study the level of fundamental rights protection asylum seekers have access to under the Dublin Regulation and to examine the implementation of the Regulation at national level. This took place through listening to migrants who have experienced Dublin procedures, by obtaining information from the authorities involved in implementation at national level and from practitioners at JRS Malta engaged in providing legal and psychosocial assistance to migrants within Dublin procedures.

As part of this project, research was conducted in 10 EU Member States. The outcome of this project was ‘Protection Interrupted’ – a European wide report, incorporating national reports from 10 Member States, a comparative analysis of the results obtained through the research conducted and recommendations for improved practices and procedures with proper guarantees of protection.

The national report presents the results of the research conducted in Malta. The first part of the report outlines the law and practice relating to the implementation of the Dublin Regulation at national level by outlining and examining the procedure through which migrants are transferred to and from other EU Member States, in terms of the Regulation. The second part of the report outlines the experience of migrants, who had, at one point or another, been subject to the terms of the Regulation. The report then analyses the data findings and contains recommendations for improved practices and procedures with proper guarantees of protection, at national level.

Methodology

Research was conducted by project partners according to a common methodology, consisting of a mixed qualitative and quantitative questionnaire, used to interview migrants subject to Dublin procedures, and through meetings with national authorities involved in the operation of the Dublin procedure at a local level. The questionnaire used to interview the migrants was divided into two sub-categories with a questionnaire targeting persons who were awaiting transfer (transferees) and another questionnaire specifically for persons who had been returned (returnees).

Partners were instructed to carry out between thirty and forty interviews with a mixture of returnees and transferees at different stages of the Dublin procedures, where possible. Partners were also instructed that in cases where the Dublin procedure had already been concluded, the interviewing pool was to include only those in respect of whom the procedure had been concluded within established time-frames.

In Malta, interviews were carried out with 23 migrants who had been returned to Malta from other Member States. One of these interviews was considered as not falling within the criteria for the project and was not used to compile the data findings. No interviews were carried out with migrants awaiting transfer to another Member State. This is due, in part, to the low number of migrants in respect of whom a request may be made to another Member State to take charge. In 2012, 15 such transfer requests were made as opposed to the 186 individuals who were actually transferred to Malta from other Member States. Moreover, the few individuals JRS Malta was in contact with who were pending the determination of an outgoing request were unwilling to be interviewed. All information regarding transferees contained in this report was provided by national authorities and professionals providing them with services.

The interviewee sample included beneficiaries of international protection who had nonetheless been returned in terms of the Dublin Regulation. Of the 22 interviewees whose data was taken into consideration, 12 were beneficiaries of

---

1 Dublin’s Impact on Asylum Seekers’ Protection.
2 JRS Malta is the only NGO providing these services to migrants in detention, in addition to providing services to migrants in the community.
3 The research was also conducted in the following Member States: Belgium, France, Germany, Hungary, Italy, Poland, Romania, Sweden and the United Kingdom.
subsidiary protection, 5 were asylum seekers awaiting a final determination of their application and another 5 were failed asylum seekers, whose application had already been finally determined.

Data was collected from both men and women, all of adult age. Migrants eligible to be interviewed were selected from among migrants in detention, from among those who were receiving a service, or who requested a service, from JRS Malta, and from among contacts which JRS Malta has with the local migrant community. We did not invite migrants who we deemed unfit to be interviewed as a consequence of physical or mental health problems to be part of this study. Their needs are therefore not reflected in the project findings.

Of the 23 people interviewed, 17 were male and 6 were female. Interviewees hailed from 6 different African countries: Eritrea, Somalia, Ethiopia, Nigeria, Guinea and Ivory Coast. The average age of interviewees was 30 years, with the youngest interviewee being 21 years old and the oldest being 47 years old. The composition of the interviewing sample reflects the nature of the migrant population in Malta, in terms of age, gender and nationality/ethnicity.

Migrant interviews took place at the JRS Malta office, in Birkirkara, with the exception of two interviews which took place with two migrants detained in B Block, Safi Barracks. As a number of respondents could not speak English, cultural mediators provided interpreting services and facilitated communication. The interviewees’ consent to participate in the project and for the use of a particular interpreter was always requested at the beginning of the interview. The data collected was recorded on the questionnaires themselves. No recording equipment was used.

The second part of the project focused on data collection regarding the workings of the Dublin procedure as employed in the national context. Meetings were held with national authorities who are in charge of the Dublin procedure as well as with those authorities who come into contact with migrants who have been through the procedure. Three meetings were set. The first of the three interviews took place with the Refugee Commissioner, who, in addition to being the entity authorised to receive and examine applications for international protection, is the designated head of the local Dublin Unit. The Chief Executive Officer of the Agency for the Welfare of Asylum Seekers [AWAS] was also interviewed with a view to obtaining information about the social situation, entitlements and practice relating to those migrants who fall under Dublin procedures. The third and final interview took place with the Immigration Police who are entrusted with operating the Dublin procedure; in practice they are responsible for filing and answering inter-state requests pertaining to the Regulation and for eventual migrant transfers.

**MEMBER STATE PRACTICES**


There is no specific legislative instrument which transposes the provisions of the Dublin II Regulation into national legislation. The procedure relating to the transfers of asylum seekers in terms of the Regulation is an administrative procedure, with reference to the text of the Regulation itself. The Refugee Commissioner is the designated head of the Dublin Unit with the Immigration Police implementing the procedure in practice. It is to be noted that the number of people assigned to work in these departments is very small and during the interview both agencies raised the issue of the lack of resources made available to fulfil the tasks entrusted to them.

All migrants apprehended for irregular entry and stay, or refused admission into Malta, are immediately taken into the custody of the Immigration authorities. All those who apply for asylum are systematically fingerprinted and photographed by the Immigration authorities for insertion into the EURODAC database. Asylum seekers, who are either residing regularly in Malta or who apply for international protection prior to being apprehended by the Immigration authorities, are

---

4 The Refugees Act (2000), Chapter 420 of the Laws of Malta empowers the Refugee Commissioner to examine and determine asylum applications. His role as head of the Dublin Unit is not stated in law.

5 AWAS is set up by law in terms of the Agency for the Welfare of Asylum Seekers Regulations, Subsidiary Legislation 217.11 of the Laws of Malta.

6 Hereinafter referred to as the ‘Reception Regulations’.
also sent to the Immigration authorities to be fingerprinted and photographed immediately after their desire to apply for asylum is registered. The Dublin procedure is then applied in the same way regardless of whether an asylum seeker is detained or is living in the community.

1. Establishing eligibility for a Dublin transfer

The Role of the Refugee Commissioner

Shortly after arrival, detainees are visited by members of the Office of the Refugee Commissioner [RefCom] who provide information about the asylum procedure in Malta and on the rights and obligations of asylum seekers within the asylum procedure. Detainees also receive a leaflet entitled – “Your entitlements, responsibilities and obligations while in detention”– which makes reference to the possibility that their asylum application will be processed in another Member State upon the fulfilling of certain criteria. This leaflet is however only available in English, Arabic and French.

The information given by the Office of the Refugee Commissioner is provided with the help of cultural mediators and through audio-visual and written material available in eleven languages. RefCom staff is present at this point to answer questions and clarify matters raised by the asylum seekers. It is at this point that those who express a desire to apply for asylum fill in what is known as the Dublin II questionnaire, wherein they are asked about the presence of family members in other EU Member States. Individuals then also fill in a Preliminary Questionnaire [PQ], a form through which they register their desire to apply for asylum.

The information collected in the PQ, which among other things includes information as to marital status and information about other family members, is then processed at RefCom. If the asylum seeker mentions information which renders him eligible for a Dublin transfer in terms of the Regulation, the processing of the asylum application is suspended and the details forwarded to the Immigration Police. These are, in turn, responsible for following up with the asylum seeker and the authorities of the Member State being requested to take charge of the asylum seeker.

