

# REFUGEE FAMILIES TORN APART

SEPTEMBER 2019

**THE SYSTEMATIC REJECTIONS OF FAMILY REUNIFICATION REQUESTS FROM GREECE BY GERMANY AND THEIR DETRIMENTAL IMPACT UPON THE RIGHT TO FAMILY LIFE AND THE BEST INTEREST OF THE CHILD**

<https://rsaegean.org/en/refugee-families-torn-apart>



**RSA**  
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DER EINZELFALL ZÄHLT.

Photo: Salinia Stroux

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## LEGAL NOTE

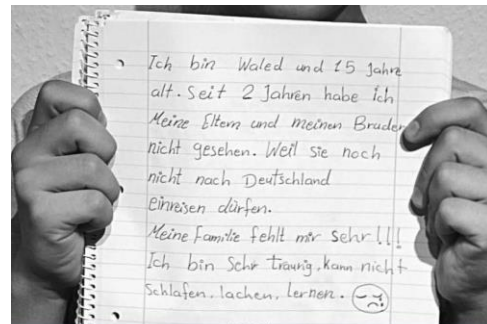
In the past two years, there has been a dramatic increase in the numbers of refusals of 'take charge' requests for family reunifications sent by the Greek Dublin Unit under the DUBLIN REGULATION (EU) No.604/2013<sup>1</sup> ('DUBLIN III REGULATION', hereinafter Dublin Regulation) to their German counterparts.<sup>2</sup>

These persistent refusals by the German asylum authorities affect first and foremost the **family unity** of individuals that have already suffered from conflict, war and persecution and mostly impact upon the **best interest** and **wellbeing of refugee children** that have often been separated from their families for prolonged periods.

While the Dublin Regulation - the "cornerstone" of the Common European Asylum System (CEAS) - has been repeatedly and not unjustly criticized as an unfair and ineffective mechanism for the allocation of responsibility for the examination of asylum applications submitted in different European member states, **its family reunification procedure remains until today one of the scarce safe legal routes to fulfill the rights and core principles of family unity, the best interest of the child and the right to family life.**

This Legal Note presented by Refugee Support Aegean (RSA) and PRO ASYL aims to examine **major changes within the last three years and recent practices of the German authorities in relation to the implementation of the Dublin family reunification procedure for asylum-seekers in Greece who are separated from their relatives in Germany and their detrimental consequence of shrinking the right to family reunification, family life, children's rights and other individual rights.**

The sole purpose of the above-mentioned practices appears to be to keep refugees who manage to arrive at the EU's external borders in first arrival countries such as Greece and to deter further arrivals.



Waled, an unaccompanied 15-year-old from Syria, was waiting 2 years to reunify with his family who were stuck in Greece due to the unlawful cap on transfers.

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<sup>1</sup> Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013, establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), Official Journal of the European Union, L 180/31, 29 June 2013, available at: <https://bit.ly/2PdA1rP>.

<sup>2</sup> These systematic rejections were denounced first in public in spring 2018 by the German DIE LINKE MP, Gökay Akbulut (see Question Nr. 05/50). The MP was informed by a written answer of the German Ministry of the Interior, that in the period between 1 January 2018 and 07 May 2018, Greece had sent 870 'take charge' requests to Germany, while Germany had rejected 582. The increase in rejections also becomes apparent if one sees the high increase in re-examination requests during 2018. In 2017, a total of 28 re-examination requests were sent to Germany by the Greek Dublin Unit. On the other hand, during the first five months of 2018 (January to May), 438 re-examination requests were sent. Written request Month May 2018, Gökay Akbulut, MdB, 14 Mai 2018, available at: <https://bit.ly/2HwDVWh> (DE).

## BACKGROUND

Following the closure of the Western Balkan route and upon the implementation of the EU Turkey “Deal” in March 2016, thousands of refugees got trapped on the eastern Aegean islands as well as in mainland Greece.<sup>3</sup> Many of them had relatives elsewhere in Europe – most of them in Germany - with whom they wished to reunite.<sup>4</sup> As the situation developed, most Regional Asylum Offices including the newly established Regional Asylum Offices on the islands were overwhelmed with asylum claims and the asylum system in the whole country paralyzed. Therefore, registration of family reunification requests became a big challenge. The severe delays in the registration of the asylum claims reaching up to several months resulted from the lack of actual capacity to handle such a number of claims. *In some cases, these delays rendered the fulfillment of the right to family reunification impossible.*

On the eastern Aegean Islands, the European Asylum Support Office (EASO) refrained from providing concrete support in the registration and processing of Dublin family reunification cases despite the fact that it was involved in the asylum process since the implementation of the “Deal”. Within this framework, EASO has been involved in the processing of asylum claims on the islands with regard to the application of the ‘safe third country’ concept routinely concluding, that Turkey should be considered a ‘safe third country’ for the asylum applicants they had interviewed<sup>5</sup> and thus facilitating their return there.

In addition to the asylum-seekers stranded on the islands as a result of the “Deal”, there were also thousands among those trapped in substandard conditions in



Following the closure of the Balkans route in March 2016, refugees stuck in Greece held repeated protests demanding the re-opening of route so they could re-unify with their loved ones.



refugee camps in the mainland that wished to apply for family reunification and had to wait as well for several months for their applications to be registered by the Greek Asylum Office. The severe difficulties they had with access to asylum - which at that point was limited to a dysfunctional Skype system - started being addressed through the “pre-registration exercise” carried out by the Greek authorities with UNHCR’s support. The exercise was launched in June 2016 and aimed to register thousands of unregistered protection seekers - whose number until that moment remained unknown - and helped identify those eligible for family reunification or relocation.<sup>6</sup>

The registration of asylum claims by the Greek authorities was delayed throughout most of 2016. The procedures for family reunification applications started in the vast majority of cases only by the end of that year but many problems existed such as:

<sup>3</sup> On 18 March 2016, the European Council announced the conclusion of an agreement with Turkey aiming to halt refugee and migrant flows to Europe. According to the EU-Turkey ‘Deal’, all irregular migrants and asylum-seekers whose claim was rejected as inadmissible would be returned back to Turkey. Source: The European Council, European Council conclusion, 17-18 March 2016, available at: <https://bit.ly/2HwK30G>.

<sup>4</sup> In 2016, 3,588 out of 4,878 total requests sent by Greece were directed to Germany. Source: Statistical Data of the Greek Dublin Unit (7.6.2013 – 30.06.2019), 3 July 2019, available at: <https://bit.ly/2MIYUti>.

<sup>5</sup> Source: RSA/PRO ASYL, “Manipulating the “safe third country” concept as a way to deter refugees flows – a blow to the rule of law”, 17 March 2018, available at: <https://bit.ly/2Knsu5h>; see also: The Greens/ European Free Alliance in the European Parliament, “The EU-Turkey Statement and the Greek hotspots: A failed European pilot project in Refugee Policy”, June 2018 (Author: Yiota Masouridou, Evi Kyriofiti), available at: <https://bit.ly/2Zyki6r>.

