

The 2015 Suspension of the Dublin Regulation: An Investigation into Possible Causes

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ABSTRACT

Brittany Lynn Griese: The 2015 Suspension of the Dublin Regulation: an investigation into possible causes
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In the summer of 2015 European countries faced a refugee crisis unlike any since World War II. The European Union has rules and directives in place dictating which member state is responsible for processing asylum claims, the Dublin III Regulation. However, as the 2015 refugee crisis reached a climax, Dublin III was placed under increasing strain, and in September 2015 the Dublin rules were suspended. This paper investigates the possible reasons and causes that lead to the suspension. It weighs the relative importance of two lines of argumentation: the role public pressure on governments to stem the tide of immigrants, and the importance of administrative overload in processing the registration of millions of refugees. The paper outlines the Dublin Regulation, a quick overview of the refugee crisis, and then investigates the two possibilities: bureaucratic incapacity or public pressure, while conducting a paired comparison of Germany and Hungary.

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LIST OF ABBREVIATIONS

EU	European Union
CEAS	Common European Asylum System
ECRE	European Council on Refugees and Exiles
UNHCR	United Nations High Commissioner for Refugees
EASO	European Asylum Support Office
NGO	Non-Governmental Organization
FIDEZ	Hungarian Civil Alliance
MIGSZOL	Migrant Solidarity Group of Hungary
BAMF	German Federal Agency for Migration and Refugees
AfD	Alternative for Germany
ECtHR	European Court of Human Rights

INTRODUCTION

In mid to late 2015 it was hard to open a news source without seeing new reports on the ever-growing refugee crisis in Europe. The refugees were coming from Syria, Iraq, Afghanistan, and other areas such as Northern Africa in search of an escape from the constant conflict in their home country. One of the main issues facing the European Union (EU) was how to handle the constant flow of refugees, which were mixing with the ever-constant flow of migrants. The Dublin Regulation is the EU directive, which dictates which EU member state is responsible for processing the asylum request of an asylum seeker: that being the “country of first entry”. In fact the crisis was reaching unprecedented levels, and countries that adhered to the Dublin Regulation began to struggle to cope with the shear numbers. Dobra (2015: 92) articulates this by noting that, “the Dublin Regulation, even by changes brought until 2015, was not taking into account a crisis of a magnitude as perceived later as being ‘the greatest crisis of refugees from the second World War’.”

As a result of the growing pressure by the influx of refugees, the Dublin Regulation was suspended for a time in 2015. In my paper I aim to investigate the chief causes of the breakdown of the Dublin Regulation. Was the suspension of Dublin III in the fall of 2015 a result of public pressure from populations, or was it a collapse of the bureaucratic registration process? I will try to answer this question by first defining some major terminology pertaining to the crisis, next outlining the Dublin regulation and describing the migrant crisis, and finally examining the relative veracity of two possible causes for the suspension- public pressure, and administrative overload- through a pair comparison of Germany and Hungary.

Definitions

During the process of my research for this paper, I have come across different definitions and terminology. In some cases the crisis in 2015 is regarded as the “migrant crisis”, while other sources use the term “refugee crisis”. This difference in terminology, and how it impacted the view of the crisis in 2015, is well characterized by Holmes and Castaneda (2016). They describe how “at times the phrase ‘migrant crisis’ subtly delegitimizes calls for protection, whereas the phrase ‘refugee crisis’ reinforces them” (Holmes and Castaneda 2016: 16). The distinction is that “refugee” implies involuntary migration, whereas “migrant” implies voluntary migration (Holmes and Castaneda 2016: 16-17). For the purpose of this paper, I have chosen to use the term “refugee crisis”, as I believe it best describes the situation.

In that respect I use the EU definition of a refugee, which is adopted from the 1951 Geneva Convention definition:

“a person who owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or owing to such fear is unwilling to avail himself of the protection of that country.” (United Nations Refugee Agency 1951)

In regards to the term “third-country national”, I use the definition given in the Dublin regulation:

“any person who is not a citizen of the Union within the meaning of Article 20(1) TFEU and who is not a national of a State which participated in this regulation by virtue of an agreement with the European Union” (Reg. No 604/2013: article 2).

I also use the EU classification of asylum granting, as outlined on the Common European Asylum System (CEAS) website:

“Asylum is granted to people fleeing persecution or serious harm in their own country and therefore in need of international protection.” (European Commission CEAS 2017)

The Dublin Regulation

Phases

The Dublin Regulation is the EU directive meant to determine which member state is responsible for processing the asylum application of third country nationals. The Dublin Regulation was first outlined at the European Community Convention in Dublin in 1990. The Dublin Convention took place amid the opening of the borders to visa free travel between Schengen member states. The agreement was meant as a clarification and replacement of Chapter VII of the Schengen Agreement, “Responsibilities for Processing Applications for Asylum”, which outlines the obligations of the member states and the rights of the asylum seeker (Hurwitz 1999: 647). The Dublin Convention is similar to Chapter VII, however, Dublin goes into further detail regarding the responsibilities of each member state for processing an asylum claim, and also differentiates the rights of different types of asylum seekers (e.g. minors, unaccompanied minors, etc.). Hurwitz (1997: 647) describes the original aim of the Dublin Convention as: to establish “a system determining the State responsible for examining the applications for asylum lodged in one of the member states of the European Community.”

At the time of its original incarnation, it was set up to meet the criteria of the 1951 Geneva Convention relating to the status of refugees. The criteria, as outlined in the preamble of EU regulation No 604/2013, the Dublin Convention III, included “thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of *non-refoulement*.” The Dublin

regulation is not a CEAS, but instead a “clear and workable method for determining the member state responsible for the examination of an asylum application” (Reg. No 604/2013). One of the main aspects of the passing of the 1990 Dublin Convention relied on “States mutual confidence in their asylum procedures” (Hurwitz 1999: 648). Since Schengen opened the borders between the countries and allowed for visa free travel, if the States did not have mutual trust the others asylum procedures then the system would not function.