Although the examination of the asylum application is supposed to be suspended pending the outcome of the Dublin procedure, in many cases where the procedure is not concluded within a short amount of time, the Refugee Commissioner may nonetheless decide to proceed with the examination of the application.

The Refugee Commissioner specified that he may call upon the asylum seeker for the asylum determination interview at a stage where he considers that too much time has elapsed from the time of referral to the Immigration Police for follow-up. Cases documented by JRS Malta corroborate this information as a number of asylum seekers over the past year were called up for their status determination interview prior to a final answer being given on their eligibility for a transfer. Consequently they were precluded from benefitting from the provisions of the Dublin Regulation and remained separated from their family members. Although those granted international protection were subsequently able to travel to the other Member States, to visit and not to stay, on the basis of regularly obtained travel documents, the Dublin procedure was cut short as they were effectively no longer asylum seekers.

The Role of the Immigration Police

The Immigration Police process the information that is passed on to them by the Refugee Commissioner at the initial stages of the procedure. They are then expected to call the asylum seeker for a Dublin interview, where the asylum seeker is informed about the possibility that his or her asylum application is processed by another Member State. This meeting takes place at the Police General Headquarters without the assistance of interpreters or cultural mediators. At most, another detainee, or a fellow migrant, if on the outside, might be asked to accompany the asylum seeker to provide interpreting services. This interview is not recorded nor is a transcript available.

Asylum seekers are asked to provide documentation in support of their statements which will then be attached to the request sent by the Maltese authorities. The ‘take charge request’ is only submitted once the necessary documentation is obtained. It is the asylum seeker who is expected to provide the documentation in support of his claim. This raises obvious difficulties when the migrant is detained with limited access to communication facilities. Consequently, detainees undergoing the Dublin procedure rely on NGOs to facilitate communication and assist with the provision of documents.

The Immigration Police specified that documents so provided are not translated but are sent to the Member State requested to take charge, annexed to the outgoing request.

2. Detention and the Dublin Regulation

National law did not place a time-limit on detention prior to 2011.\(^8\) Detention lasts until an asylum application is determined, in the case of those granted some form of protection. Since June 2005, asylum seekers whose application is still pending after the lapse of 12 months are released to await the outcome of their asylum application in the community. When the asylum application is finally rejected before the lapse of twelve months, or in the case of those who do not apply for asylum, detention lasts for a maximum of 18 months, unless removal to the country of origin is effected in the meantime. The only exceptions are unaccompanied minors, whose claim to be under eighteen years of age is accepted and those who are found to be vulnerable, after an individual assessment of their situation, as in terms of government policy vulnerable immigrants are not detained.\(^9\)

For migrants in Dublin procedures, detention would last until the transfer is effected or until the lapse of twelve months in detention as an asylum seeker, whichever is the earliest, unless the Refugee Commissioner decides to process the application or to grant provisional protection to secure release pending a final determination of the application.\(^10\) If the requested Member State rejects the request, the asylum procedure is no longer suspended and the asylum seeker’s application is then examined and determined.\(^11\)

Although fifteen (15) outgoing requests were submitted by Maltese authorities in 2012 during that year there were only two (2) transfers. Cases from 2012 indicate the existence of a lengthy Dublin procedure with few ensuing transfers. Moreover, Dublin transferees are liable to spend more time in detention than other asylum seekers granted protection who would have arrived at the same time, as the latter would have had their asylum application examined and processed immediately.

Two examples from 2012 highlight the impact of the Dublin procedure on detention. An Eritrean asylum seeker who arrived in Malta in June 2012 declared upon arrival that his wife and child were in Italy, where they had been since 2011. Due to the difficulty in obtaining documentation proving family links, the request to take charge was only submitted in October 2012. The Italian authorities accepted responsibility for the asylum seeker in February 2012 with the transfer taking place two weeks after this acceptance was communicated to the Maltese authorities. During the eight months that the transferee spent in detention, all of those who had arrived in Malta on the same day had had their asylum application examined at first-instance with all those being granted protection and released from detention within three months of their arrival in Malta.

In another case, a Somali woman who arrived in Malta in August 2012 declared that she had been told that her husband and two children were in residing in the Netherlands where they had been granted international protection. She was unsure where they were currently residing as she had lost all contact with them and had only heard the news through other Somalis back in Somalia. The Somali applicant managed to re-establish contact with her husband in November 2012 who proceeded to forward all available documents in proof of their statements. The request to take charge was submitted in December 2012. In the meantime, the asylum seeker remained in detention, pending the possibility of a Dublin transfer, even though prior to re-establishing contact with her husband and obtaining knowledge of his actual whereabouts there was no real possibility that a request could be filed. Consequently, a request was submitted to the

---

\(^8\) Regulation 11(14) and (15) of the Common Standards for Return of Illegally Staying Third Country Nationals Regulations, which transposed the Return Directive into national law, places a 6 month time limit on detention, which may be extended for a further 12 months up to a maximum of 18 months. It is unclear whether this time limit applies to all categories of detainees, as regulation 11(1) states that the safeguards do not apply to third country nationals who are “subject to a refusal of entry” or “who are apprehended or intercepted by the competent authorities in connection with the irregular crossing by sea or air of the external border of Malta and who have not subsequently obtained an authorisation or a right to stay in Malta”.


\(^10\) Article 10 of the Reception Regulations provides for access to the labour market after 12 months from the date of an application for protection. Maltese authorities use this as the basis for release arguing that detainees are unable to obtain access to the labour market while in detention.

\(^11\) See [Becoming Vulnerable in Detention – Civil Society Report on the Detention of Vulnerable Asylum Seekers and Irregular Migrants in the EU](http://www.jesuit.org.mt/files/634311314406818750.pdf), a 2010 report following a project coordinated by JRS Europe which findings illustrated that detention is in itself causing vulnerability, especially with regards to mental ill-health. The national report, drawn up by JRS Malta, is available at: [http://www.jesuit.org.mt/files/634311314406818750.pdf](http://www.jesuit.org.mt/files/634311314406818750.pdf) and contains further information about the law, policy and practice regarding detention in Malta.
Refugee Commissioner regarding the possibility that notwithstanding that a full and final examination could not be carried out of her eligibility for international protection, the applicant could be considered for a provisional form of protection on account of her prima facie need for international protection. Documents substantiating applicant’s protection needs were forwarded to the Refugee Commissioner who in turn granted the applicant Provisional Humanitarian Protection thereby securing her release from detention. Throughout this time, other Somali asylum seekers who had arrived on the same boat as the applicant had been released from detention within a few months of their arrival, after being granted international protection.

3. Information & Legal assistance during the procedure

During the time that the asylum seeker is pending the outcome of the Dublin procedure requests for information can be made to the Immigration Police regarding the status of the procedure. In practice, this is possible when asylum seekers are able to set up an appointment with the authorities in question. Where an applicant is detained, it is inherently more difficult for the individual to follow up on the Dublin request due to the restrictions in directly contacting the police for follow-up and obtain information. When they do manage to establish contact, information is usually forthcoming. The main problem with obtaining information is that detainees do not know who to ask to obtain the information in question. Detainees are effectively precluded from obtaining regular information and updates about their case. Local legislation does not provide for the possibility of free legal assistance during the Dublin procedure. Legal assistance is provided either by independent lawyers, against payment, or by lawyers working with NGOs regularly present in detention. Information about the stage of the proceedings is usually provided to the lawyer representing the applicant upon request. In practice, lawyers working with JRS Malta are actively engaged in providing assistance to a large number of detained asylum seekers pending the outcome of a request for an outgoing transfer.

4. Transfers & their execution

When a Member State accepts responsibility for an asylum seeker, transfer takes place as soon as possible or if the asylum seeker appeals, after the appeal is determined. No official statistics are available regarding the length of time it takes for a transfer to be effected once responsibility has been accepted by the other Member State. Recent examples however illustrate that the transfer is sought to be effected within days of the date of acceptance by the responsible Member State with the Immigration authorities purchasing the flight ticket as soon as practicable.