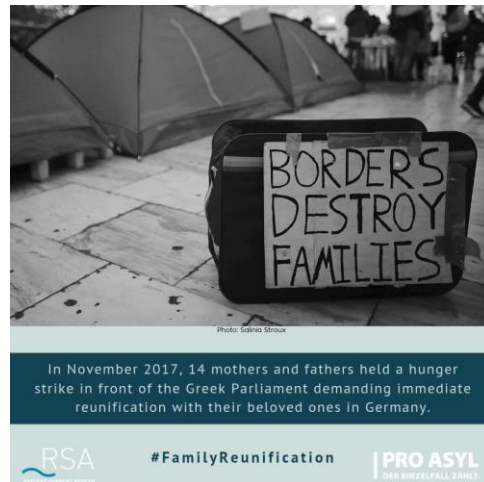
<sup>6</sup> 20% (5,579) of those pre-registered were eligible for family reunification. Source: Greek Asylum Service Statement, 8 June 2017, available at: <https://bit.ly/2ZDh7PO> (GR). See also: UNHCR, “Over 15,500 asylum-seekers pre-registered in mainland Greece”, 1 July 2016, available at: <https://bit.ly/2L5Psvl>; Press Interview of Minister of Migration Policy, 23 August 2016, available at: <https://bit.ly/2L384yK> (GR).

- lack of adequate legal information in the newly established emergency refugee camps;
- insufficient legal aid capacity as the few existing NGOs are all based in Athens and Thessaloniki;
- recurring problems with refugees having to self-finance the expenses for their tickets in order to travel to Germany.<sup>7</sup>

In early 2017, a short-term program run by UNHCR with its partner Ecumenical Refugee Program (KSPM-ERP) funded a limited number of transfers (reaching in its peak 540 in March 2017), but as time passed and more applications got registered, more and more refugees had to wait longer for their transfers and pay the tickets again themselves.

## AN UNLAWFUL 'CAP ON TRANSFERS' POLICY

After May 2017, the transfers of hundreds of asylum-seekers whose 'take-charge' requests had already been accepted by Germany were postponed for an indefinite time and periods exceeding the six-month deadline provided by the Dublin Regulation. RSA/PRO ASYL followed-up more than 40 cases of refugee families who had to wait on average up to one year after their 'take-charge' request was accepted by Germany in order to reunite with their loved ones. They remained for months without any information as to whether they would be finally transferred or not, when they would be allowed to depart and whether they had to cover their travel expenses. In some cases, transfer deadlines provided by the Regulation expired and these asylum-seekers faced the risk that their family reunification would be interrupted and Greece could be considered the responsible state for the examination of their asylum applications.



This practice was the result of an arrangement reached between Greek and German authorities<sup>8</sup> in mid-2017 following a request by Germany for a cap in the number of asylum-seekers transferred from Greece each month under the family reunification procedure. **More than 4,000 persons were affected**, often families that had been separated for years because of conflict in their homelands.

The practice attracted the heavy criticism as a serious breach of the right of family reunification and the Dublin Regulation and was followed by mobilizations of refugees, national and international NGOs as well as legal interventions in Germany.<sup>9</sup>

Despite the attempt, to increase transfers from late summer of 2016 with the use of special charter flights, it was not until the beginning of December of 2018, that this backlog of transfers was completed, and those families reunited.<sup>10</sup>

<sup>7</sup> For more information on the situation in 2016/2017, see: RSA/ PRO ASYL, "The Dublin family reunification procedure from Greece to Germany", 2 August 2017 (Author: Artemis Tsiaka, lawyer), available at: <https://bit.ly/2LdmNpl>.

<sup>8</sup> See reference to the content of a Letter by former Greek Minister for Migration Policy, Giannis Mouzalas, dated 4 May 2017 concerning secret arrangement made between the two countries on a cap on transfers limiting them to 70 persons per month, 29 May 2017, available at: <https://bit.ly/2ZxhV42> (GR).

<sup>9</sup> Source: Informationsverbund Asyl & Migration, "VG Wiesbaden: Dublin-Familienzusammenführung hat rechtzeitig zu erfolgen", 22 September 2017, available at: <https://bit.ly/345FWCC> (DE); see also: RSA, "No more separations of families!", 3 August 2017, available at: <https://bit.ly/2ZvRFHb> and <https://bit.ly/2Lery2r>; ECRE, "Open Letter: Asylum Seekers' transfers from Greece to Germany for Family Reunification under EU Regulation 604/2013", 26 July 2017, available at: <https://bit.ly/30IyCuF>.

## CURRENT STATE OF PLAY AND CHALLENGES

## FROM DELAY TO REJECTION

Since the end of 2017<sup>11</sup>, asylum-seekers in Greece with family ties in Germany are faced with an even more rigid, harsh and "wrongful" application of the Dublin Regulation by the German authorities.<sup>12</sup> After the 'delay of transfers' practice, rejections of Dublin family reunification applications dramatically increased.<sup>13</sup> The vast majority of rejections, whose number has remained high in 2019, concerns requests that were sent under Article 17(2).<sup>14</sup> Recently, and as a result of joint<sup>15</sup> litigation efforts, German administrative courts condemned this practice and ruled in favor of the applicant families.<sup>16</sup>

In particular in cases of missed deadlines that were not an asylum-seeker's own fault but due to impediments such as inadequate reception conditions, insufficient information on rights, lack of legal aid, wrong age registrations of minors, the German authorities steadily refused responsibility arguing that Greece was responsible to meet the deadlines. Germany admitted this increase.<sup>17</sup>

<sup>10</sup> "In the beginning of December 2018, the Greek Asylum authority informed, that all "old cases" have been transferred to Germany in the meantime". Information from the Greek Asylum Service provided to the German government. Source: Response of the federal government to Small parliamentary request by Ulla Jelpke, et al. Dr. André Hahn. Gökay Akbulut a.o. of DIE LINKE, 13 March 2019, 19/7623, available at: <https://bit.ly/2ZrhkA> (DE).

<sup>11</sup> During the German election campaign of 2017, the rising right-wing party AfD and conservative bloc of CDU/CSU competed with each other in right-wing rhetoric by referring to excessive numbers of future family reunions that would increase the number of asylum applicants in Germany with the end of the 2-year suspension of family reunification for people with subsidiary protection in Germany from March 2018 onwards (This mainly concerned Syrians and Iraqis). Panic, which has been created by this right-wing discourse concerning numbers of refugees reaching Germany through their family ties, apparently affected Dublin family reunifications negatively, too. The discourse was further sparked after the elections of September 2017, when Horst Seehofer (then prime minister of Bavaria, today Interior Minister) claimed that a "hundred thousand" could come through family ties and Interior Minister of Saxony, Holger Stahlknecht (CDU) even spoke of 800.000 people. Source: Migrationsrecht, "Panikmache beim Familiennachzug zu anerkannten Schutzsuchenden", (Author: Dr. Klaus Dienelt), available at: <https://bit.ly/2ZrMWu8> (DE); see also: ZDF, „Seehofer sieht kein Zeitlimit bei Sondierungen“, 17 November 2017, available at: <https://bit.ly/2zF2eqJ>; Süddeutsche Zeitung, „Stahlknecht: Familiennachzug muss beschränkt bleiben“, 17 November 2017, available at: <https://bit.ly/2MlmlLe>.