The Dublin process has gone through three iterations: Dublin I in 1995, Dublin II in 2003, and Dublin III in 2013. The first Dublin Convention was updated on 18 February 2003 with the passing of regulation No. 343/2003 (Dublin II). Lenart (2012: 5) outlines the original aim of Dublin II as:

“Designed to prevent two of the most undesirable phenomena in the area of refugee law- ‘refugees in Orbit’ (refugees circling between member states or within one Member State neither being allowed to stay within it’s territory, nor being able to leave it) – and ‘Asylum Shopping’ (lodging an application in several member states or choosing the one having the most lenient policy or practice in this respect) – and to bring order to the process of examining asylum application in the EU.”

Under Dublin II the “one-stop” procedure was meant to tighten the reign on “asylum shopping” a process in which an asylum seeker will lodge asylum applications in multiple member states in hopes to find a State with more lenient asylum policies or greater social benefits. The “one-stop” policy states that the first country of entry, first European Union country that the asylum seeker sets foot in, would be responsible for processing the asylum claim. For this procedure to work well, just as with the original Dublin Convention, all States must have faith and trust in the asylum procedures of all other member states. The member states must trust that the asylum

seekers will be treated with similar levels of respect and dignity, while also being given adequate housing and support.

One of the main complaints from member states was in regards to the increased burden “on Southern and Eastern European Countries” (Lenart 2012: 6). This burden was a consequence of being the usual “country of first entry”, which resulted in these border countries being responsible for handling a disproportionate number of asylum claims. Yet, while these border countries were seeing the bulk of the asylum seekers, there was still a problem with “asylum shopping”.

The new Dublin II regulation received sharp criticism from the European Council on Refugees and Exiles (ECRE) and the United Nations High Commissioner for Refugees (UNHCR) for being insensitive to asylum seekers’ preferences and circumstances and being too cumbersome. The ten criticisms include:

“1) No equivalence of protections throughout the Union leading to the ‘Asylum Lottery’ phenomena; 2) No possibility to choose the country of Asylum; 3) Dublin II Regulation as a responsibility- shifting instrument; 4) Responsibility for asylum application as a penalty for allowing their country nationals to enter the territory of ‘fortress Europe’; 5) length and cost of procedures and transfers; 6) No suspensive effect of appeal or judicial review against the decision to take charge or take back; 7) Possibility of detention; 8) Very limited notion of a ‘Family Member’; 9) Discretions of Member States with regard to application of sovereignty and humanitarian clauses; 10) Risk of violation of non-refoulement principle in case of automatic reliance on the provisions of the regulation” (quoted from Lenart 2012: 12).

Dublin III

Dublin III came into effect in June 2013, and sought to respond to some of these concerns as well as to prepare for the accession of the new member states from Central and Eastern

Europe into the Schengen area. The official objective of Dublin III was to create “a common policy on asylum, including a Common Europeans Asylum System (CEAS), is a constituent part of the European Union’s objective of progressively establishing an area of freedom, security, and justice open to those who, forced by circumstances, legitimately seek protection in the Union” (Reg. No 604/2013: 31). The chief features of the current Dublin regulation are described below.

Determining Responsibility

Chapter Two, article three indicates the type of national who can apply for asylum; “member states shall examine any application for international protection by a third country national or a stateless person who applies on the territory of any one of them, including at the border or in the transit zones”(Res. No 604/2013: 37). The article goes on to explain that only one State may process the asylum application at any one time, and that State must be the “State of first entry” (Res. No 604/2013: 37). The “State of first entry” clause commands that the State responsible for processing the asylum application is the first State in which the applicant has set foot within. The next chapter discusses the criteria for determining which member state is ultimately responsible.

Chapter three outlines the “Criteria for Determining the Member State Responsible”. The provisions include:

- the procedure for minors [article 8 and article 6],
- which State is responsible when the applicant has a legal residence permit [article 12],
- the procedure for determining which member State is responsible depending on the “entry and stay” habits of the applicant [article 13],
- what to do, when there are, “family members who are beneficiaries of international protection” [article 9],

- and the “discretionary clause” [article 17] (Res. No. 604/2013: 40).

In terms of article 8, the member state responsible for handling the application of an unaccompanied minor is the State where there “is a family member or a sibling of the unaccompanied minor legally present, provided that it is in the best interest of the minor” (Res. No. 604/2013: 39). Then in article 6, “guarantee for minors”, it is outlined that the application process should be carried out in a manner, which has “the best interests of the child as the primary consideration” (Res. No. 604/2013: 38). In that regard, it is required that a representative of the unaccompanied minor is present at all times, and for that this representative is to “have the qualifications and expertise to ensure that the best interests of the minor are taken into consideration during the procedures carried out under this regulation” (Res. No. 604/2013: 38). Article 6 stresses the importance of finding family members of the unaccompanied minor, and to meet this end all member states should cooperate to identify possible family members. On a similar note, article 9 provides that the applicant may have his/her claim processed by the State in which they have family members present who “are beneficiaries of international protection”, but only “provided that the persons concerned [applicant] expressed their desire in writing” (Res. No. 604/2013: 39).

In terms of article 12, if the asylum applicant has a legal residency permit or visa from a member state, the issuing member state is responsible for processing the claim (Res. No. 604/2013: 40). This means that even if an asylum seeker leaves the State in which he/she has a legal residency permit, and applies for asylum in a different State, the case will likely be sent back to that State. This article is meant as another remedy to curtail “asylum shopping” and to make sure the application is only processed in one country.