The decision to transfer an asylum seeker to another Member State may be appealed through the filing of an appeal to the Immigration Appeals Board. In 2012, the Board’s jurisdiction, previously limited to hearing and determining appeals against decisions taken in terms of the Immigration Act, was widened to deal with appeals from decisions taken within the Dublin framework. The provisions indicate that an appeal to the Board must be filed within three working days from the decision subject to appeal. National law does not make any provision regarding the procedure to be followed in the case of an appeal. There is no obligation to inform the asylum seeker, either orally or in writing, about the outcome of the Dublin request. Notwithstanding this, the law specifies the three-day time-period from date of the decision within which migrants are to appeal. In practice, migrants are not systematically informed of the outcome of the request, making it very difficult for them to appeal the decision within the stipulated time-period. It must be recalled that both the Police and the Refugee Commissioner are administrative authorities, legally-bound to observe the rules of good administrative practice, as is the duty to provide reasons for an administrative decision. According to the Immigration Police, if an appeal is filed, it has suspensive effect although this is not specified in law.

The authorities note that the asylum seeker is informed in person about the transfer and the date when it will take place. If the asylum seeker assents to the transfer, this is carried out without the presence of police escorts. The transfer is only carried out under escort if the asylum seeker demonstrates an unwillingness to be transferred. In all cases, the asylum

---

13 Ibid., regulation 3.
14 Immigration Act (1970), article 25A
15 This is the official information provided by the Immigration Police. The information in the leaflet provided to migrants upon arrival contains contradictory information noting that ‘You [asylum-seeker] must leave Malta during the appeal process.’
seeker is provided with a letter explaining that he is a transferee, which he is expected to present to the Immigration authorities upon arrival in the accepting Member State.

Maltese authorities transfer asylum seekers to all Member States with the exception of Greece. In cases where the application of the Dublin Regulation would imply that Greece bears responsibility for the examination of the asylum seeker’s application, Malta assumes responsibility and the asylum application is examined by the Refugee Commissioner. In cases where the asylum seeker nonetheless wants to be transferred to Greece, this possibility will also be considered.

5. Returnees

In practice, few asylum seekers are eligible for a transfer to another Member State, as Malta would be the first point of entry into the EU for the majority of asylum seekers who enter irregularly. This is also reflected in the statistics available for 2012 which indicate that there were 15 outgoing requests, where another Member State was asked to take charge, as opposed to 1003 incoming requests, whereby Malta was asked to accept responsibility for the asylum seeker by another Member State. There is no information available on the use of the humanitarian or the sovereignty clauses, although the Refugee Commissioner indicated that there are cases where the humanitarian clause is used and Malta takes charge of the applicant on account of health reasons.

Return, Imprisonment and Detention

No asylum seeker is detained or imprisoned simply because he is a Dublin returnee. The treatment of Dublin returnees with respect to administrative detention, in terms of the Immigration Act, relates to the manner in which the asylum seeker would have left detention in the first place.

Migrants who would have left Malta in breach of the Immigration Act, as in the case of those who travelled without the requisite travel documents, using false documents or using documents issued to someone else, are liable to being arraigned in court and charged with committing an offence carrying a maximum of two years imprisonment, upon return. Moreover, if the migrant would have escaped from detention prior to leaving the island, he may also be charged with escaping and breaching a place of custody, an additional criminal charge, which carries a possible term of imprisonment of a minimum of six months and a maximum of four years.

Although these provisions are not foreseen to apply solely to Dublin returnees, it is nonetheless true that as asylum seekers are only entitled to be issued with travel documents in very exceptional cases, enabling them to leave and return to Malta, with failed asylum seekers not being entitled to any travel documents, the majority of returnees within this category are subject to prosecution and imprisonment. Moreover, the Court of Appeal (Criminal) has emphasised that these are serious offences which merit a sentence of effective imprisonment, laying to rest the previous practice of granting suspended sentences to those found guilty of the above-mentioned offences. In practice, asylum seekers and rejected asylum seekers returned to Malta face a very real possibility of prosecution and imprisonment for leaving the country in breach of criminal law provisions. This is obviously inapplicable to all those who would have managed to travel regularly.

Return does not put those who travel regularly at any risk of being prosecuted or detained. A substantial number of returnees are beneficiaries of international protection who are eligible to be issued with a travel document. There have been instances where beneficiaries of international protection chose nonetheless to travel irregularly, and were prosecuted and imprisoned upon return due to this violation.

With respect to returnees being detained again, this applies solely to those who were asylum seekers or failed asylum seekers, and who were not released regularly from detention prior to their departure from Malta. These individuals who would have absconded from detention are, in addition to facing prosecution and imprisonment, subject to being detained again as they are expected to complete the time period in detention that they would have had to spend had they not left

---

16 Information provided by Immigration Police.
17 Immigration Act, art. 32.
18 Criminal Code, Chapter 9 of the Laws of Malta, arts.151 & 152.
19 The Reception Regulations specify in article 5 that asylum seekers may only be issued with a travel document ‘when serious humanitarian reasons arise that require their presence in another State’.
irregularly. In practice, these returnees are returned to detention, after serving a sentence of imprisonment, to pick up where they left off.

Moreover, due to the impact that return has on the asylum procedure, if their asylum application would have been closed, they return to face a period of detention lasting up to eighteen months in total, unless they are readmitted into the procedure during this time.

*Returnees and the Asylum Procedure*

The treatment of Dublin returnees within the context of the asylum procedure is, to a large extent, dependent on the legal status they held prior to their departure from Malta.

Migrants, who are beneficiaries of international protection, are returned to Malta with no further action to be taken as they have already been through the procedure and their asylum application fully examined.

Asylum seekers, in respect of whom a decision had been issued at first-instance but who were pending the outcome of an appeal, return and continue awaiting the outcome of the appeal. However, if during their time away from Malta the Refugee Appeals Board attempted to contact the appellant and this was not possible due to the departure from Malta, then the appeal may be held to have been implicitly withdrawn with the Board declaring the appeal abandoned with no examination on the merits.\(^{20}\)

The main impact of the transfer on the asylum procedure relates to the difficulties in accessing the asylum procedure faced by those who leave Malta prior to being interviewed at first-instance. If an asylum seeker leaves Malta without permission of the Immigration authorities, either by escaping from detention or by leaving the country irregularly, the Refugee Commissioner will consider the application for asylum to have been implicitly withdrawn, without a decision being taken on the merits of the application.\(^{21}\)

Consequently, an asylum seeker whose application had not yet been determined at first-instance and who is returned to Malta will, in almost all cases, find that his asylum application has been declared implicitly withdrawn, leaving him susceptible to return by the Immigration authorities. Although the individuals in question may ask for a reopening of their case, considered as a subsequent application if they provide reasons which are considered justifiable by the Refugee Commissioner, they may, in the interim, be removed to their countries of origin. The time taken by the Refugee Commissioner to decide on whether to readmit the individual into the asylum procedure is entirely discretionary, with no time-limit specified in law.

Although Maltese authorities accept responsibility for the examination of the asylum application, upon return returnees are not systematically informed about the status of their application. They are only informed of the status of their application for international protection after an enquiry is made with the Refugee Commissioner. Prior to this, the returnee is not given any information in writing specifying the status of his asylum application. In many cases, this information is obtained only after the asylum seeker would have sought legal assistance. The use of the implicitly withdrawn provision came into being following the promulgation of the Procedural Regulations, in 2008, before which escape from detention was not construed as an abandonment of the asylum application. Asylum seekers, who left Malta before this time, or before 2009, which is when information about the asylum procedure started being given by the Refugee Commissioner, will in most cases return to detention expecting to be eventually called for their asylum determination interview. It is only upon obtaining access to legal assistance that they are informed about the situation and the required follow-up action to obtain access to the procedure. As these individuals are detained, communication with the Refugee Commissioner is even more limited and primarily facilitated through the provision of legal services by JRS Malta, which is still the only NGO regularly present in detention centres providing free legal assistance.