<sup>12</sup> According to a ruling by the Lüneburg Administrative Court: "A relevant subjective right of the applicant is hereby infringed, as the defendant wrongfully rejected the 'take charge' requests filed by the Greek authorities." Source: Administrative Court Lüneburg, Decision of 8 July 2019 (8 B 111/19).

<sup>13</sup> In 2017, Germany accepted 5,276 out of 5,772 'take charge' requests in 2018, only 992 out of 2295. So far in 2019, Germany has accepted less than one third of the take charge requests (300 out of 1,018), available at: Greek Asylum Service Statistics; see footnote 4.

Following the increase of rejections, numbers of re-examination requests have increased, too (2017: 28; 2018: 1,837; 2019 (1<sup>st</sup> quarter): 266). In the responses sent for the re-examination requests received, there are increasingly further rejections if one compares the monthly average of 2018 and 2019, bringing a rise in the number of monthly rejections (from 60 to 67) and a drop in the positive responses (from 42 to 40), available at: <https://bit.ly/2MHRuXp>; see also: <https://bit.ly/2XKzu0l>.

<sup>14</sup> A written response of the German authorities dated 28 May found that in the period 1 January 2019 to 22 May 2019 626 'take charge' requests were sent from Greece to Germany of which 472 were rejected. 200 rejections concerned Article 17(2) 'take charge' requests. Source: Written request by Gökay Akbulut, MdB, 28 Mai 2018, available at: <https://bit.ly/2zrqZDH> (DE).

Rejections of 'take charge' requests under Article 17(2) had already increased since 2017, but in 2018 increased dramatically. Source: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 6 June 2019, available at: <https://bit.ly/2XKzu0l> (DE).

<sup>15</sup> Various German and Greek NGOs are actively litigating against the restrictive application of the Dublin Regulation. For example: RSA, "Family Reunification", available at: <https://bit.ly/2NFifey>; Refugee Law Clinics abroad e.V. & PRO ASYL, "Muster-Schriftsatz: Eilrechtsschutz zur fristgerechten Dublin-Familienzusammenführung", available at: <https://bit.ly/2PmBrAm>; Equal Rights Beyond Borders, "Litigation", available at: <https://bit.ly/34ahsbq>.

<sup>16</sup> Eg. Administrative Court Münster, Decision of 20 December 2018 (2 L 989/18.A) and Administrative Court Trier, Decision of 27 March 2019 (7 L 1027/19.TR) both available at: <https://bit.ly/34ahsbq>; Administrative Court Lüneburg, Decision of 8 July 2019 (8 B 111/19); Administrative Court Frankfurt (Main).

<sup>17</sup> In a written answer to a small parliamentary request by DIE LINKE (Nr. 19/3051, dated 28 June 2018; answer to question 15), the German authorities related the increase of rejections in comparison to 2017 to

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## OUT OF TIME FOR FAMILY LIFE? THE INTRODUCTION OF AN ADVERSE INTERPRETATION OF DUBLIN REGULATION



This policy of an increasingly systematic refusal of responsibility was propped-up by a July 2017 ruling by the Court of Justice of the European Union (CJEU) in the *Mengesteab Case*<sup>18</sup> which appears to have provided the German authorities with a legal excuse that allows them to routinely reject 'take-charge' requests from Greece **as inadmissible because they are considered as missing the deadline**. The German authorities argue that the starting point of the three-month deadline<sup>19</sup> to send the 'take charge' request **is not the time that the application was lodged with the competent authority** (the Greek Asylum Service) **but the time of the expression of intention** (a much earlier stage

which took place during the arrival of the asylum-seekers and during the first reception registration).

This contradicted what has been a long-established practice of all national authorities to consider as **lodging time** the time when the asylum claim was registered with the Greek Asylum Service, the only competent body for processing a family reunification request. This interpretation has been used until today by Germany to routinely refuse responsibility for the examination of family reunification cases that are not submitted within three months from the date of an asylum-seeker's expression of intention.

To avoid such rejections in the future, **the Greek Dublin Unit notified all authorities involved in the First Reception and Registration and adjusted its practice to Germany's interpretation** by sending a 'take charge' request within three months from the time of the registration of the intention to seek international protection (ΒΟΥΛΗΣΗ).<sup>20</sup> Yet this presupposes that the Greek Dublin Unit is informed of the registration of such an intention and wish of an applicant to reunite. In practice however, this would usually occur only when applicants manage to reach and

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the following factors: "for example, with regard to family-related responsibility criteria since the beginning of 2018, relevant documents such as family books, birth certificates and proof of origin are missing in the Greek 'take charge' requests. In some cases, translations of these documents from the respective countries of origin are missing. In these cases, a refusal is made, together with a request to Greece to send further documents or to deliver a translation (...). In addition, it is striking, that since the beginning of 2018 Greece has increasingly been sending 'take charge' requests to Germany, that are out of deadlines of the Dublin III Regulation. Another reason for refusal lies in the fact that those persons who are already in Germany and who are designated by Greece as appropriate for the care of the persons to be transferred, were exactly not suitable for their care."

Source: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 28 June 2018, available at: <https://bit.ly/2KUWDtX> (DE).

<sup>18</sup> In a case challenging the return under the Dublin Regulation of an Eritrean national to Italy, the CJEU ruled that "Article 20(2) of Regulation No 604/2013 must be interpreted as meaning that an application for international protection **is deemed to have been lodged if a written document, prepared by a public authority and certifying that a third-country national has requested international protection, has reached the authority responsible for implementing the obligations arising from that regulation, and as the case may be, if only the main information contained in such a document, but not that document or a copy thereof, has reached that authority**". See: Case C-670/16 *Tsegezab Mengesteab v Bundesrepublik Deutschland*, Judgment of 26 July 2017, EDAL, available at: <https://bit.ly/2XvMKq2>.

<sup>19</sup> According to Article 21(1) Dublin Regulation 'a 'take charge' request must be made as soon as possible and at the latest three months within the date on which the application was lodged".

<sup>20</sup> Information communicated by different Asylum and Reception authorities and based on RSA's legal work.

register their application with the Asylum Service, which again might not be possible due to the really poor reception conditions in the Greek hotspots.

In some cases, the German authorities have reduced even further the three-month deadline by wrongly considering *the arrival date* as the starting point of the application although no wish for asylum had been registered on that day, only to admit later that the request was well within the time-limit following another review request by the Greek Dublin Unit.