However, while these articles work together as a way to determine the responsible member state, article 17 brings the decision back to the discretion of the member state. Article 17 states that a member state can decide to “examine an application for international protection” even if they are not determined to be the member state responsible, but in doing so they must notify all other member states using the “DubliNet electronic communication network set up under article 18 of the Regulation (EC) No. 1560/2003” (Res. No. 604/2013: 41). Member states, according to article 17, also are given the discretion “before a first decision is made they can request that another Member State takes over the request per family reunification humanitarian grounds” (Res. No. 604/2013: 41).

Responsibility of Communication

Article 4 outlines the “Right to Information” for the asylum seeker. All of this information is to be provided to the asylum seeker in a leaflet, which includes a specific leaflet for unaccompanied minors. This article states the information should be presented to the applicant “as soon as an application is lodged” (Res. No 604/2013: 37). The information should include:

- a description of the “consequences of making another application in a different member state”;
- description of the “criteria for determining the member state responsible”;
- information regarding a personal interview which is “pursuant to Article 5”;
- the possibility of submitting information regarding the presence of family members, relatives or any other family relations in the Member State, including the means by which the applicant can submit such information” (Res. No. 604/2013: 37).

Other communication to be presented to the applicant includes:

- information about “the possibility to challenge a transfer decision and where applicable, to apply for a suspension of the transfer”;
- they are also to be provided information that member states “can exchange data on him or her for the sole purpose of implementing their obligations arising under this regulation”;
- and finally the applicant is to be provided “the right of access to data relating to him and her and the right to request that such data be corrected if inaccurate or be deleted if unlawfully processed” (Res. No. 604/2013: 37).

Interview

Also stated in Chapter Two, article 5 is the responsibility of the State to conduct a personal interview which “shall be conducted in a language that the applicant understands or is reasonably supposed to understand, and in which he or she is able to communicate” (Res. No 604/2013: 38). This interview is used to gather information from the asylum seeker in regards to processing their application, and determine which State is responsible for processing their asylum application.

Take Charge and Take Back

Chapter Four outlines the “take charge” and “take back” procedures. Section III discusses the stipulations for issuing a “take back request”, which is when a member state requests another, which had been determined to be the State of first entry, “take back” the asylum applicant. In terms of a “take charge” request this can be made by a member state after there is reasonable suspicion that an applicant has entered a different member state previously (Res. No. 604/2013: 43). That means that once a person’s information has been flagged in the Eurodac system as

having been processed in different member state, the member state in which the applicant currently resides can request the original State to “take back” or “take charge” of the applicants’ request for asylum. This is meant as a way to prohibit “asylum shopping”, where an asylum seeker moves around to other member states in hopes of applying for asylum in a State with more lenient policies.

This information may be received through a personal interview with the applicant or through the Eurodac system. Eurodac is an electronic information system first implemented in 2000 as a shared information system that all member states use to log in the fingerprint and other biometric data of the applicant once they have applied in that State (Brekke and Brochmann 2014). The applicant is to be fingerprinted (if over 14) and processed in the system as a way of keeping track of who has already applied for asylum in any member state (European Council regulation (EC) 2725/2000). If the asylum seeker’s information is flagged in the system, for example, because he has already applied for asylum, the member state has “two months after the Eurodac hit to send a take back request” (Res. No. 604/2013: 43). In regards to “take charge”, article 21 notes that a member state has “three months to request a ‘take charge’ from another member state” (Res. No. 604/2013: 43). Once a “take charge” request has been made the respondent State has two months to respond (Res. No. 604/2013: 43).

When there is a change in member state responsibility, the applicant shall be informed in writing (Res. No. 604/2013: 43). In Section IV both articles 26 and 27 discuss the “procedural safeguards” for the applicant. Article 26 outlines how an applicant is to be informed of a transfer decision, and article 27 explains their rights to an appeal of the decision (Res. No. 604/2013: 46). In both situations the applicant has the right to free legal council if necessary, and that all

information must be shared with the applicant “in a language that the person concerned understands or is reasonably supposed to understand” (Res. No. 604/2013: 45).

Detention

The reasons and time limits for detention are outlined in Section V, article 28. While an applicant may be placed in detention, Dublin III stipulates:

- “Member states shall not hold a person in detention for the sole reason that he or she is subject to the procedure established by this regulation”,
- that the person is only to be detained “when there is serious risk of absconding”,
- that “detention shall be for as short of a period as possible” (Res. No. 604/2013: 46).

When a person is detained, and a “take charge” request has been made, the article dictates that the “take back” or “take charge” request must be responded to in one month. Once the response has been given and a transfer is decided the transfer “must take place no later than six weeks after responsibility claimed” (Res. No. 604/2013: 46). If the applicant is not in detention the transfer must take place within six months. The cost of that transfer is paid by the receiving member state-- not the asylum applicant (Res. No. 604/2013: 47).

Crisis Management

The article most relevant to the 2015 refugee crisis is article 33, “a mechanism for early warning, preparedness, and crisis management”. This article dictates that in times when it becomes evident that a State might not be able to handle the flow of asylum claims, the European Commission “shall, in cooperation with the European Asylum Support Office (EASO), make recommendations to the member state in crisis, inviting it to draw up a preventative plan” (Res.

No. 604/2013: 48). However, a member state does not have to wait for the Commission to request they draw up a preventative action plan, but can draw one up themselves and then present it to the Commission for review (Res. No. 604/2013: 49).

The action plan must maintain the “asylum *acquis* of the Union,” that is to say that the action plan must not disrupt the asylum procedure of other member states and must maintain “fundamental rights of applicants for international protection” (Res. No. 604/2013: 49). This action plan can be implemented at the first sign of a crisis, and after the first implementation the member state must report to the European Commission every three months.

The Refugee Crisis

The refugee crisis of 2015 was the climax of a series of events and trends that began well before 2015. As Ostrand (2014: 259) notes, the EU has seen a mass influx of persons since 2001, but the levels rose dramatically after the Arab Spring of 2010-11 and reaches the highest levels so far in 2015. According to a BBC source (2016), “the conflict in Syria continues to be by far the biggest driver of migration. But the ongoing violence in Afghanistan and Iraq, abuses in Eritrea, as well as poverty in Kosovo, are also leading people to look for new lives elsewhere.”