\(^{20}\) *Refugees Act, art. 7.*

\(^{21}\) The Refugee Commissioner exercises the discretion provided to him in Regulation 13 of the Procedural Regulations, which transpose the provisions of the Asylum Procedures Directive.
6. Reception Conditions - Law and policy regulating the reception of asylum seekers in Malta

**Detention as the initial reception**

The reception of asylum seekers is regulated by the Refugees Act (Chapter 420 of the Laws of Malta) and the Reception of Asylum Seekers (Minimum Standards) Regulations (S.L. 420.06). The treatment of irregular or ‘prohibited’ immigrants and persons refused admission into Malta is governed by the Immigration Act (Chapter 217 of the Laws of Malta) and related subsidiary legislation.

In practice, both the reception of asylum seekers arriving by boat and the length of their detention are governed by a complex mix of law and policy, which developed over time in a somewhat piecemeal manner in response to particular situations that arose as the local authorities struggled to deal with the challenge of receiving and providing for the arrivals. Detention is the main form of reception provided to asylum seekers who enter Malta irregularly and are classified as prohibited immigrants, who are by far in the majority. Asylum seekers falling within the Dublin framework experience the same form of reception as other asylum seekers with no distinction made between the services provided to asylum seekers awaiting a Dublin transfer and other asylum seekers.

Although the Dublin II Regulation is concerned with asylum seekers, as a number of persons returned to Malta are beneficiaries of international protection who were nonetheless channelled through the Dublin procedure for return, with the request to the Maltese authorities being submitted as a Dublin request to take back, the following also looks into the rights and entitlements of beneficiaries of international protection.

**Accommodation in the community**

Following release from detention, all migrants are provided with accommodation in an Open Centre regardless of their legal status. Asylum seekers who arenever detained, i.e. those who arrive in Malta legally or who apply for asylum before they have been apprehended for illegal entry or stay, would also be accommodated in an Open Centre if they do not have alternative accommodation. The Open Centre system is administered by AWAS; however, some centres are run by NGOs.

The government provides a per diem allowance to those residing in the centre, to cover food and transport. The daily amount provided depends on legal status, with beneficiaries of subsidiary protection and asylum seekers receiving €4.66 per day and rejected asylum seekers €3.49 per day. Migrants released from detention receive the allowance automatically; whether or not other categories of residents, e.g. asylum seekers who arrived in Malta legally and are never detained, will receive a per diem allowance is determined after an assessment of their individual circumstances. This provision of basic financial support is not regulated by law.

In addition to the basic per diem allowance, the rights of Open Centre residents to access employment or basic services, such as healthcare or education, are dependent on their legal status.

In terms of the Reception Regulations, which transposed the Reception Directive into national law, asylum seekers are entitled to ‘material reception conditions’, which include: “housing, food and clothing, provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance.”

They are also entitled to free state medical care, education up to the compulsory school age limit and to be allowed access to the labour market if a decision on their application has not been taken within 12 months. In practice, asylum

---

22 For an in-depth description of the reception system in Malta refer to the JRS Malta June 2012 report: ‘Bridging Borders – Report on a project to provide sheltered accommodation and psychosocial support to vulnerable asylum seekers to whom such services are not otherwise available.’ Available at [www.jrsmalta.org](http://www.jrsmalta.org)

23 This information is correct as at the time of the interview with the AWAS CEO, which took place in October 2012.


25 Reception Regulations, reg 2.

26 Reception Regulations, regs 9, 10 & 11.
seekers who are not in detention are provided only with accommodation in an open centre and the *per diem* allowance. They are also issued with a renewable work permit, which is valid for 6 months, if they find work.

The rights of beneficiaries of international protection are regulated by the Procedural Standards in Examining Applications for Refugee Status Regulations (S.L.420.07). In terms of this law, refugees and beneficiaries of subsidiary protection have a number of rights: rights related to their entitlement to stay in Malta and that of their family, rights related to the possibility of travel and socio-economic entitlements, such as employment, education, healthcare and social welfare.27

Both in law and in practice there are a number of differences between the entitlements of these two categories of migrants. Both are entitled to remain in Malta with freedom of movement and to be granted personal documents and a residence permit: in the case of refugees the permit is valid for 3 years, in the case of persons with subsidiary protection for one. Dependent members of their family who are in Malta with them when they apply for asylum are granted the same rights, but only recognised refugees have the right to family re-unification – i.e. to bring dependent members of their family to Malta after they have been granted protection. Both categories of migrants may obtain a permit to work in Malta and both are entitled to access state education and medical care. Although all beneficiaries of international protection are entitled to some degree of social welfare support, there are significant differences in the level of entitlement of the two categories. Moreover, in terms of current policy they cannot receive these benefits for as long as they are resident in an Open Centre.

The quality of accommodation in the different Open Centres varies considerably, ranging from large centres where conditions are extremely basic and the staff to resident ratio is very low to smaller centres, targeting mostly families with children and unaccompanied minors, where conditions are far better and the support provided is greater.

The conditions of residence in Open Centres are regulated by a Service Agreement between centre management and resident. Breach of the Open Centre rules could result in termination of the Service Agreement, which could mean either that the service user is asked to find his/her own accommodation or that s/he is asked to move to another centre, depending on the particular circumstances of the case. Service Agreements usually last for a maximum of one year, after which time residents are expected to be ready to move into independent accommodation; it is not unusual for residents to be allowed to remain in the centre longer. As a rule, once residents leave the Open Centre they are no longer entitled to receive the *per diem* allowance. Whether or not they are entitled to receive other benefits will depend on their legal status. Unemployed residents in Open Centres only receive a small *per diem* allowance, which is nowhere near enough to provide for the basic necessities of life.28 Beneficiaries of international protection living in independent accommodation who are unemployed would, as a rule, be entitled to social welfare benefits, but other categories of migrants, such as asylum seekers, and rejected asylum seekers would not be entitled to any form of income support.

The *per diem* food and transport allowance provided to Open Centre residents is minimal and far from sufficient to allow residents to meet their basic needs, even in terms of food and transport. The lack of financial support makes it practically impossible for some people, particularly those who cannot work, either because of their physical or mental health problems or because they have children for whom they are wholly responsible, to ever move out of the Open Centres. For the latter category the situation is compounded by the lack of affordable childcare.

With respect to employment, asylum seekers may work regularly, yet this necessitates finding an employer who is willing to apply for a licence to employ them to undertake a particular job. The employment licence so issued is only valid for the particular job applied for. Should the asylum seeker find another job, another employment licence has to be obtained through the new employer. Refugees and beneficiaries of subsidiary protection are given a permit to work in Malta which allows them to take up any job they find.

### 7. Migrants in Dublin procedures


28 The Caritas Malta study, A Minimum Budget for a Decent Living (16 March 2012), concluded that ‘the minimum essential budget for a household of two adults and two children is estimated at €10,634, a lone parent and two children at €8,581 and for two older persons at €6,328’, maintaining that this is only a minimum acceptable standard below which a household’s income should not fall for an individual to live with dignity. Available at: [http://www.caritasmalta.org/AMinimumBudgetforaDecentLiving_McKay_Sammut_Farrugia_Piscopo(MinimumSize).pdf](http://www.caritasmalta.org/AMinimumBudgetforaDecentLiving_McKay_Sammut_Farrugia_Piscopo(MinimumSize).pdf)
Transferees, who are released from detention prior to a decision being taken as to whether they will be transferred to another Member State, are treated in the same way as other asylum seekers living in the community. They are entitled to accommodation in an Open Centre and will receive the same €4.66 per diem allowance as all other asylum seekers. Moreover, they may work regularly should they find an employer willing to apply for a licence for them.

In the case of transferees who are never detained, i.e. those who arrive in Malta legally or who apply for asylum before they have been apprehended for illegal entry or stay, would also be accommodated in an Open Centre if they do not have alternative accommodation. Whether or not residents falling within this category would receive a per diem allowance is determined after an assessment of their individual circumstances. Once again, the possibility of working regularly is linked to obtaining an employer willing to apply for an employment licence for them.