In cases of out of time requests or requests that risk to be considered as exceeding the deadlines the Greek Dublin Unit sends or resends 'take charge' requests for cases where the compulsory jurisdiction applies (Articles 8-11 of the Regulation, family reunification of minors and family members) under the dependency and discretionary clauses (Articles 16 & 17<sup>21</sup>) invoking the core principles of the Regulation.

In the majority of cases followed-up by RSA/PRO ASYL, the German authorities sent their answers to the take charge requests from Greek Dublin Office within a very short



The majority of refugees applying for family reunification in Greece have their beloved ones in Germany.



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period (of a few days), and refused or reinstated their refusal providing **insufficient or no reasoning** at all while **insisting on and prioritizing the formal rather than the substantial rules and binding criteria laid down in the Regulation** (such as the family unity and the best interest of the child). Taking into account the lack of capacity of the Greek Asylum Service the problematic access to the asylum procedure, the lack of legal aid, the lack of information and the insufficient system of detection for unaccompanied minors, **the risks that a Dublin family reunification procedure could never be successful are particularly high.**

## BUREAUCRATIC OBSTACLES PREVENT FAMILY LIFE

Meanwhile, new 'delaying tactics' on behalf of the German authorities have arisen. Lately in cases concerning unaccompanied minors, Germany is found to call into question the family tie or the age assessment procedures that have taken place to determine the minority of the applicant<sup>22</sup>. Moreover, the demand of the German authorities that all the evidential documents be translated at least into English sets a further challenge for the tormented family reunification cases.<sup>23</sup>

<sup>21</sup> According to Article 17(2) of the Dublin Regulation, the Member State in which an application for international protection is made and which is carrying out the process of determining the Member State responsible, or the Member State responsible, may, at any time before a first decision regarding the substance is taken, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16.

<sup>22</sup> This practice has been noted in cases assisted by RSA/ PRO ASYL and other refugee organizations, as well as mentioned in information provided by the Asylum Service, 18 June 2019.

<sup>23</sup> In a written answer dated 28 May 2018 provided by the German authorities to a small parliamentary question, it is stated: "The Federal Office for Migration and Refugees does not require a translation or certification from asylum-seekers seeking family reunification, but from the requesting Member State. Relevant documents should either be translated into English from the respective foreign language or their content should be summarized. The Greek Dublin Unit has now adapted this approach, which is common among the Member States, by sending translations or summaries of relevant documents in English. This complies with the common practice of all Member States and serves to speed up procedures by simplifying the examination of responsibilities." Source: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 28 June 2018, available at: <https://bit.ly/2KUWDtX> (DE).



As a consequence of the increased German rejections and extensive work on re-examination procedures, the Greek Asylum Service reduced the number of requests directed to Germany by refraining to send initial 'take charge' requests in the cases that were pending since early 2018 (backlog) where the deadline had been exceeded and by limiting the number of re-examination requests<sup>24</sup>, mainly based on Article 17, that would likely be rejected by the German authorities, thus impeding the right to family reunification of those individuals.

In practice, from October 2018 onwards the Greek Asylum Service decided to close a number of active Dublin cases (backlog) to Germany whose dispatch of a 'take charge' request or re-examination was pending based on the dependency and discretionary clauses (Articles 16 & 17) and refer them to the Greek asylum procedure.

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## AN UNLAWFUL 'DEAL'

This decision followed the August 2018 German-Greek Administrative Arrangement<sup>25</sup>, the so-called 'Seehofer-Deal', where Germany had promised to re-examine all pending re-examination requests without undue delay (see point 9 of the Arrangement)<sup>26</sup>.

The August 2018 Agreement introduced questionable return procedures for third-country nationals entering Germany from the Austrian border that by pass EU law. In a recent case concerning an Afghan asylum-seeker returned from Germany to Greece, the Munich Administrative Court found the procedures prescribed by the Arrangement illegal and ordered the immediate return of the applicant to Germany.<sup>27</sup> While the provisions included for family reunifications on the other side did not bring any legal changes to improve or ease the procedures for thousands of families hindered to reunite. According to the Seehofer-Deal, Germany undertakes **to uphold already legally binding provisions of the Dublin Regulation and its Implementing Regulation**<sup>28</sup>.

In the meantime, **the barriers constructed by the unlawful interpretation of Dublin Regulation by German Asylum Authorities were not tackled in the Agreement and as a result most pending case reviews got rejected.**<sup>29</sup> At the same time, the Greek Asylum Service started informing the applicants' lawyers that it had decided to reduce the numbers of re-examinations to one attempt in such cases.<sup>30</sup>

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<sup>24</sup> The number of re-examination request by Greece dropped from 264 in September 2018, to 116 in October; 101 in November and 59 in December. A slight increase could be noticed in the first three months of 2019 (January 2019: 77; February: 90; and March: 99). For 2019 see: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 6 June 2019, available at: <https://bit.ly/2XKzu0l> (DE); for 2018 see: small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 13 March 2019, available at: <https://bit.ly/2ZrhrkA> (DE).

<sup>25</sup> The Administrative Arrangement between Greece and Germany, RSA commentary, 1 November 2018, available at: <https://bit.ly/2ZyMHcP>.

<sup>26</sup> According to Article 5.2 of the Implementing Regulation 1560/2003, re-examination requests have to be answered within a two-week deadline, but contrary to the deadlines for initial requests, there is no acceptance by default for the reviews.

<sup>27</sup> See Joint Press Release by Aitima, Equal Rights Beyond Borders, RSA and PRO ASYL, 2 September 2019, available at <https://bit.ly/2lyn7X2>.

<sup>28</sup> See: Verfassungsblog, "Gewolltes Recht", 2 November 2018, (Author: Constantin Hruschka), available at: <https://bit.ly/2OMA8Fi> (DE); Equal Rights Beyond Borders, "Swapping asylum seekers, reuniting families? The counterpart of returns to Greece in accelerated pro", 14 November 2018, available at: <https://bit.ly/32f8tnk>.

<sup>29</sup> Specifically, numbers of rejections in review cases rose in the months September and October 2018 to 179 and 141 respectively, while the monthly average in all of 2018 was around 61 rejections. Source: small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 13 March 2019, available at: <https://bit.ly/2ZrhrkA> (DE).

<sup>30</sup> There are no statistics available for cases rejected in first instance by Greek Dublin Office.