The refugee crisis of 2015 was thus not simply a result of European countries being unprepared for processing asylum applications, but appears tied to the rapid rise in the number of asylum applicants during 2015. In Connor’s words (2016: 6), “Since 1985, Europe received about 11.6 million asylum applications- meaning that last years 1.3 million amounted to about one tenth of all applications received during the past 30 years by current EU countries, Norway, and Switzerland.” The systems began to become bogged down with applications, and there was also the issue of how to provide housing and support to a growing number of people.

Routes of Arrival

Refugees were arriving to the EU by diverse means. The routes to Europe are not new, but they were being used by an increasing number of people. Refugees and migrants were mingling together on the route to Europe and caught up in an increasingly perilous journey as borders begin to close to them. The European Commission published a communication on March 2, 2016, in which it described the crisis as follows: “Today more than 60 million people have been displaced as a result of war, protracted conflict, or severe national disasters. Between Jan 2015 and February 2016, over 1.1 million people – refugees, asylum seekers, and migrants, have made their way to the European Union, either escaping conflict in their countries of origin or in search of a better and safer life” (quoted in Dobra 2016: 96).

There were three main routes for asylum seekers to get to Europe:

- a. Across the Mediterranean from North Africa to Italy or Spain
- b. Across the eastern land route from Turkey via Bulgaria
- c. Across the western Balkans from Greece via Macedonia, Serbia, and Hungary

The most perilous is across the Mediterranean. It is here that people are often clustered on small boats, most not even sea worthy vessels, and set sail in the cover of darkness with hopes of reaching the shores of a European country by the morning. Many die in the water before help arrives. Italy has been dealing with the refugees and economic migrants coming from Northern Africa across the Mediterranean since before the height of the Arab Spring violence in 2011. The Italian navy has been employed in the EU operation Mare Nostrum since the spring of 2013 to

rescue the third country nationals from the sea. Since 2014, the action has been taken over by the European Union's Frontex naval border patrol.

Along with those coming by sea from Northern Africa, are those taking the western Balkans route. As time went on, the borders between the non-EU Balkan countries and Hungary became increasingly militarized. Kallius, Monterescu, and Rajaron (2016: 26) note, "Hungary occupies a strategic corridor between Serbia and Austria; in recent years, it has developed into a crucial entry point to the EU Schengen area." With an increase in traffic, and people passing through irregular border crossing points as a way to evade having to make their Asylum claim in Hungary instead of a more desirable country (i.e. Germany or Sweden), the Hungarian government took a drastic choice and began to erect a razor wire border wall. The crisis in 2015 played out on television screens, in published photos from news sources throughout the world, and in the daily lives of many Europeans.

Overview of Numbers

As the crisis began to climax the sheer number of refugees began to increase, which caused a major stress on the system. A Eurostat report from March 2016 estimated that over 1.2 million first time asylum applications had been submitted from January 2015 until December 2015 (Eurostat 2016). While in 2016, a different Eurostat report, showed the number of first time applicants, only decreased by around 50,000 applications, still leaving the number of first time applicants at around 1.2 million (Eurostat 2017). In comparison, Eurostat (2016) estimated that in 2014 there were only around 563,000 first time applicants. The report published on March 4, 2016, included the below chart outlining the drastic increase in first time asylum applications

comparing 2014 to 2015. Some of the most drastic increases are shown in Hungary, Belgium, Germany, Austria, Finland, and Sweden.

TABLE 1: “First time asylum applicants in the EU member states” (EuroStat 2016)

	Number of first time applicants			Share in EU total (%)	Number of applicants per million inhabitants*
	2014	2015	Change (in %) 2015/2014	2015	2015
EU	562 680	1 255 640	123%	100.00%	2 470
Belgium	14 045	38 990	178%	3.10%	3 463
Bulgaria	10 805	20 165	87%	1.60%	2 800
Czech Republic	905	1 235	36%	0.10%	117
Denmark	14 535	20 825	43%	1.70%	3 679
Germany	172 945	441 800	155%	35.20%	5 441
Estonia	145	225	54%	0.00%	172
Ireland	1 440	3 270	127%	0.30%	707
Greece	7 585	11 370	50%	0.90%	1 047
Spain	5 460	14 600	167%	1.20%	314

France	58 845	70 570	20%	5.60%	1 063
Croatia	380	140	-63%	0.00%	34
Italy	63 655	83 245	31%	6.60%	1 369
Cyprus	1 480	2 105	42%	0.20%	2 486
Latvia	365	330	-10%	0.00%	165
Lithuania	385	275	-29%	0.00%	93
Luxembourg	1 030	2 360	129%	0.20%	4 194
Hungary	41 215	174 435	323%	13.90%	17 699
Malta	1 275	1 695	33%	0.10%	3 948
Netherlands	21 780	43 035	98%	3.40%	2 546
Austria	25 675	85 505	233%	6.80%	9 970
Poland	5 610	10 255	83%	0.80%	270
Portugal	440	830	89%	0.10%	80
Romania	1 500	1 225	-18%	0.10%	62
Slovenia	355	260	-27%	0.00%	126

Slovakia	230	270	18%	0.00%	50
Finland	3 490	32 150	822%	2.60%	5 876
Sweden	74 980	156 110	108%	12.40%	16 016
United Kingdom	32 120	38 370	19%	3.10%	591
Norway	10 910	30 470	179%	-	5 898
Switzerland	21 940	38 060	73%	-	4 620

While some of the countries have seen minimal increases in first time asylum applicants, the drastic rise in numbers over a one-year period has regardless placed a strain on the system as a whole. Dublin lays down the rules for who is responsible for processing an asylum claim, and with numbers that, in some places, have seen an increase of over 100% determining exactly who is responsible according to Dublin becomes a much longer process.

