

# Should asylum seekers be returned under Dublin system?

COMMENTARY | BY SOLON ARDITTI\*<sup>\*</sup>

Over the past few months there have been repeated calls from a number of European Union member-states to resume the transfer of asylum seekers to Greece under the Dublin Regulation, which provides for the return of applicants to the member-states through which they first entered the EU.

Dublin transfers to Greece have been suspended since 2011, following two judgments by the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU), which identified “systemic deficiencies” in the Greek asylum system.

While all the regular progress reports issued by the European Commission since this suspension had systematically concluded against resuming Greece’s participation in the Dublin system, the latest report published on December 8 has for the first time recommended a gradual resumption of Dublin transfers to Greece from March 15, 2017.

Is this recommendation fair and justified?

While the latest progress report published by the European Commission has rightly noted a wide range of improvements in Greece’s legal, technical and operational ability to deal with the enduring migrant crisis, a number of challenges still appear to stand in the way of Greece’s implementation of the Dublin rules. To mention but a few:

Between January and December 4, 2016, 171,909 migrants arrived irregularly in Greece and the average daily number of arrivals in Greece has increased since August 2016. Moreover, following the closure of the Western Balkans route, which prevents third-country nationals from moving onward, more than 62,000 third-country nationals having arrived irregularly are currently still present in Greece.

The pending asylum cases to be examined at first instance were, on September 30, more than 17,000 and the asylum application case load that the Greek Asylum Service is facing is significantly higher than in previous



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years. While Greece has significantly increased its overall reception capacity for both irregular migrants and asylum applicants, serious challenges remain in the Aegean islands, where the current maximum reception capacity is around 8,200 against a total number of 16,295 registered migrants.

At least as importantly, the capacity for vulnerable applicants is still very

suboptimal, with a current waiting list of 1,199 unaccompanied minors who need to be placed in appropriate facilities. This is in addition to the growing concerns about the protection of vulnerable applicants, including unaccompanied minors, in view of the lack of an adequate guardianship system.

Finally, despite notable improvements over the past few months, both

the Greek Asylum Service and the Appeal authorities continue to be understaffed relative to their growing workload.

The above diagnosis does not bode well for Greece’s fitness to regain membership of the Dublin system in the foreseeable future. What is more, it is difficult not to advance that the calls issued by some member-states for the reintegration of Greece into the Dublin system may have been more politically motivated, in view of a number of major national elections, than reflective of the actual magnitude of the issue at stake. For example, in Germany, the number of asylum cases for which Greece should be responsible under the Dublin Regulation amounted to 18,897 people for the first half of 2016, and 5,436 for 2015. This is less than 2 percent of the over 1 million asylum applicants and migrants which Germany received in 2015, and some 6 percent of the approximately 300,000 people it is expected to receive in 2016, according to the Federal Office for Migrants and Refugees (BAMF).

Based on these figures, there is little doubt that the number of Greek Dublin cases in Germany, or the even smaller number of Greek Dublin cases in other member-states, will only affect Germany’s and other member-states’ national budgets very marginally if Greece were to be reinstated in the Dublin system.

On the other hand, would it not be fair to also examine the number of Greek Dublin cases in the EU in the light of the achievements of the EU Relocation Plan to date? As of December 6, only 6,212 people out of the planned 63,302 had effectively been relocated from Greece to other member-states. The balance would probably amount to – if not exceed – the number of cases falling under Greece’s Dublin obligations.

While responsibility for deciding on a resumption of Dublin transfers in individual cases lies exclusively with the member-states’ authorities under the control of the courts, the appropriateness of reinstating a member-state

whose refugee crisis was caused largely by an unfavorable geographic position and a failing EU responsibility sharing environment may therefore be questioned. This is particularly true when other, better-resourced member-states have themselves decided to suspend their implementation of both the Dublin and Schengen rules, or have ignored their legal obligation to participate in the EU Relocation Plan.

According to a statement by the European Commission’s spokesperson a few months ago, commenting on the forthcoming revision of the Dublin system, every member-state should abide by the rules, and before Dublin is reformed, the returns to the country from where the asylum seekers first crossed into the rest of the EU should apply.

However, since the forthcoming Dublin reform foresees, among other things, that the current regulation will be supplemented with a “corrective fairness mechanism” that will address situations of disproportionate pressure on individual member-states, would it not be more fitting for Greece to only regain membership of the Dublin system after, and not before, the forthcoming reform and the new solidarity mechanisms are in place, not least when the viability of the EU-Turkey migration agreement now appears so fragile? And how morally tenable would it be for Greece to have to resume its implementation of the Dublin rules before the EU Relocation Plan has fulfilled all its commitments and has materialized the principles of responsibility sharing on which the new Dublin system is designed to build?

\*Solon Arditis is managing director of Eurasylum and a research fellow at the Institute for the Study of Labor (IZA). He is also co-editor of Migration Policy Practice, a bimonthly journal published by the International Organization for Migration (IOM). His new book, “A Concise Dictionary of the European Refugee Crisis,” will be published next year. Twitter @Eurasylum.