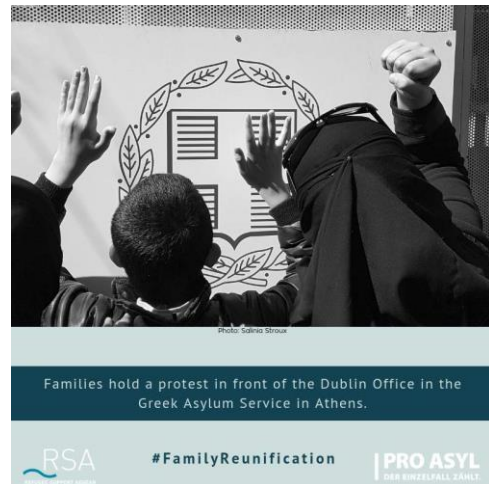
## FAMILY REUNIFICATION UNDER THE COMPULSORY RESPONSIBILITY (ARTICLES 8-11)

Outgoing requests in the context of family reunification send under Articles 8-11 of the Dublin Regulation involving nuclear family, such as parents/spouses, their children and siblings, constitute the overwhelming majority of the total 'take charge' requests sent by the Greek Asylum Office.<sup>31</sup>

Yet with regard to **Germany, many of these requests are being rejected merely as exceeding the three-month deadline.** This is related to a large extent to the above-mentioned shift of the German policy with regard to the starting point of the deadline and, although less, to the delays in accessing asylum, the gaps in registration and insufficient capacity of the Greek asylum system.<sup>32</sup>

However, most recently, family reunification claims under the compulsory clauses are usually rejected because Germany disputes family ties; or family member residing in Germany had his/her asylum claim rejected or does not hold an international protection status (Articles 9 and 10 of the Dublin Regulation).

Rejections of 'take charge' requests on the basis of **disputed family ties** have reportedly been noted mainly in cases regarding Afghan asylum-seekers.<sup>33</sup> The Implementing Regulation 1560/2003<sup>34</sup> provides that a receiving member state must check exhaustively and objectively, on the basis of all information directly or indirectly available to it, whether its responsibility for examining the application for asylum is established and sets out a number of proof and circumstantial evidence including documentation for the family link; verifiable information from the asylum applicant; statements by the family members concerned; reports/confirmation of the information by an international organization which are considered as indicative evidence; and refers to a DNA test only if necessary and when evidence that persons are related is not available (Annex II to the Implementing Regulation). **However, RSA/PRO ASYL understand that the responses of the German authorities depict that they often fail to consider such evidence, negate the validity of the personal and family status certificates submitted, demand DNA tests, leading to repeated re-examination requests or even refuse finally the 'take charge' request.**<sup>35</sup>



<sup>31</sup> In 2019, 2,782 requests have been sent by the Greek Dublin Unit, 1,745 according to Article 8 – 11. Source: Statistical Data of the Greek Dublin Unit (7.6.2013 – 30.06.2019), 3 July 2019, available at: <https://bit.ly/2MIYUfi>.

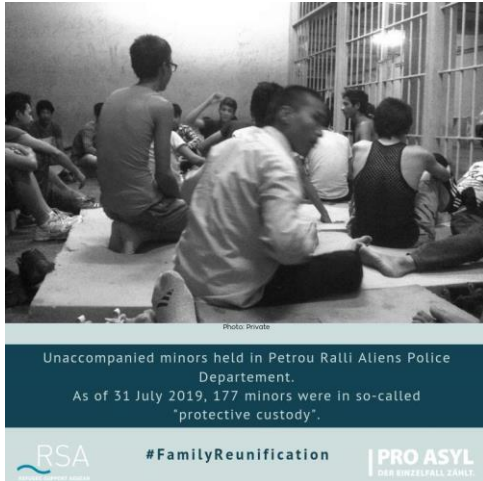
<sup>32</sup> The Greek authorities register an average of 5,289 applications per month. See: Asylum Service Hellenic Republic, 07.06.2013 – 30.04.2019, available at: <https://bit.ly/2WQVMm>.

<sup>33</sup> After Syrians, Afghans are the second largest group of applicants for family reunification in Greece since 2016. They are followed by refugees from Iraq (2017: Syrians 529, Afghans 378, Iraqis 132; 2018 (January-May): Syrians 431, Afghans 246, Iraqis: 60). Many Afghans lack identity documentation and proof of family ties while being second generation refugees from Iran or Pakistan or as they had no access to such documents in Afghanistan. Source: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 28 June 2018, available at: <https://bit.ly/2KUWDix> (DE).

<sup>34</sup> See: Commission Regulation (EC) No 1560/2003 of 2 September 2003 laying down detailed rules for the application of Council Regulation (EC) No 343/2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, available at: <https://bit.ly/2IFnlG8>.

<sup>35</sup> See Dublin Regulation, available at: <https://bit.ly/2PdA1rP>.

Further, since 2016, first instance asylum procedures in Germany demonstrate a negative tendency, which has a detrimental effect on family reunification, as only beneficiaries of international or subsidiary protection are entitled to reunify according to the Dublin Regulation. Of particular interest is the decision-making practice regarding Afghan asylum applicants, as they make up the largest proportion of family reunification applicants from Greece. While the overall protection rate in Germany increased slightly to 63.1% in the first quarter of 2019, the biggest share is again constituted by “prohibition of deportation” status (“Abschiebeverboten”)<sup>36</sup>. Even more applications from Afghan asylum seekers got rejected. Though a “prohibition of deportation” status does not entitle the holder to enjoy family reunification, s/he is residing legally in Germany. This not only unfairly denies international protection to these applicants but also their right of family reunification.



In most cases, applicants have appealed against their asylum rejections before courts and thus their asylum procedure is still pending and may well expect to be granted international protection in the future.<sup>37</sup>

In relation to cases of unaccompanied minors, 'take charge' requests may also be refused on the ground that German authorities **question the methodology and result of the age-assessment procedure** in Greece, and respectively the minors' age.

Other grounds for unsuccessful family reunifications include the **lack of English translations of documents** written in languages other than German or English as

requested by the German authorities<sup>38</sup> or the **pending 'take back' request for the return of the family member** that was already in Germany back to Greece.

Of particular importance are also cases where families have been split after arriving and seeking asylum in Greece. Germany has persistently refused such family reunifications where one member of the family has subsequently applied for asylum in Germany. These applications are in their overwhelming majority rejected as **“arbitrary” and “outside the time limit”**. Specifically, Germany rejects almost all cases concerning spouses who got separated after first arriving and registering in Greece together and of young minors that arrived unaccompanied in Germany d after being first in Greece with their families. Following the conclusion of the problematic August 2018 Administrative Arrangement, the Greek Asylum Service decided in October 2018 not to send 'take charge' requests for the latter cases (young unaccompanied minors in Germany). The Greek Asylum Service Director stated that specifically practices of separation concerning unaccompanied minors are against the best interest of child and for this reason instead of Greece sending an Article 17 (humanitarian clause)

<sup>36</sup> The presentation is based on the adjusted protection rate. Afghan asylum applicants: First half 2019, rejections (36.9%), 'prohibition of deportation' status (32%); 2018, rejections (48%), 'deportation of deportation' status (29%); 2017, rejections (53%), 'prohibition of deportation' status (24%); Data available at: PRO ASYL, "Antrags-, Entscheidungs- und Bestandsstatistik", available at: <https://bit.ly/2Udkelo>.