Two Possible Reasons for the Suspension

Why has the Dublin regulation broken down resulting in the temporary suspension of transfers? I entertain two plausible lines of explanation: a bureaucratic capacity argument and/or a response to public pressure. The first line of argument looks for the reason of the breakdown in the severe and asymmetric bureaucratic burden of enforcing Dublin in the face of the sudden influx of refugees. The second argument is that some governments defected because of rising public pressure, which pushed them to act when vast numbers passed through borders. I will

examine these two arguments by first briefly investigating the situation in the EU as a whole and then through a comparative case study of Hungary and Germany.

Bureaucratic (in)capacity

Many scholars have noted bureaucratic impediments both at the EU and national level. First, several highlight the inability of Dublin to cope with a crisis of this magnitude. A report ordered by the European Commission (2015: 4) stated, “Dublin III was not designed to deal with situations of mass influx, which has severely reduced its relevance in the current context and has undermined achieving its objectives.” Hence, even before the refugee crisis in 2015, it seems that there have been cracks in the system, but those cracks were made into crevices as a result of 2015.

Moreover, the differences in asylum procedures in EU member states were known to negatively affect the processing of stopping “asylum shopping”. Brekke and Brochmann (2014: 146), point to “national differences in reception conditions, access to integration measures and social rights undermine the supranational efforts to coordinated policies across the region”, and that “these differences encourage secondary movement by migrants, movement that the Common European Asylum System (CEAS) was intended to prevent.” The CEAS was “based on the principle that it should not matter which country you flee to”, as all should have the same standards (Brekke and Brochmann, 2014: 146). However, that was not the case as Dublin III returns had been suspended with respect to Greece in 2011, and Norway proposed to do the same with respect to Italy in 2012 (Brekke and Brochmann 2014: 148). The case of Greece even went to the European Court of Human Rights (ECtHR) in 2011, which confirmed the suspension of Dublin III returns to Greece. Brekke and Brochmann (2014: 148) note two of the main

challenges of implementing and enforcing Dublin III include there being a “disproportional burden on the countries on Europe’s Southern border” and the “differences in reception conditions, processing ability, and access to social rights prompt regime competition.” In the European Commission’s report, the “Evaluation of Dublin III Regulation”, it is also clarified how “Dublin III was not designed to ensure fair sharing of responsibility and does not effectively address the disproportionate distribution of applications for international protection” (EU Commission 2015: 4).

Public pressure

An alternative explanation resides in public opinion, which rapidly became more critical of immigrants across Europe. This is apparent from the Pew Research Center Spring 2016 Global Attitudes Survey of the Pew Center, conducted in ten European countries: Hungary, Poland, Netherlands, Germany, Italy, Sweden, Greece, UK, France, and Spain. Wike, Stokes, and Simmons (2016: 3) discussed how the main concerns for many Europeans were the “security and economic repercussion of the refugee crisis”. Wike, Stokes, and Simmons (2016: 3) asked the respondents to rate the three responses in order of that which they believe is the most worrisome issue facing their country. The three responses were: 1) “refugees will increase the likelihood of terrorism in our country”, 2) “Refugees are a burden on our country because they take our jobs and social benefits”, and 3) “refugees in our country are more to blame for crime than other groups”.

TABLE 2: Views Towards Impact of Refugees

Country	R1	R2	R3
Hungary	76%	82%	43%
Poland	71%	75%	26%

Netherlands	61%	44%	N/A
Germany	61%	31%	35%
Italy	60%	65%	47%
Sweden	57%	32%	46%
Greece	55%	72%	30%
UK	52%	46%	28%
France	46%	53%	24%
Spain	40%	40%	13%
Median	59%	50%	30%

The numbers in red refer to the most worrisome to the highest number of people in that country.

Wike, Strokes, and Simmons (2016: 4) also surveyed the same group in regards to their views towards “Muslims in our country”, and found there was a majority with a unfavorable view:

TABLE 3: Views on “Muslims in Our Country”

Country	Unfavorable
Hungary	72%
Italy	69%
Poland	66%
Greece	65%
Spain	50%
Netherlands	35%
Sweden	35%
Germany	29%

However, the authors note that “for some Europeans negative attitudes towards Muslims are tied to a belief that Muslims do not wish to participate in the broader society” (Wike, Strokes, and Simmons 2016: 5). They conclude that, “the refugee crisis has brought into sharp relief deep ideological divides over views of minorities and diversity” (Wike, Strokes, and Simmons 2016: 5).

Another side of the public pressure argument is tied to the public perception of how the authorities are handling the situation. Examining public opinion in ten EU during the height of the crisis, Connor (2016: 7) concludes “disapproval was generally greatest in countries with the

highest number of asylum seekers in 2015.” It is interesting that the EU appears to bear most of the blame. When asking citizens from the ten EU countries the question “Do you (Disapprove/ Approve) of the way the European Union is dealing with the refugee crisis?” a majority in each country disapproved, with the some of the highest levels of disapproval in frontier countries (Connor 2016: 7).

TABLE 4: Attitudes Towards EU Handling of Crisis

Country	Disapprove	Approve
Greece	94%	5%
Sweden	88%	10%
Italy	77%	17%
Spain	75%	21%
Hungary	72%	24%
Poland	71%	19%
UK	70%	22%
France	70%	26%
Germany	67%	26%
Netherland	63%	31%

That is not to say that all public opinion of refugees and migrants was negative. It is important to also note the work of humanitarian organizations and Non-Governmental Organizations, which were established as a way to meet the needs of the refugees and migrants that could not be met by the different governments. In actuality, European societies became more divided, both externally and internally, on how best to deal with the refugees.

