

The Making of the *Absconder* in the Dublin Regime

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Odysseus Summer School 22th edition, Brussels, PhD Seminars

Introduction

- The dogma of asylum in only one country and the Schengen/Dublin dual regime of mobility

Convention Implementing the Schengen Agreements, OJ L 239, 22.9.2000 § (1990), Title II, chapter 7

Convention Determining the State Responsible for Examining Applications for Asylum lodged in one of the Member States of the European Communities, Pub. L. No. 97/C 254/01 (1990)

- The two dimensions of the *Dublin Regime*: 1. formal rules: hierarchy of criteria 2. Instruments for enforcing them
- A regime in permanent crisis? Inability to fix in the responsible MS and low transfer rates

Introduction

What this project is not about :

- formal criteria of jurisdiction allocation
- the first entry rule and the north/south divide

What this project is about :

Dublin implementation by (northern) MS since 2015

the proliferation of measures for deterring “secondary movements” since 1990

their constant failure to achieve their official goal and their (un)intended effects

the socio-genesis of the « absconder »

NB: Three outcomes of the Dublin procedure: transfer, responsibility shift, “absconding”

Methodological overview

Three kind of material

- Multi-sited, long-term ethnographic observation
- Archival work and discourse analysis
- Semi-structured interview with institutional stakeholders

Epistemological approach:

- Understanding the Dublin Regime beyond its apparent failure and through its effects
- Analysing the dynamic interaction between
– migration practices and policy implementation

I. “Absconding” vs. Flight

Consequences for absconding:

- One additional year of waiting before having the claim examined in substance
- Loss of the right to temporary residence
- Detention and deportability ((EU) 2013/604, art. 28 & 2013/33/EU, art. 8)
- Loss of reception conditions,

Hypothesis on benefits for MS:

- Banishment not *from* the territory, but *from within* it
- A-ban-donment rather than coercion
- Cheaper (non-)reception
- More dissuasive?
- Alternative to border checks: free-movement-friendly
- Win-win game for all MS?
- Absconders as “inbetweens”

I. “Absconding” vs. Flight

Snapshot from field-ground :

- “Flight strategies” are essential in the permanent reshaping of the Dublin Regime

Flight strategies: all the practices enacted to escape Dublin rules and appropriate freedom of movement through irregularity

Ex: the Calais vicious (or virtuous) cycle

Discretionary clause:

“By way of derogation from Article 3(1), each Member State may decide to examine an application for international protection lodged with it by a third-country national or a stateless person, even if such examination is not its responsibility under the criteria laid down in this Regulation.” ; (EU) 2013/604, Art. 17.1

Absconding:

« Where the transfer does not take place within the six months’ time limit, the Member State responsible shall be relieved of its obligations to take charge or to take back the person concerned and responsibility shall then be transferred to the requesting Member State. This time limit may be extended up to a maximum of one year if the transfer could not be carried out due to imprisonment of the person concerned or up to a maximum of eighteen months if the person concerned absconds », Regulation (EU) 2013/604, Art. 29.2

I. “Absconding” vs. Flight



The continuous emergence of new flaws within the Dublin Regime

- Belgium
- Brexit
- Covid

II. Primary Documentation

Snapshot from archival work: The genesis of the “absconder”

- 1992: First appearance of the concept (in the context of Dublin)

« *If a transfer has been arranged under the provisions of 5(a) above, but is not completed because of **the failure of the applicant to co-operate**, the second Member State may begin examination of the application on the' information available to it on the expiry of the deadlines specified in Articles 11.5 and 13.1 (b). If the application is refused, the second Member State **will remain [for an indefinite period] liable for taking back the applicant** under the provisions of Article 10(1)(e) unless the provisions of Article 10(2), (3) or (4) apply »*, Immigration Ministers, « Conclusions on the transfer of asylum applicants under the provisions of the Dublin Convention ». *Ad Hoc Immigration Group*, 1 decembre 1992

II. Primary Documentation

What this project is trying to map (geographically and temporally, at EU and national level):

- Dublin flaws (which can be appropriated by Dubliners). In particular: cessation of responsibility clauses (and subsequent transfer of jurisdiction), application of the discretionary clause, EURODAC errors
- Rules, legislation and practices regarding procedure delays
- Absconding definition & criteria, included outside the Dublin framework (return directive, procedure directive, reception directive and now the proposal for a screening regulation)

II. Primary Documentation

Composition of the Corpus:

- Documentation from the pre-Amsterdam Ad Hoc Groups. In particular: Schengen sub-group II (Asylum); Rhodes Group; Ad Hoc Immigration Group; K4 Committee, Article 18 Committee
- Legislative procedures within the Community framework (Dublin, Eurodac, Reception directive, Procedure directive)
- Documentation on Dublin implementation from EU agencies (EASO, EU-LISA, and EMN), institutions (COM, LIBE), and NGOs (ECRE, AIDA)
- Statistics (Eurostat, Northern MS ministries of Interior)
- Case-laws (CJEU, EctHR, northern MS courts)

Conclusion

Understanding current discussions on the Pact through the past

- Battle over the definition of absconding: “non compliance” or “disappearance”? cf. French “ligne rouge” in Council doc. 11617/21, 07/09/2021
- Obligation of the MS or obligations of the claimants?
- Deletion of cessation of responsibility clauses: priority given to deterrence over other principles (burden & responsibility sharing, mutual trust, speedy procedures, efficiency and reduction of administrative burden, and even national sovereignty)?
- The Hypothesis of an indefinite *ban*? From SCH/com-ex. (96) 11 (1996) to Dublin IV proposal (COM (2016) 270 final/2, art. 30), and the RAMM (COM(2020) 610 final art. 35 2)

Conclusion

What I'm particularly looking for:

- Reference codes of all the works of the Schengen & Rhodes Group
- statistical data on prolongation of transfer delays
- contact of pertinent stakeholders (both past and present) to interview

Thanks for your attention!