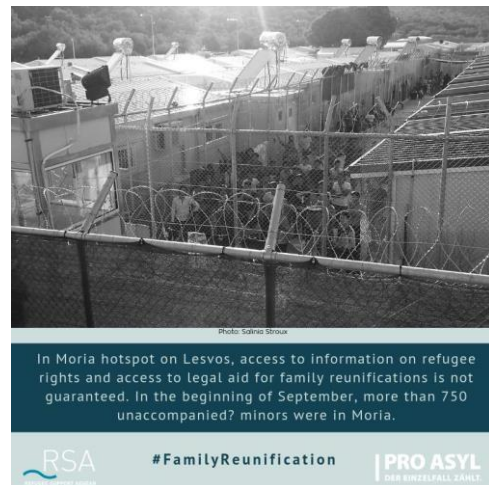
<sup>37</sup> 2018, 58% of the appeals by Afghan applicants against the decision by the Federal Migration Office got a positive decision. Source: PRO ASYL, "Geheimnisvolles BAMF: Schutzlotterie für Afghan\*innen", 13 June 2019, available at: <https://bit.ly/2MJYHo>.

<sup>38</sup> See footnote 17; See also: Safe Passage/ PRAKSIS, "Caught in the middle", 6 March 2019, available at: <https://bit.ly/348OBEn> (p.13); Ecumenical Refugee Program, KSPM-ERP - : Δουβλίνο III: η "εξαιρεση" που έγινε κανόνας, 3 May 2018, available at: <https://bit.ly/30KzsH5>; AIDA/ ECRE, AIDA Report: Greece (update 2018), available at: <https://bit.ly/2OGULnP> (p.60).

'take charge' request, a 'take back' request would be sent by Germany for the return of the child and the reunification with his/her family in Greece.<sup>39</sup>

In a few cases, including cases of unaccompanied minors, where one family member applied for asylum in Germany after being first registered together with her/his family in Greece, Germany has requested Greece to 'take back' the family member. To RSA/PRO ASYL's knowledge there have been no returns of such cases so far. In the cases that RSA/PRO ASYL followed it was well demonstrated that a potential forcible return to Greece would not be in the best interest of the child as it would threaten their wellbeing and uproot the children once more.

RSA/PRO ASYL notes that following the assumption of responsibility of the asylum procedure by the German authorities for such cases, Germany refused the reunification with their parents or relatives ignoring or neglecting Greek Dublin Unit's subsequent re-examination requests despite the children's right on a life with their family.



**German administrative courts in a dozen of interim measures** filed by PRO ASYL, Equal Rights or dedicated lawyers since the end of 2018 that concerned both cases of families split already before arriving to Greece and, most recently, cases of families that initially had arrived to Greece together, **ruled that the jurisdiction for safeguarding family unity and the best interests of the child preceded the time-limits of the Dublin Regulation.** The courts held that discretion under Article 17 (2) where applied, was reduced to zero in some cases for the same reasons.

Even if a parent decided to leave one child back or send it ahead, it cannot be considered the child's free will and thus it has the right to be reunited. Specifically, when Germany has accepted the responsibility of one family member, it could not deny it to other members of the family. In one case, the court ruled, that the fact that BAMF failed to examine Article 17 (2) constitutes a misuse of powers. Further, it was considered that, despite the missing of deadlines, Articles 8-11 should be applied in view of the right on family unity and the best interest of the child but also that Article 17 (2) was applicable due to the fundamental rights of the applicants.<sup>40</sup>

## FAMILY REUNIFICATION UNDER THE DEPENDENCY AND DISCRETIONARY CLAUSES (ARTICLES 16 & 17 OF THE DUBLIN REGULATION)

Considering the challenges described in detail above more often than not the Greek authorities have to resort to the application of discretionary clauses under the Articles 16 or 17 of the Dublin Regulation for cases that establish the compulsory jurisdiction of Germany (Articles 8-11, family reunification of minors and family members). These are cases for which there is evidence of family links but regard requests that risk to be considered by the German authorities as being send outside the three-month deadline.

<sup>39</sup> Information shared during the Meeting of Athens Legal Aid Working Group/Protection Working Group on 21 November 2018.

<sup>40</sup> Administrative Court Münster, Az. 2 L 989/18.A, 20. December 2018,). available at: <https://bit.ly/2ZCfIDx>; Administrative Court Berlin, Az. 23 L 706/18, 15 March 2019: (available at : <https://bit.ly/2zxPlzq> ; Administrative Court Trier, Az. 7 L 1027/19.TR, 27 March 2019, available at: <https://bit.ly/2zvo6uD>; Administrative Court Lüneburg, 8 B 111/19, 8 July 2019; Administrative Court Frankfurt (Main), Az. 10 L 34/19.F.A, 08 June 2019; Administrative Court Wiesbaden, Az. 4 L 478/19.WI.A, 25. April 2019.

Article 17 (2) provides that a Member State responsible, may, at any time before a first instance merits decision, request another Member State to take charge of an applicant in order to bring together any family relations, on humanitarian grounds based in particular on family or cultural considerations, even where that other Member State is not responsible under the criteria laid down in Articles 8 to 11 and 16 of the Dublin Regulation.

The use of Article 17(2) by the Greek Dublin Unit as a basis entitling it to submit a 'take charge' request for family reunification *stricto sensu* cases where the three months is considered to have expired has been met with fierce denial by the German asylum authorities. Yet, a number of German Administrative Courts have ruled that Germany has to accept such requests.<sup>41</sup>

**According to the Greek Dublin Unit almost 95% of the applications under Article 17 are rejected.**<sup>42</sup> Meanwhile, statistics provided by the German government, show that Article 17(2) 'take charge' requests from Greece rose from 13,42% of the total requests sent by Greece in 2017 to 21,66% in 2019 (1<sup>st</sup> quarter). The respective German rejections in response to these requests for the same period multiplied rising from 54,1% in 2017 to 175,51% in 2019.<sup>43</sup>

RSA/PRO ASYL note that extensive rejections even include Article 16 applications concerning very vulnerable cases. An illustrative case is that of an old blind woman whose whole family had been accepted for family reunification in Germany, a pure humanitarian case that had to remain alone following Germany's rejection.

In the vast majority of cases legally represented or monitored by RSA/PRO ASYL since 2018, German responses to Article 17 'take charge' requests were negative and lacked sufficient reasoning. **RSA/PRO ASYL note that the absence of sufficient reasoning is in clear contravention to the Dublin Regulation and its implementing Regulation 1560/2003 (Articles 3 & 5).**

## CONCLUSIONS



In the last two years, German authorities have been systematically rejecting hundreds of family reunification applications from Greece. The persistent rejection of these requests points to the immediate need for Germany to review its current application of the Dublin Regulation and interpret it as a whole set of criteria and **substantial principles (such as the family unity and the best interest of the child)** and not just as formal rules and deadlines. Within the restrictive Dublin Regulation, **its family reunification procedure is one of the scarce safe legal routes protecting these core principles, an accomplishment that must be respected.**

**Selective compliance with parts of the Regulation while disregarding main principles and values laid down by it constitutes a breach of the Regulation itself and is against the principles of good administration and the Common European Asylum System.**

<sup>41</sup> Ibid.