Case Studies

Lets us now take a deeper look into the situation by focusing on two countries: Germany and Hungary. I have decided to use Germany and Hungary as my case studies for two reasons. The first is that while both are EU countries, Hungary occupies a part of the external border of

the EU, and has become a “country of first entry” and transit for those traveling along the Balkans land route. Germany on the other hand is landlocked in terms of Dublin. Germany, on the other hand, is landlocked in terms of Dublin, and has become a major “destination country”. The second reason is the difference in the initial government response and subsequent responses.

I will apply the same criteria for determining possible reasons for the suspension of Dublin III in both countries.

Hungary

Overview of crisis

In May 2015 there were around 2,500 asylum seekers and migrants entering Hungary per week (Piazza 2016, Part I: 40). Police reportedly gave them temporary stay permits and approximate directions to refugee camps further inland (Piazza 2016, Part I: 40). The situation on the ground was a lot more disorganized. Piazza (2016, Part I: 40) describes how “in reality, there is a chaotic flow of people through the country, mostly bypassing the refugee camps and slipping, or being smuggled, into Austria.” By June, the estimates of asylum seekers and migrants entering Hungary weekly increased to around 4,000, and this upsurge had police and border personnel struggling to process all the asylum claims (Piazza 2016, Part I: 40). It is at this time that more NGO’s and humanitarian groups began to increase their assistance to the growing number of asylum seekers and migrants arriving in Hungary each day.

On June 17, 2015, the Hungarian government decided to build a border wall along the border with Serbia in hopes of stopping the irregular border crossings which made it hard to process all those arriving through the proper Dublin channels (Piazza 2016, Part I: 40). However, as Piazza (2016, Part I: 40) goes on to explain the number of asylum seekers and migrants

entering Hungary steadily grew to reach in July to around 7,000 a week, and in August the numbers reached around 12,000 per week. By September 1, 2015, the Hungarian government stopped all trains from leaving for Austria, and the asylum seekers who did not want to register in Hungary were left stranded in the train station (Piazza 2016, Part I: 42). In response to this move by the Hungarian government, the asylum seekers decided to march along the M1 highway between Budapest and the Austrian border, a move that became known as “The March of Hope”. The March of Hope took place on September 4, 2015, with over 4,000 asylum seekers taking part (Piazza 2016, Part I: 42). After Austria agreed to let the refugees’ pass through its border, the Hungarian government sent buses to pick up the people from the M1 highway and drive them across the border into Austria (Piazza 2016, Part I: 42). The border wall with Serbia was completed on September 15, 2015 and a subsequent border with Croatia was completed on October 16, 2015 (Piazza 2016, Part I: 44).

Number of Refugees

At the height of the crisis in August, almost 12,000 people per week were passing through Hungary (Piazza 2016). It has been estimated by both Connor (2016: 5) and the EU EuroStat Report (2016), in 2015 there were 174,000 asylum applications made in Hungary.

Government Response

The response by the Hungarian government to the increasing flow of refugees and migrants was by and large skeptic. On April 24, 2015, the FIDESZ government of Prime Minister Viktor Orbán sent out the “National Consultation Regarding Immigration and Terrorism to eight million voters in Hungary” (Piazza 2016, Part II: 33). This questionnaire, as described by

Piazza (2016, Part II: 33) in “Living our Values- Part II”, included twelve questions which wording that invited negative responses. One online Hungarian publication, the Orange Files, published the questionnaire along with the original letter of introduction, translated to English, on their website. To quote one part of the letter, as translated by the Orange Files (2016), “Since Brussels has failed in the handling of immigration, Hungary must take its own path. We will not permit subsistence immigrants to threaten the workplaces and subsistence of Hungarian people.” In the letter Orbán goes on to say, “We must decide how to defend Hungary against illegal border-crossings. We must decide how to limit explosively increasing subsistence immigration” (Orange Files 2016). The responses to the National Consultation were then used as justification for any response Hungary would take to limit the flow of refugees through the border.

In conjunction with the National Consultation, the Hungarian government also began a poster campaign. The three posters included the phrases: “If you come to Hungary, you must respect our Culture”, “If you come to Hungary, you must respect our laws”, and “If you come to Hungary, you must not take away Hungarian jobs” (Piazza 2016, Part II: 34). Given that all three posters were solely in Hungarian, it seems that the intent was not to share these “Hungarian values” with the refugees.

Even though the Hungarian government seemed to oppose entry of more refugees, Hungary continued to adhere to the Dublin procedure and “insisted on registering all asylum-seekers, mostly against their will” (Piazza 2016, Part II: 35). In fact, this process of registering all refugees continued “until the end of August when the numbers became totally unmanageable and it was clear that its EU partners were not holding Hungary to its obligations” (Piazza 2016, Part II: 35). The Hungarian government worked to maintain the Dublin Convention even after

the numbers had reached critical levels, and even with the reception centers dangerously over crowded.

Public Response

Apart from the responses to the National Consultation questionnaire, there were mixed responses from the public in Hungary. There were those who agreed with the government about the dangers of allowing refugees to enter the State, but there were also grassroots aid organizations and other non-governmental and humanitarian organizations which began to assist the asylum seekers who had already entered. One of the newly formed grassroots organizations was the Migrant Solidarity Group of Hungary (MIGSZOL), which saw itself as “an informed, unregistered political grassroots organization” (Migszol 2016). This group published their own report titled “Hungary’s Long Summer of Migration”, which was a combination of statistical information, and a recording of fifty personal interviews with current asylum seekers in Hungary.

This group was opposed to the Dublin procedures, as they saw it as unfair, and expressed the view that “people seeking international protection are not merely numbers, the aggregate of flow, or monolithic entities”, and should not be treated as such (Migszol 2016). The group also criticized the Hungarian government for having “received millions of euro in support from the EU, but it has by and large failed to fulfill its responsibility to process the asylum applications of people seeking international protection” (Migszol 2016: 16). The criticism of the Hungarian governments response was also shared by academics. For example, Greenhill (2016: 323) argued that the crisis was used by Orbán and others like him to appeal “to such audiences, to show that those arriving on Europe’s shores are not viewed as refugees in need of protection and assistance

but rather a liability to national security, societal stability and cultural identity- soldiers in Orbán's 'invading army', if you will." In the end while the humanitarian groups, NGO's, UN Human Rights organizations, and even the EU itself criticized the growing anti-refugee sentiment in Hungary, the Hungarian government was framing its response as just acting in the best interest of securing the external European border.