The distinction between asylum seekers in general and those who are within Dublin procedures arises in the context of returnees, as their treatment differs with respect to the financial assistance provided.

Returnees are accommodated in Open Centres upon return, according to the availability of places in the Centres. AWAS maintain that, although up till the time of interview, returnees are provided with a place in the Open Centre upon return, it is linked to the availability in the Centres and in cases where space is limited, priority will be given to other migrants being released from detention rather than returnees.

Returnees are not met at the airport upon arrival. To obtain a place in the Open Centre and to resume receiving the per diem allowance, they must make their way to the AWAS headquarters and provide proof that they are returnees, usually by providing their flight boarding pass and letters provided by the sending country. Although this state of affairs is known by many migrants who are returned, as they would have picked up the information from others, the system raises obvious difficulties for those who are unaware of the system in place, as is the case with a number of people in a particularly vulnerable situation.

On occasion, migrants have shown up at JRS Malta stating that they have been returned on the day with no information as to how to proceed to re-access basic services. Moreover, AWAS offices are only staffed during working hours, raising difficulties for those who are returned on weekends or outside of office hours. JRS Malta has recorded cases of migrants who were rendered homeless due to this situation, and who had to rely on friends or homeless shelters to provide them with temporary accommodation until the situation was sorted out.

AWAS operates a policy whereby the amount of per diem allowance provided to returnees is reduced from the €4.66 given to asylum seekers and persons with protection, to €2.91 per day. This reduction in allowance is specifically linked to the migrant having been returned from another Member State in terms of the Regulation, and is applied as a blanket provision with no assessment of the particular needs of the returnees in question.

Asylum seekers transferred to Malta, for whom Malta would not have been their first entry point into the EU, but who are nonetheless transferred on the basis of the presence of family members in Malta or on account of their Schengen visa having been issued by Maltese authorities, find themselves transferred to Malta without any information as to the procedure they should follow. JRS Malta have assisted individuals and families who had no record of prior stay in Malta but who were transferred in terms of the Regulation.

In these cases, no provision is made for accommodation or financial assistance prior to their arrival. Although accommodation in an Open Centre is subsequently provided, the per diem allowance is not granted automatically to those who do not arrive irregularly by boat but is instead considered on a case-by-case basis. No formal policy is in place to cater for the needs of these individuals. In the interim, no financial assistance is provided and no consideration is made for food and transport costs.

Although these cases are few and far between, when they do arise they also raise significant difficulties in accessing the asylum procedure. Authorities maintain that upon arrival, migrants are given very basic instructions by immigration authorities at the airport, about the need to visit the offices of the Refugee Commissioner, AWAS and the Police Headquarters. Information is not provided in writing and is provided without the use of an interpreter.
Individuals transferred to Malta who are considered as prohibited immigrants in terms of the Immigration Act are detained upon transfer. This means that they are detained and subject to the same detention policy as any other asylum seeker who entered Malta irregularly. In these cases, access to the procedure, is dependent upon the Refugee Commissioner being informed by the Immigration authorities of their desire to apply for asylum.

**NATIONAL DATA FINDINGS**

The data in this section was obtained from the interviews carried out as part of this project. In all a total of 23 interviews were carried out although the findings presented below represent the data which emerged from 22 of the interviews held. All migrants interviewed had been returned from another EU Member State in terms of the Dublin II Regulation. Of the interviewees, 12 were beneficiaries of subsidiary protection, 4 were asylum seekers pending a final determination of their claim and 5 were failed asylum seekers.

1. **Personal Story**

All interviewees were asked to speak about their personal story, documenting the experiences they had been through since arriving in the EU. Respondents spoke about their arrival in Malta and their travels across the EU, particularly the number of times they had been detained throughout this journey. They also highlighted the number of times they had applied for asylum, in different countries. This was not restricted solely to asylum seekers but was also the case among those who had already been granted subsidiary protection in Malta.

I came to Malta in 2007. I applied for asylum. I got a reject. After this reject I travelled to Norway in 2010. I went to Italy by Boat, after that I went to Germany by train, after that I went to Sweden by train, after that I went to Norway by train. I lived in Norway for 1 year and 6 months. When I arrived in Norway I first asked the authorities for asylum. I told the authorities, that I have a wife living in Norway, so I got permission to live with her in a flat. After 1 year and 6 months the Dublin Regulation “sent” me back to Malta. When I was back in Malta I lived here for 4 months in prison. After they released me I went to Sweden in 2011. I crossed Holland and Denmark. There I lived 11 months in detention. I asked for asylum and the Dublin Regulation sent me back to Malta. I came back to Malta in 2012 where I was put in prison for another 2 months. Now I live in Hal Far Hangar.

An Eritrean failed asylum seeker describes his travels across the EU

Like many of the other interviewees, this Eritrean man emphasises how his travels in search of protection and where he could be with his family took him across different EU Member States. The interviewees’ testimonies illustrate the pervasive use of detention across Member States, with several migrants being detained over and over again. Moreover, the stories indicate that notwithstanding that the asylum application would have been examined in Malta, migrants still submitted asylum applications in the states they travelled to, in the hope that they would get protection and a right to stay in that particular Member State.

2. **Knowledge of Dublin Procedures**

*What do people know about Dublin?*

When asked what they know about the Dublin Regulation, only 12 of the interviewees chose to answer this question. 5 of these claimed to have advanced knowledge of the Regulation, meaning that they knew two or more things about the Regulation. These migrants mentioned that the Regulation is the reason why asylum seekers’ fingerprints are registered and specified that the state responsible for the examination of the asylum application is the country of first arrival. 1 interviewee described the Regulation solely by reference to ‘fingerprinting’. Another 6 people defined their knowledge of the Dublin Regulation in terms of the Regulation determining the responsible state for the examination of the asylum application stating:

In the first EU country you enter you are bound to stay. The country in which you land must issue you documents…something which did not happen to me. This is stipulated in the Dublin convention.

An Ivorian male rejected asylum seeker detained in Safi Barracks
After interviewees were asked what they know about the Dublin Regulation, they were then asked to specify how well-informed they are about Dublin procedures. 30% claimed that they feel they fully understand Dublin, with another 15% feeling well-informed albeit there still being aspects they don’t know about the Regulation. In contrast, 20% claim to know nothing about Dublin and another 25% have heard about Dublin but do not understand it because they lack information. 10% remained non-committal claiming they are in the middle of knowing and not knowing.

Who informed them and how?
Administrative authorities were the greatest sources of Dublin information for the people who were interviewed, as 30% of those asked if they were given information by administrative authorities replied in the affirmative. NGOs and fellow migrants were the secondary sources of information with the percentage this time standing at 20%.

30% of those who were given information, by any source, claimed to have received this information orally as opposed to the 15% who said they were only given this information in writing. The majority, standing at 53.8%, were given information both orally and in writing. However, only 13 of the 23 migrants chose to reply to this question.

The large majority, standing at 88%, felt that they were given information early enough in the procedures, meaning that they were either informed about Dublin prior to receiving the transfer decision, at the first interview with the Dublin Unit or upon arrival in Malta the first time round. The rest of the interviewees felt that they had received this information late in the procedure.

Those who understood the information that was given to them by state authorities (77%) claimed that this was due to the information being given in the right language, with a number specifying that this was also because the information was thoroughly explained to them. One of those who claimed not to have understood the information given, attributed this to his state of mind, claiming that he was too stressed at the time. The majority also found this information provided by the state to be helpful.

3. Appeals
Slightly more than half of those interviewed (56%) claimed that they had been informed how to appeal a Dublin decision with the greatest sources of information being lawyers (42%). Administrative authorities (33%) and NGOs (8%) then follow as providing information about the possibility to appeal Dublin transfer decisions. This information was mostly provided orally (57%) as opposed to the 43% who received the information in writing.

When asked as to whether they had tried to appeal the transfer decision the majority replied in the negative (58%), claiming this was due to their understanding that there was no chance of success. Some others also attributed this to the lack of information provided.