<sup>42</sup> Information provided by the Asylum Service: Legal Aid Working Group / Protection Working Group, 21 November 2018, para 5.

<sup>43</sup> See: Response of the federal government to the small parliamentary request by Ulla Jelpke, et al. DIE LINKE, 6 June 2019, available at: <https://bit.ly/2XKzu0l> (DE).

Overwhelming rejections of family reunification applications sent by Greece, a Member State at Europe's external border, signal also a worrisome political decision to disregard fundamental rights and principles as well as the use of EU legislation for the purpose of deterring arrivals and trapping refugees at the south eastern borders of the continent and far from the 'North' in substandard conditions.

It should be openly recognized that the substandard reception conditions<sup>44</sup> associated with human rights risks which ECHR and CJEU<sup>45</sup> have in the past considered as legal constraints for the forcible transfers of asylum seekers under the Dublin system still exist today in Greece. Despite some steps forward, the country's reception system remains inadequate and faces tremendous challenges and gaps in the protection of individuals. The prevention of redistribution via family reunification further tightens these already dire conditions. Considering this, it goes without saying that refugees and asylum-seekers are still forced to leave Greece in order to find safety and dignity.

The overall situation in Greece should also be taken into consideration in the implementation of the Dublin Regulation and assessed based on realities on the ground rather than blaming people for 'behaving arbitrary' or engaging in "secondary movements" (assuming that reception conditions are equivalent in different member states) or accusing external border countries for failing to process disproportionate numbers of asylum applications and sending requests on time. The German authorities should comply with the principles that German courts upheld ordering the authorities to halt the majority of return decisions from the German Federal Office of Migration (BAMF) of asylum-seekers and recognized refugees to Greece as well as ordering them in other cases to exercise discretion and respect the principles of **family unity** and **best interest of the child** even in cases where formal deadlines have not been met.<sup>46</sup>

States participating in the Dublin system, and the EU institutions and agencies have a responsibility to comply with and monitor the application of the core principles and values of the Dublin Regulation and the CEAS standards as well as implement a real 'shared responsibility' system. To this end the establishment of an ad hoc solidarity mechanism is absolutely necessary and the only sustainable and efficient way to fulfill the PRINCIPLE OF SOLIDARITY prescribed in fundamental European Union law<sup>47</sup> and to tackle the challenges of refugee protection. Regrettably, EU institutions have been deliberately passive in ensuring the implementation of core European law principles and in the face of violations of asylum standards and therefore they remain accountable for this, along the individual Member States breaching the Regulation.

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<sup>44</sup> Article 3 of the Dublin Regulation prohibits transfers to countries where a risk of inhuman or degrading treatment would ensue.

<sup>45</sup> 2011: M.S.S. v. Belgium and Greece by the European Court of Human Rights (ECtHR) and N.S./M.E. by the Court of Justice of the European Union (CJEU).

<sup>46</sup> See note 40 above.

<sup>47</sup> Article 80 in Chapter 2 ' POLICIES ON BORDER CHECKS, ASYLUM AND IMMIGRATION' of the Treaty on the Functioning of the European Union (TFEU) states ' *The policies of the Union set out in this Chapter and their implementation shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. Whenever necessary, the Union acts adopted pursuant to this Chapter shall contain appropriate measures to give effect to this principle.*' Available at: <https://bit.ly/2MC5UFO>.

## CASELAW

## EVEN IF A SEPARATION FROM A CHILD WAS SELF-INFLICTED BY THE PARENTS, THE FAMILY MUST BE REUNITED

*VG Wiesbaden (Az. 4 L 478/19.Wl.A), Decision of 25 April 2019<sup>48</sup>*

The case concerned a single mother from Afghanistan who applied for asylum in Greece with her two children at the end of 2016. After some months, she moved to Germany with one of her children, leaving the second behind as she lacked enough money. Ever since the child was placed into a shelter for unaccompanied minors. The mother and the first child received a 'prohibition of deportation' status in Germany at the end of 2017 (German: "Abschiebeverbot"). A 'take charge' request was sent on behalf of her minor child in Greece based on Article 17 (2) in August 2018 insisting on the best interest of the child but got rejected due to the missing of deadlines. The German authorities stated, that they were not responsible for the asylum procedure of the child. A re-examination request was answered also negatively, arguing that it was the decision of the mother to leave the child behind due to financial reasons and the separation was self-inflicted.

The Administrative Court of Wiesbaden ruled that the Germany authorities' discretion had to be reduced to zero for humanitarian reasons. The court found that Article 17 (2) of the Regulation applied given amongst others the dependency of the child to the mother, the small age of the child in Greece and traumatic experiences. It decided to oblige the BAMF to take back the rejections, to declare Germany responsible for the asylum claim of the second child and ordered the child's transfer to Germany.

It stated: "(The 12-year-old child) is already dependent to a family closeness to his mother with whom he has a strong emotional attachment [...]. Also, irrespective of the question as to whether the applicant's behaviour at that time [...] constituted a voluntary giving up of the family life, this aspect must not be held against their family reunification. For this purpose, argues on the one hand, the aspect of the best interest of the child that was certainly not voluntarily separated from his mother and cannot be held responsible for the decision of his mother at the time. On the other hand, it should also be borne in mind, that [Germany], despite being aware of [the] asylum application [of the mother] in Greece, refrained from transferring (the mother back) to Greece for the purposes of the asylum procedure. [...] At this time, [Germany] also had knowledge that there was another minor son in Greece. [...] If [Germany] has already made use of its right to take responsibility for the mothers' asylum case itself, it cannot refuse to do so as well for the child dependent on this mother."

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<sup>48</sup> Case legally represented by lawyer Christopher Wohnig, legal funds by PRO ASYL

## PRIORITY OF HIGH-LEVEL LEGAL INTERESTS OVER FORMALIZED PROCEDURES

*VG Frankfurt a. M. (Az. 10 L 34/19.F.A), Decision of 27 May 2019<sup>49</sup>*

The case concerned an Afghan family (consisting of mother, father and three minor children) who initially applied together for asylum in Greece in October 2016 and who got later separated from each other during the attempt to leave Greece. The mother travelled finally alone to Germany and applied for asylum in early 2017, while the father remained with the children in Greece. The mother received a 'prohibition of deportation' status in September 2017 and appealed against this before the competent German court. A 'take charge' request, based on Article 17 (2) of the Dublin Regulation was sent by the Greek authorities in November 2018, and got rejected by the BAMF three weeks later, on the grounds that the period laid down in Article 21 (1) and (2) of the Dublin Regulation had not been respected. The German authorities also argued that Article 17 (2) of the Dublin Regulation is not intended to serve as a standard option for delayed requests, which is why no examination would be made under Article 17 (2).