The upshot was a growing divide between governmental (vertical) and civil society (horizontal) political actions. Kallus, Monterescu, and Rajoron (2016: 27) define vertical political actions as those which "located agency and action necessarily and exhaustively on the side of the State and leave no room for agentive responses by Migrants," and horizontal political action as "involving private citizens working with migrants, standing with them in their protests, sheltering people, and transporting them to the western border." Hence, Kallus, Monterescu, and Rajoron (2016: 27) attribute the breakdown of the Dublin regulation in part to "these solidarities," which "in turn, highlighted slippages between humanitarian and political action and led to the de facto collapse of the Dublin regulation."

Germany

Overview of Crisis

Germany is no stranger to refugees, as the country had experience with German refugees following the Second World War and East German refugees during the Cold War. As a result, the policies towards refugees and asylum seekers have been more open than their Central and Eastern European neighbors. Germany, on the other hand, is surrounded by EU member states, which are party to Dublin III. This means that even if refugees were to cross the German border, by train or foot, Germany would not typically be required to process their application. Thus

while there were arrivals in Germany in 2015, there was a high likelihood of the asylum seekers being returned to the “country of first entry”. The flow of refugees entering Germany tended to come from Hungary and Austria. During the height of the crisis, it was harder to distinguish from which country was the “first entry” country, as many seekers worked to circumvent the registration process. Also, the number of asylum seekers with open applications began to bog down the German asylum system. The result was a suspension of Dublin returns from Germany and a *de facto* suspension of the Dublin Regulation in all of the EU.

Number of Refugees

The number of asylum applications lodged in Germany during the crisis varies depending on which source is used. That being said, one thing that most sources have in common is that they all make it known that Germany has had the highest number of applicants. Connor (2016: 10) states that, “asylum applicants to Germany alone accounted for almost one-third of Europe’s 2015 Asylum Seekers.” The more agreed upon number of first time applicants is listed at 442,000, (Connor 2016; EuroStat 2016). However, there have been other reports, one from the Brookings Institute, which have the number of refugees in 2015 as being close to 1.1 million, with “Berlin received nearly 10,000 refugees in November alone” (Katz, Noring, and Garrelts 2016: 2). This difference may be a result of the data collection processes of the different sources: first time applicants (Connor 2016; EuroStat 2016), compared to total number of applications (Katz, Noring, and Garrelts 2016).

Government Response

The Government in Germany had a very different response to the Asylum seekers, than that of Hungary. Holmes and Castaneda (2016: 14) describe that, “while countries such as Israel and most of the Gulf States have uniformly turned away refugees, and others such as Hungary have answered with direct violence, Germany has responded with ambivalent hospitality that is uniquely nuanced and conditioned by memories (and some present day realities) of xenophobia and fascism.” However, even though Holmes and Castaneda (2016: 14) praise the responses of Germany, they are also quick to clarify “there is no unified Germany in response to the crisis.”

Germany has had a process in place for admitting Syrian refugees since 2013. Ostrand (2015: 267) explained that in March 2013 “Germany announced the initiation of a program for admitting Syrian refugees, primarily from Lebanon.” In this program Germany “vowed to accept 20,000 refugees” who were currently settled in Lebanon, for resettlement in parts of Germany where there would be housing provided along with other governmental services of support (Ostrand 2015: 267). Syrians admitted through this program received a two-year temporary residence permit. Syrians obtained their visa in Lebanon before coming to Germany (Ostrand 2015: 267). The situation in the spring and summer of 2015, which caused increasing strain on the Dublin system in Germany, was in regards to refugees entering Germany *before* obtaining a residency permit or visa.

The German government is often cited as being the first country to break with the Dublin regulation thus leading to its suspension. However, this is not true. The tweet from the German Federal Agency for Migration and Refugees (BAMF) posted on August 25, 2015, that had been rumored to trigger the collapse of Dublin was actually within the bounds of Dublin III. The

tweet, translated from German by The Guardian, read “the #Dublin procedure for Syrian citizens is at this point in time effectively no longer being adhered to” (Oltermann and Kingsley 2016).

This is in line with article 17 of Dublin III, the discretion clause. Article 17 states that a country can decide to process the application of an asylum seeker even if that State is not the “country of first entry”, but in doing so they must notify all other countries through DubliNet. Thus article 17 gives any member state the right to take over an asylum application at their own discretion. Oltermann and Kingsley (2016) describe how the tweet was in connection to a memo sent to all BAMF offices in regards to asylum applications. The memo, “Rules for the suspension of the Dublin Convention for Syrian Citizens”, was sent by Angelika Wenzel a senior executive government official at BAMF. Oltermann and Kingsley (2016) summarize the memo as simply stating “the Syrians who applied for asylum in Germany would no longer be sent back to the country where they had first stepped on European soil.” They also point out how this tweet was not meant “to torpedo the unloved law [Dublin III], but as an emergency de-cluttering measure, freeing the agency from additional bureaucracy before it was unable to cope” (Oltermann and Kingsley 2016).

There was criticism of the move by BAMF to send out the tweet, noting that even the Interior Ministry was unaware of the context of the tweet. Thomas, Bradley, and Geiger (2015), note that the Interior Minister did not approve the tweet before it was sent out, but “it didn’t even require approval from the Interior Ministry and was aimed only at BAMF’s 36 field bureaus around the country.” They went on to explain that “the Interior Ministry said that the agency had full authority to issue the guideline and that its reasons were both humanitarian and practical: it took too much paperwork to send the refugees back to the first EU country where they set foot” (Thomas, Bradley, and Geiger 2015). The Dublin regulation required that a “take back” or “take

charge” could take as long as two months to reach a decision, which was impractical in the case of the mass influx of refugees crossing the border each day. In this context, the German authorities choice to apply article 17 to Syrian refugees was within their authority. However, this decision had lasting impacts in not only Germany, but the surrounding countries as well.