Contacts with lawyers
90% of the interviewees had contact with a lawyer, with the majority having been provided with legal assistance by the state (77%). NGOs were next in line with respect to the provision of legal assistance by NGO lawyers standing at 18%. Interviewees were asked for their perspective regarding the care the lawyer took of their case. 60% were positive about the legal assistance provided, claiming the lawyer took care of their case. Interviewees judged the lawyers’ performance based on the effort they put into the case.

Discretionary clauses
Slightly more than half of those interviewed knew about the discretionary clauses listing administrative authorities, lawyers and migrants as their sources of information. Notwithstanding, only 2 people tried to take action on the discretionary clauses, to no avail.

4. Knowledge about asylum case
When asked what they know about their asylum case, 40% claimed they know nothing as opposed to the 15% who feel they are fully informed about their asylum case. A further 10% claimed that although they have heard about asylum procedures they do not understand them because they lack information. Moreover, 74% of interviewees had not been given information about Malta’s asylum system prior to being transferred to Malta.
During the interview, 55% claimed they had questions about their asylum claims, as they wanted to know more about asylum procedures and how to get refugee status, in addition to wanting to know what was going to happen to them in general.

Half of those interviewed claimed to have experienced difficulties applying for asylum in Malta citing procedural difficulties related to the length of the asylum procedure, quality of translation during their interview and not getting the right documents after their release from detention.

5. Personal Well-Being
Interviewees were then asked about their experience of reception conditions in Malta, primarily relating to their experiences of housing, work, education, medical care, food/clothing and legal services.

Housing
An overwhelming majority, 65.2% complained that notwithstanding that they were provided with housing, this was of a bad quality. Only 17% had positive things to say about their housing with the rest just making neutral statements.

A female Somali beneficiary of subsidiary protection described how she lives in a container and ‘…in summer it gets really hot. Also it is infested with cockroaches and rats. Because men and women’s restroom facilities are in the same area and not controlled I am scared to walk there alone.’

Her complaints were echoed by an Ethiopian asylum seeker who claimed that although he was living in proper accommodation in the Netherlands, ‘here I am living in a metal container.’ Others claimed that although the accommodation provided was in an open centre, ‘it felt more like a jail’.

Work
Interviewees were overall more positive about the availability of work in Malta, with 55% claiming that they had work. Some did describe work in negative terms, but most used neutral statements. Migrants were also quick to compare the limitations of the job market in different Member States, claiming that ‘it’s easier to find work in Malta, than in Switzerland, for example’.

Education
Interviewees were nearly evenly split about their access to education, with the main concern being that even though in theory there might be access to education, ‘there is no way to enrol in courses if you cannot finance them’. Others compared their experience in other Member States where they were provided with financial assistance and made to learn the official language of the state they were in. As one migrant noted, studying was never a requirement in Malta and he was not provided with sufficient financial assistance. Consequently he did not take the initiative to enrol in any courses as his ‘first priority was to earn money’ to survive and meet his basic needs.

Medical Care
The majority of respondents specified that medical care is provided although some complained about the quality of care provided. Others however expressed mostly neutral statements.

Food & Clothing
Most people said that these are provided although this is because they work and are able to finance these material items themselves. They were quick to compare the differences between Member States as although in Malta ‘they give you like one t-shirt and one pair of shorts’, in Norway he was provided with jackets and shoes in addition to financial assistance on a fortnightly basis, so that he could meet his own needs. In contrast ‘in Malta I was given money after I came out of detention’.

Legal Services
Nearly everyone said they have access to legal services with many claiming that these were only provided by JRS.
Reception Conditions in different Member States
Interviewees were then asked to highlight any differences between the reception conditions provided in Malta and the state they were transferred from. This prompted an overwhelming majority (91%) claiming that there are differences in conditions between the Member States with the biggest differences pertaining to legal assistance, medical care, food and clothing, housing and education. The majority claimed that Maltese authorities had provided them with assistance relating to housing, food, clothing and medical care. Concerns were raised regarding the quality of assistance and services provided.

An Eritrean beneficiary of subsidiary protection explained that in Norway, they were ‘overall better at everything ... Detention centres in Norway were different to Malta. In no way did they come as close to a prison’. Migrants were mostly concerned that in Malta they were not treated with the ‘privacy and dignity’ they experienced in other countries.

Human rights are respected in Switzerland. When you ask the authorities for help they treat you with respect despite your legal status. When in need of assistance with regards to any service be it legal or social a reply is given within a short time in Switzerland.

An Eritrean asylum seeker returned from Switzerland

Detention
All of the respondents had experienced detention, with some being re-detained in multiple Member States, at times solely due to their status as migrants in the Dublin procedure. When asked if detention had affected them in any way, many of the respondents claimed this had negatively impacted them.

Detention ruined my life. It closed my mind. You can’t read and write inside here. No opportunity to learn the Maltese language except for some rude words. In Holland detainees can learn Dutch.

Ivorian male rejected asylum seeker detained in Safi Barracks

In Holland I was treated well, in Malta it is very difficult. In Malta I am locked and have no access to the fresh air and the outside. Place is not clean and too crowded.

A female Somali beneficiary of subsidiary protection returned from Holland

Moreover, respondents highlight their surprise that in Europe they were met by detention instead of the safety and protection they were expecting to receive.

Detention is not a nice place. It’s like you escape from one prison (Africa) to another’ It is not the ideas that you have when you escape from Africa to Europe. You suffer in there.

Male Eritrean asylum seeker returned from Norway

Special connection to Malta
Slightly more than half of those interviewed claimed that they don’t have a special connection to Malta. Those who do, attribute this to the presence of family members, availability of work opportunity and the presence of compatriots.

Impact on family life
By far, the biggest impact that the Dublin Regulation has had on people’s lives is the disruption of family life with the separation of families being reported as a major consequence of the application of the Regulation.

An Ivorian national speaks about his partner, an EU national, who was pregnant at the time he was returned to Malta: ‘It had effects on my partner. She is pregnant at the moment and I cannot be by her side whilst she gives birth’.

Others noted how they ended up separated from their spouses and children: ‘My wife is in the Netherlands because she was rejected in Malta. We couldn’t stay together.’

My wife and child are still in Norway whilst I was sent back to Malta.

An Eritrean asylum seeker returned from Norway
Other beneficiaries of subsidiary and temporary humanitarian protection noted that their motivations for leaving Malta were to go to a Member State which granted them the right to family re-unification, a right which in Malta is restricted to recognised refugees.

If I was granted protection in Switzerland I would have been allowed to apply for family reunification and bring my family over from Eritrea, but since I was returned to Malta due to Dublin Regulation I could never apply for it and my family is still in Eritrea.

_An Eritrean beneficiary of international protection returned from Switzerland_

**Personal Planning**

Family reunification was a recurrent theme, also mentioned as being the plan held by interviewees prior to their Dublin transfer. Others also mentioned that they were somehow searching for safety. A few others listed work and education opportunities as their previous plans.

An overwhelming majority of respondents, standing at 91%, claimed that the Dublin Regulation disrupted their plans, primarily by preventing them from reuniting with their family members.

_I was sent back to a country where my asylum claim is rejected. Because of Dublin I will not be able to see my daughter, get protection and education. I cannot go to Ethiopia to see my daughter._

_An Ethiopian asylum seeker, whose claim was rejected at first instance_

A third of respondents claimed that the transfer process itself was the most disruptive with the rest blaming Dublin for the disruption in their search for safety and education plans.

Moreover, more than half of respondents claimed that they have new plans for their life, with a large number claiming that they will try again to go to a different EU country. The rest mentioned that they will try to reunite with family, continue searching for safety and educational opportunities.

_A Somali beneficiary of subsidiary protection returned from Germany_

**Absconding from authorities**

A majority of respondents (74%) specified that they have never absconded from the authorities, with the main reasons being that they know that this is illegal and did not have the will to do so.