The Administrative Court of Frankfurt a. M. ruled that the BAMF should not have refused the 'take-charge' request with reference to the time limits laid down in Article 21 (1). All requirements of Article 17 (2) are fulfilled. In particular the court ruled that the family had humanitarian reasons within the meaning of Article 17 (2), because members of a nuclear family are concerned and they had already been separated for more than two years. Instead of exercising its discretion against the backdrop of Article 8 ECHR and Article 7 and Article 24 of the European Charter of Fundamental Rights (CFR), which provide for guarantees of the right on family unity and the best interest of the child, the BAMF did not take a discretionary decision at all. Taking into account the high importance of the right on family unity and the best interest of the child the court decided, that any other decision which would not bring the family back together would be unlawful (so called "intended" discretion). The court therefore ordered the BAMF to take back its rejections and to declare it responsibility.

It stated: "The court was also able to give a final decision on the application, since in view of the outstanding protected interests that speak for the applicants, a decision other than the consent to the acceptance of the applicants would be unlawful. [...] If the humanitarian reasons according to this provision exist, a decision other than the consent of the applicant to take over the applicant is only mandatory in rare exceptional cases [...]. That follows, first, from the defendant's [BAMF] decision [...] to examine her [the mother's] application for international protection when another Member State, namely the Hellenic Republic, would in fact have been competent to conduct the proceedings. [...] this not only has the consequence that Germany has become the competent Member State for the applicant, but with this decision Germany has assumed all the obligations associated with this competence. These obligations naturally include, first and foremost, the asylum procedure of the first applicant. Furthermore, the court is convinced that this fact also gives rise to the obligations arising from the family context, in particular the obligation to promote family reunification and to observe the welfare of the child. The respondent [BAMF] did take none of these obligations into account and ignored the high importance which the [Dublin] regulation admits to a uniform decision on the asylum procedure of all family members and the best interest of the child. On the other hand, the condensation of the discretion opened up to the respondent follows directly from the provision of Article 17 (2) Dublin III Regulation itself. Because the conflict between the basic decisions of the Dublin III Regulation, on the one hand to ensure the acceleration of the proceedings required by a clearly outlined regime of jurisdiction,

<sup>49</sup> Case legally represented in Germany by lawyer Jonathan Leuschner, legal funds by PRO ASYL. In Greece legally represented by NGO AITIMA



and on the other hand to guarantee the protection of high-ranking legal interests such as family unity and the welfare of the child, can only always be resolved in favour of the humanitarian decision within the framework of Article 17 (2) of the Dublin III Regulation. For precisely this is the meaning and purpose of the provision which, despite all the formalisation of the procedures for determining responsibilities, takes into account that a humanitarian corrective is necessary if outstanding protected interests threaten to become the victim of purely formalised considerations of jurisdiction and if unindebted failure to meet deadlines leads to unacceptable consequences for the family and the welfare of the child."

## IT CANNOT BE THE INTENTION OF THE DUBLIN REGULATION TO RENDER FAMILY REUNIFICATIONS IMPOSSIBLE

*VG Lüneburg (Az. 8 B 111/19), Decision of 8 June 2019<sup>50</sup>*

The case concerned an Afghan unaccompanied girl in Greece and her father. They had initially arrived together in Greece, got separated during the attempt to leave Greece and then the father applied for asylum in Germany while the girl remained in Greece with her elder brother and applied for asylum there. Meanwhile, Germany took responsibility of the asylum procedure of the father and he subsequently received a 'prohibition of deportation' status. The family reunification 'take charge' and 're-examination' requests got rejected by the German Dublin Office as it assumed that the separation happened willingly, was self-inflicted and their relationship could not be sufficiently proved and thus Article 17 (2) would not be applicable. Greece send three re-examination requests that all got rejected.

The Administrative Court of Lüneburg ruled in favour of the applicants and ordered the BAMF to lift the rejections issued on 11 May 2018, 12 December 2018 and 3 January 2019 and declare Germany responsible to examine the asylum application of the underage daughter. It further ruled that all requirements to apply Article 8 (1) are met, because the daughter was left back alone in Greece and is therefore an unaccompanied minor with regards to the definition laid down in Article 2 lit. j. Against the backdrop of the high importance of the right to family unity and the best interest of the child the fact that the deadline for the 'take charge' request was missed does not nullify the right to be reunited, because missing the deadline was neither the father's nor the daughters' fault. Even if Art. 8 could not be applied, the criteria for Article 17 (2) are met, because of the family bonds and the best interest of the child. Furthermore, not only the daughter, but also the father can claim his subjective right to family reunification.

It found that: "The applicant may claim for himself a subjective right on the consideration of the guarantees given in the European Charter of Fundamental Rights on the respect for family life and for the child's right to protection and care (Articles 7 and 24 CFR), which through Article 51 CFR should also be taken into account in the implementation and application of the Dublin III Regulation by Member States. [...] The responsibility of Germany to process the asylum claim of the applicant's daughter did not cease because of the expiry of deadlines under the Dublin III Regulation. [...]"

The missed deadline cannot become detrimental to the claimant or his daughter. Because the failure to meet the deadline is neither the responsibility of the applicant nor his daughter. [...] It is true that [...] in these cases where the take charge request was not sent within the deadlines laid down in subparagraphs 1 and 2 of Article 21 (1) 3, the member state becomes responsible where the application for international protection has been lodged. However, this would have in the cases of family

<sup>50</sup> Case legally represented in Germany by lawyer Jonathan Leuschner, legal funds by PRO ASYL. In Greece legally represented by the NGO AITIMA.

reunification based on Article 8-11 of the Dublin III Regulation as consequence, that that due to the expiry of the formal deadlines in the procedure to determine the responsibility of the Member State, that are made to streamline and accelerate the Dublin procedures, it becomes impossible in the long term to make a family reunification possible. This result cannot be the intention of the Dublin regime. In this regard, it should be borne in mind, that the examination for the responsibility of a Member State of Article 21 (1) of the Dublin III Regulation does not merely serve to distribute tasks between the Member States, but that it is also in the specific interest of the asylum-seeker, and consequently this rule of jurisdiction also confers on him subjective rights. However, in cases of family reunification, the transfer of responsibilities due to a missed deadline would not take into account the interests of the applicant."

The court further stated: "That a failure to submit a take charge request in due time may have the consequence that family members are denied their human right to family reunification (Article 8 ECHR, Article 7 CFR) due to a failure to meet a deadline by a state authority [...] does not appear to be a possible result of interpretation. The existing conflict between the family unity and the deadlines given in Article 21 (1) of the Dublin III Regulation can, in the light of the particular importance of the family unity and, in particular, of the very high protective interests of the child and here respectively of unaccompanied minors, can only be resolved with the duty of [Germany] [...], to accept a 'take charge' request even after a deadline has expired [...]."

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