The initial response from German Chancellor Angela Merkel was to welcome to the refugees. Smale (2016) explains how the Chancellor’s own past of growing up in East Germany had impacted her view on accepting refugees. Smale (2016) also described how the Chancellor coined the phrase “‘Wir schaffen das’ (roughly ‘We can make it’)” in response to growing discontent over the number of refugees arriving in Germany.

Public Response

The public response has been disparate. According to Holmes and Castaneda (2016: 15) it was tied to the idea of who is “deserving of Asylum”. It seems that, as Holmes and Castaneda (2016: 15) describe, “in general, Syrian families are seen as deserving because they are understood to have been forced to flee by the ongoing civil war.”

However, public opinion was ever changing during the crisis. Portions of the population embraced refugees at train stations with open arms and posters expressing their “Welcome”, but there were also instances of vandalism and arson of refugee housing centers. Lawler (2015) described “Unruly protests and incidents of arson incited by anger over the influx of migrants have plagued German cities in recent weeks. Mrs. Merkel has herself been subjected to jeers from anti-immigrant protesters, whom she has called ‘disgusting’.” The Economist published an article just a little over a month after the tweet, which discussed the ever-changing opinion of the

public. It outlined how “in a survey by German public television 51% of Germans say that they fear the refugee influx, 13 points more than in September” (The Economist 2015).

The German cities struggled with how to house and take care of the ever-growing number of refugees. There were humanitarian organizations along with the German government and various NGOs, which have taken up the cause to find housing and provide support, but many cities struggled to find empty housing. The Economist (2015) described how “The government of Hamburg has begun seizing empty office buildings to house refugees, raising constitutional questions. Berlin and Bremen are considering similar measures.” Many cities within Germany became over burdened by the sudden increase. In fact, the situation eventually led to a turn in public opinion on both the refugees and the response by Chancellor Merkel.

At the same time, support for the German far right Populist Party, Alternative for Germany (AfD), increased. Fischer (2016) described how AfD was able to “campaign on fears of refugees”. Schwartz (2016), also discussed how “over the past two years, as Merkel has welcomed Muslim refugees and led the bailout of struggling European economies such as Greece, populist sentiments have surged- and the AfD is now reaping the rewards.” In fact in the recent State elections held in Mecklenburg- Western Pomerania, AfD was able to obtain more votes than the Christian Democratic Union, of which Merkel is a member (Schwartz 2016).

Comparison and Conclusion

The refugee crisis of 2015 exposed the flaws and faults of the Dublin Regulation, and the variances in the asylum policies of each member state. While all iterations of the Dublin Regulation aimed to limit “asylum shopping”, the asylum seekers still ‘shopped around’. The

Dublin regulation had no real mechanisms in place to deal with mass influx of asylum seekers. The system was designed for a much smaller number of asylum seekers.

The Dublin process only applies to help determine who is responsible for processing a claim, and figuring out responsibility can take time. The resources needed in each country to process asylum claims and determine responsibility accumulated as the number of asylum seekers increased. Even with crisis mechanisms in place, such as Article 33 of Dublin III, the member states struggled to cope with the ever-growing number of asylum seekers. Through my own research, I had not found any instance of Article 33 being used by a member state during this crisis, and I did not expect to find one as Article 33 implies foresight into the possibility of a crisis. The only European Commission communiqué was related to Greece, which instructed the country to reinstate the Dublin procedure after the 2011 European Court of Human Rights (ECtHR) suspension of Dublin returns to Greece.

While the key question was if the suspension of Dublin III was a result of public pressure or a breakdown of the bureaucratic registration process, it seems that the situation was provoked by a combination. In terms of Germany, the suspension was actually a result of a bureaucratic decision to implement Article 17, and an illustration of a breakdown in the bureaucratic process. BAMF noted the inability to keep up with the paper work as one reason why they issued the memo and the subsequent tweet. However, it seems that the tweet by BAMF became the lynchpin for a breakdown of Dublin processing in other countries. Once the decision by BAMF became public knowledge, it became impossible for Hungary and other member states to continue to stop refugees from traveling on to Germany.

In terms of public pressure, it does seem that the suspension was a result of pressure from a different angle than that which I had originally hypothesized. Before I began my research I

believed that public pressure would come from possible public attitudes towards the flow of refugees and migrants. The other angle, which emerged in my research, was the impact of pressure from the refugees themselves. While a large number of refugees had been registered in Hungary, they did not want to stay in Hungary. One example of this was the situation in Budapest's Keleti train station, where trains had been stopped and there were refugees were camping in the halls. This was, in part, a result of refugees who were trying to evade registration in Hungary, so that when they finally reached their destination country they would not be returned to Hungary. Even those who had been registered still tried to continue their journeys on to Germany, Belgium, or even Sweden. Also, in the case of Hungary, there was public pressure from local humanitarian groups who believed that there was not enough being done for the refugees, which had an impact on the Hungarian response to the situation. However, in terms of housing in both Hungary and Germany, the issue was that there simply was not enough designated space to house the sheer number of refugees. In Hungary the designated camps did not have enough room to house the vast number of people, and in Germany some States decided to designate unused buildings as housing.

In the end the Dublin Regulation was suspended temporarily because of increasingly unmanageable numbers of refugees, which caused stress to the bureaucratic processes and in turned swayed public opinion. All processes were interconnected. The reaction of the member states since the climax of the situation in September 2015 has been to remedy the situation and figure out the best way to ensure a Crisis of this magnitude does not impact the EU again.

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