_It is better not to. But instead better to try learning a language or finding work within the country you are in. Oblige to the law and use your time purposefully._

_An Eritrean beneficiary of subsidiary protection returned from Switzerland_

Because I do not want to break rules. I want to abide by the rules of the country.

_There was no reason for me to run away. I am not a criminal._

_An Eritrean beneficiary of subsidiary protection returned from Norway_

6. **Personal Views about the Dublin Regulation**

The majority of interviewees feel that the Dublin system is unjust, unfair or just not good, with others calling for the system to be reviewed. A minority of respondents are resigned that this is the law and so it should be accepted as it is. Those who question the fairness of the Regulation do so citing the lack of level-playing field they have experienced among the Member States and feel that states should be more involved in understanding and accepting of the reasons why they require protection in that specific Member State. They feel that Dublin is unfair because it prevents them from choosing which EU country they can seek protection in.

_The Dublin Regulation and its procedures should be terminated if not entirely, at least in smaller countries such as Malta, Greece or Portugal. The Dublin Regulation and its procedures is not applicable everywhere with the same results._

_A male Ivorian asylum seeker returned from Norway_
I do not think that the law is fair. I feel that they should ask more questions such as why you do not want to go back to Malta.

An Eritrean male asylum seeker returned from Norway

Interviewees were asked what information they wished they had in hand prior to their arrival in Europe. Migrants noted that they wished they had known about the hardships they would come to experience in Malta and in Europe, with others specifying that they wished they had more knowledge about the Dublin Regulation. Nonetheless, several respondents noted that as their departure from their country of origin was motivated by their need for safety, staying at home was not an option. They note however that knowing more about the hardships they would come to endure in Europe would have left them better prepared to cope with these situations.

When I left my country I did so because I had a problem. When I arrived in Malta also problems appeared even though there is no war. Mentally I have been affected greatly by the whole situation in Malta (detention etc). I wish I had known about these problems before because I knew about the Italian refugees and although they are not given money, they could still bring their families with them (through family reunification). Here it is not like that.

An Eritrean beneficiary of temporary humanitarian protection

Respondents were asked if they had any advice for other migrants prompting a different set of responses, with the majority advising others not to come to Europe or else to carefully choose carefully the EU state they go to.

Somalis were a notable subset in advising their compatriots not to come to Europe, telling them to ‘stay at home with your family’. Others specifically caution migrants against making the journey to Europe as life here ‘is not as good as we think’. A quarter of interviewees stressed the importance of carefully choosing which EU country they arrive in as the Dublin Regulation would preclude them from travelling after arrival. They advise them to be careful and not choose Malta even if they ‘come legally by boat, they should not arrive to Malta’. Others note that they should ‘bypass Malta and go to Italy’.

The minority of interviewees who would advise other migrants to stick to the rules of the Dublin Regulation do so noting that ‘trying to go somewhere else is a waste of money, valuable time and may be a problem for your case’. Moreover, migrants should better inform themselves prior to departure so that they can evaluate if the journey to Europe is a risk worth taking.

Respondents were asked to name their three biggest problems. These were the problems in finding accommodation and work, the lack of stability in their lives and once again, the absence of family members. Interviewees spoke of the consequences that delays in procedures and policies related to family re-unification have on their mental health. As a rejected Eritrean asylum seeker said:

‘I am suffering from depression because the government took too much time to consider my case. The fact that I couldn’t see and get my daughter. The fact that I can only get a work permit if I find employment and the employer is then willing to sign for my work permit. I would like to work and support myself and this is a huge barrier.’

When asked what the best solution in the circumstances would be for them, interviewees gave different responses which however have a recurring theme of a need and desire for safety, protection, a normal life and the presence of family members. They noted that they want ‘to be free’, ‘to have a protection status’, ‘to reunify’ with children and ‘to go to a secure place where I can live, earn money and bring my family’.

DATA ANALYSIS

The research findings are clear in highlighting that the Dublin Regulation is doing little other than severely disrupting people’s lives. It falls short of meeting its stated aim of speedily determining the Member State responsible for examining an asylum application while preventing the submission of multiple applications in different Member States. This is borne out by the migrants’ testimonies that notwithstanding the filing of an application in Malta, a large number choose to then file another application in the state they go to, in the hope that they will be granted protection, or if they are already
beneficiaries of subsidiary protection, in the hope that this time they will be recognised as refugees. Moreover, it indicates that migrants are in search of fundamental protection which is not necessarily restricted to protection from forced return. Interviewees emphasised their need for protection of all fundamental rights, \textit{inter alia}, the right to live free from serious harm in conditions respecting their dignity and their right to enjoy family life. This is amply illustrated in the high number of returnees, who notwithstanding being beneficiaries of international protection, chose to leave Malta and file another asylum application, hoping that this time round the rights attached to their protection status would address their needs more comprehensively.

Migrants are not only searching to become refugees and address their need to live without fear of persecution. They are also in need of family life, adequate housing, employment, medical assistance and other basic needs. The Dublin Regulation does not stop them from trying to fulfil these needs. It instead makes it a lengthier and more cumbersome process with serious repercussions to their familial ties, psychological well-being and morale. It precludes them from settling down and making attempts to continue their education, and integrate within the responsible Member State. From what the respondents described, this is to a large extent due to the lack of a level-playing field in the EU asylum system. This leaves migrants willing to repeatedly attempt to improve their chances of getting protection and a ‘better deal’ in another Member State, even more so where the other Member State offers them the possibility to reunite with their families through the right to family reunification.

\textbf{A) Impact on Protection}

In addition to the general shortcomings of the Dublin Regulation, migrants in Malta are at a further disadvantage due to the flawed implementation of the Regulation’s provisions in the national context. The findings illustrate the absence of a clear procedure regulating the processing of Dublin requests and transfers. No central focal point, or state entity, assumes responsibility for the workings of the Regulation, and the procedure is instead split into different stages within different government departments. The different entities are hard-pressed to fulfil the obligations relating to their part of the procedure, mostly due to the lack of resources available to them. This, together with the fact that responsibility for the procedure is fragmented and split among different entities, leads to the creation of gaps which asylum seekers can easily fall through. There is no assiduous follow-up to ensure that migrants’ fundamental rights are respected.

The result is a system whereby, in the case of transferees, asylum seekers are dealt with on a case-by-case basis, as exceptions to the rule, with no one entity responsible for ensuring that they are dealt with in accordance with the law. The chances that their cases will be followed up are dependent on their accessibility to NGOs who provide the link between the asylum seeker and the authorities, in an effort to make the system work. Returnees are, in turn, expected to fit into the system which they would have been previously subjected to, with no information as to changes in their legal status upon return. Their access to the asylum procedure is being undermined not only by their departure from Malta but by their return as Dublin returnees who are not informed about their current legal status and the way forward to obtain the protection they might need.

The piecemeal implementation of the Regulation is creating serious protection gaps and calls into question the state’s adherence to fundamental rights norms. The right to a family life is that most cited by respondents as having been breached through the use of the Regulation’s provisions. The findings also indicate shortcomings relating to the asylum procedure and the treatment which migrants are subjected to in different Member States, which leave them at risk of being subjected to cruel, inhuman or degrading treatment and punishment. The repeated use of detention raises concerns about the lawfulness of detention throughout migrants’ entire periods of detention.

A main message emerging from the project relates to the separation of families due to the application of the Regulation. Families are separated on account of their arrival at different points in different Member States with reunification occurring after a lengthy period of time, if at all. The restrictive provisions of the Regulation fail to take into account close family ties which may exist among family members, notwithstanding that they are not spouses or in a parent-child relationship. Family unity is not adequately addressed by the Regulation, even more so in its’ implementation.

In addition, recorded cases show that, at times, even where both asylum seekers, provide the necessary information for a Dublin request for transfer, the state fails to take the necessary steps to initiate a Dublin request, leading, in practice, to their separation.
The findings of the project illustrate that a primary motivating factor for migrants to leave Malta and move to another Member State is their desire to be with their family members, in particular, their spouses and children. The data indicates that notwithstanding the multiple times that some had been returned to Malta, they would nonetheless attempt to leave again, acknowledging that being with and supporting their family was their main aim which was not obviated by the stringent application of the Regulation’s provisions.

B) Dublin’s Impact on the Asylum Procedure

Transferees

The Refugee Commissioner’s use of discretion, to examine and determine the asylum application of asylum seekers still awaiting an answer on their possible transfer to another Member State, precludes them from ever being transferred to the other Member State which might be responsible for them in terms of the Regulation.

Whilst it is true that the sovereignty clause permits national authorities to decide any and all asylum applications lodged on the territory, the use of this provision in a way which separates families and negates the possibility of transfer demonstrates a misuse of the afforded discretion.

Recorded cases illustrate that following the determination of the asylum seekers’ applications in Malta, husbands were not allowed to join their wives and children were unable to join their parents, as the Member State requested to take charge rightly argued that as the request was no longer submitted by an asylum seeker it, did not fall within the terms of the Regulation. Whilst efficiency in the processing of asylum applications is a laudable achievement, this should not be achieved at the expense of the asylum seeker’s rights, even more so where this constitutes a violation of the fundamental right to family life.

Returnees

In the case of returnees, the use of the implicitly withdrawn provision is leaving returnees susceptible to refoulement, with the very real possibility that their claim to protection is never assessed on the merits. Whilst this is the case with all asylum seekers in respect of whom the provision is applied, migrants with serious protection needs are left liable to being sent back to the persecution from which they are fleeing, as they might not even be aware that their departure from Malta has impacted the examination of their asylum application.

In practice, the decision to accept to examine a returnee’s application may take several months to be taken. A number of individuals in this situation waited for months in detention pending an answer on their request prior to their case being reopened, after which they were recognised as refugees. It is pertinent to recall that during these months their legal status rendered them susceptible to removal.

C) Knowledge of Dublin Procedures

Respondents claimed to feel relatively well-informed about the Regulation, which is to be expected given that most of the interviewees had travelled extensively within the EU, undoubtedly picking up information about the Regulation from different sources in different Member States. The current scenario in Malta whereby asylum seekers are not provided with specific and detailed information, about the Dublin Regulation and its workings, indicate that the level of information which interviewees claimed to have was not provided by State authorities.

RECOMMENDATIONS

The results of this research point to the need for a strengthened Dublin Unit and a clearer, more unified procedure for dealing with Dublin transfers, in order to ensure that protection needs are met, basic rights adequately safeguarded, while ensuring efficient processing of Dublin requests.

In view of this we strongly recommend:

1. **The establishment of a single dedicated unit, responsible for the administration and implementation of all aspects of the Dublin procedure, whose composition, responsibilities and functions are established by law.**

   Responsibilities
Its responsibilities should include:

• Receiving and processing requests from other Member States;
• Providing information to asylum seekers both about the Dublin system generally and the procedure to be followed, as well as about the documentary and other requirements in their particular case;
• Assisting and supporting asylum seekers to obtain the necessary documentation, if required;
• Making arrangements for the transfer and/or reception of asylum seekers and other migrants subject to Dublin procedures.

Composition
The unit should be adequately staffed by trained, culturally-competent personnel who are well-versed in the workings of the Dublin Regulation and have an in-depth understanding of both immigration law and the asylum procedure.

Whilst knowledge of immigration rules is indispensable, it is recommended that the Dublin Unit is not inextricably tied to the workings of the Immigration Police. The current situation whereby asylum seekers are questioned by Police with a view to establishing their eligibility for Dublin transfers is self-defeating as asylum seekers are often distrustful and apprehensive of the manner in which the information they provide will be processed, largely due to the negative experiences they may have had with disciplined forces in their countries of origin.29

2. Significantly increasing the resources currently allocated to deal with Dublin requests in order to ensure that they are dealt with promptly and efficiently.

3. Establishing clear, written and publicly available rules on the procedure for dealing with Dublin requests which should include:
   
   Rules on provision of information
   
   As a basic minimum, these rules should provide that:
   
   • Information about the workings of the Dublin procedure is to be provided to asylum seekers as soon as their possible eligibility for a Dublin transfer is identified through the information they provide to the Refugee Commissioner.
   • The information is to be provided orally and in writing, in a language which the asylum seeker actually understands, through the use of an interpreter/cultural mediator where necessary.
   • The asylum seekers is to be provided with clear information regarding the documentation required to substantiate the request for a transfer
   
   Rules on provision of assistance
   
   The procedure should provide for the provision of basic assistance and support throughout the procedure, particularly in cases of outgoing requests and/or where the individual concerned is in detention, including:
   
   • Assistance to contact family members;
   • Assistance to bring over documentation.

   Rules on processing of requests
   
   The rules on the procedure for processing of requests should include:
   
   • The obligation to carry out a Dublin interview, which provides the asylum seeker with the possibility to explain his situation in-depth and clarify his eligibility for a transfer; particular attention should be made of the possible qualification for the use of the discretionary clause;
   • Rules regulating the use of the sovereignty clause, particularly in cases involving requests for transfer based on family unity – we believe that in such cases, in view of the overriding nature of the right to family life and the importance of family unity, the discretion of the Refugee Commissioner to examine asylum seekers’ applications before a decision is received regarding the Dublin request is dispensed with and the examination of the application is automatically suspended throughout the entirety of the Dublin procedure;

• The establishment of a single focal point responsible for receiving and responding to ad hoc queries from migrants about their cases;
• A clear obligation to provide regular information and updates to all migrants subject to Dublin procedures, at regular intervals throughout the process, in a language they understand, and rules regulating how the said information is to be provided;
• In cases where asylum seekers are to be transferred, provision for advance information on the date and manner in which a transfer will take place, the procedure to be followed for registration in the responsible Member State and information about how to access the asylum procedure there;
• The obligation to give the individual concerned a decision in writing, supported by the reasons for the decision and information on the time limit and procedures that need to be followed to appeal the said decision.

**Rules establishing a clear appeal procedure**

It is imperative that a clear appeals procedure is established by law; the rules regulating such procedure should provide for:

• The establishment of a procedure for appealing decisions taken in terms of the Dublin Regulation;
• Clear rules on which decisions are subject to appeal;
• Clear rules on the time limits to be followed and on the ways in which an appeal may be lodged – we recommend that the current time-limit of 3 working days is reviewed to ensure that all asylum seekers are provided with the effective possibility to lodge an appeal.
• The provision of free legal assistance to asylum seekers who choose to appeal a transfer decision.

4. **The establishment of clear rules regulating the treatment of migrants who are subject to Dublin procedures, in order to ensure they are able to live with dignity, in particular:**

**Rules regulating the treatment of asylum seekers awaiting the outcome of a Dublin request**

As a minimum, these rules should:

• Formalise and enshrine current good practice, which provides equal access to reception conditions for all asylum seekers living in the community, whether or not they are subject to Dublin procedures, into law;
• Allow for the early release of detained asylum seekers awaiting the outcome of an outgoing Dublin request, on a case by case basis after an individual assessment of their situation, in view of current policy which dictates that asylum seekers are to be detained until their application is determined.

**Rules relating to reception upon transfer from another Member State**

It is fundamental that basic standards are established for the initial reception of migrants and asylum seekers transferred to Malta from another Member State, with a view to ensuring that:

• Returnees are notified of the steps they need to take to be re-admitted into the accommodation system and the asylum procedure, if necessary, with indications of the offices they need to visit and procedures to follow;
• Asylum seekers transferred to Malta with no record of prior stay here are received in person and prior arrangements made for accommodation and financial assistance. They are also to be systematically provided with clear information about the asylum procedure and the steps they need to take to access the procedure;
• All arrivals in a particularly vulnerable situation, such as families with minor children, unaccompanied minors, those experiencing mental ill-health, and persons with disabilities are received in person and provided with the necessary psychosocial follow-up and assistance.