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4.2.2. Factors impacting the Dublin system

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Throughout 2021, national authorities faced some challenges and ambiguities in identifying potential Dublin cases and establishing the proof and grounds to determine the Member State responsible for the processing of an asylum application. For instance, the registration process in Cyprus had a direct impact on the identification of Dublin cases *(see Section 4.1).* Applicants must complete the registration questionnaire on their own, and missing or incorrect information made it difficult to identify, for example, applicants who could benefit from the Dublin criteria related to family relations.

The Swiss civil society organisation, Asylex, observed that asylum procedures were conducted rapidly and did not allow the identification of potential vulnerabilities that could impact a Dublin transfer decision,433 while the Swiss Refugee Council underlined that the narrow interpretation of the criteria related to family relations remained an issue in 2021.434

The Greek Network for Children's Rights reported that the impact of Brexit persisted, as criteria related to family reunification could no longer be applied with the United Kingdom and children had to fulfil more stringent rules to reunite with their relatives in the country. The organisation observed that many children preferred to abandon the administrative hurdles and left to try to make it to the United Kingdom on their own.435 The organisation noted that other administrative burdens persisted in 2021 as well, for example the requirement by the Spanish Dublin Unit to submit DNA tests for cases related to family criteria affected certain nationalities. Applicants were required to undertake these tests at their own cost.436

National courts delivered guidance to authorities and sought further clarification from the CJEU on modalities. The Council of State in the Netherlands confirmed that the Dutch authorities were not required to investigate the reasons if another Member State took responsibility on grounds other than the one mentioned in the take charge request. It also submitted a case for a preliminary ruling to the CJEU in order to clarify whether a diplomatic card issued by a Member State under the Vienna Convention on Diplomatic Relations would count as a residence document under the Dublin III Regulation.

In Germany, the Federal Administrative Court ruled on the collection and storage of data in Eurodac. The case concerned a third-country national who applied for asylum under a false identity but later revealed his EU citizenship that he received during the procedure. The court

pointed out that as an EU citizen his data cannot be collected and stored in Eurodac, and the Federal Office for Migration and Refugees (BAMF) has no authority to subsequently order his identification (for example, taking his fingerprints). This is because identification measures for EU citizens entitled to freedom of movement are only permissible in accordance with the Freedom of Movement Act/EU and in compliance with the prohibition of discrimination for EU citizens under the TFEU, Article 18.

The Court of the Hague referred questions for a preliminary ruling to the CJEU, inquiring whether the interests of an unborn child should be taken into account when deciding on the Member State responsible for the asylum application.

The CJEU delivered a preliminary ruling related to a regulation outside of CEAS[437] on whether complying with a transfer decision regarding a minor child following one parent's application for international protection on behalf of the child and without the other parent's consent may amount to international child abduction. The mother applied for international protection for herself and her child in Sweden, citing domestic violence by the father and threats of violence made by the father's family in the event of a return to the country of origin. The Swedish authorities transferred the child and mother to Finland based on the Dublin III Regulation and took no further action on the father's submission for a residence application in Sweden for the child. The court found that this cannot be considered as wrongful removal or retention of the child within the meaning of Regulation (EU) No 2201/2003 and the Hague Convention and confirmed that a person has the obligation to comply with a transfer decision and the right to rely on its implementation *(see Sections 2.4 and 5).*

- [433]Asylex. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/asylex.pdf
- [434]Swiss Refugee Council | Schweizerische Flüchtlingshilfe | Organisation suisse d'aide aux réfugiés. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/swiss_refugee_council.pdf
- [435]Network for Children's Rights | Δίκτυο για τα Δικαιώματα του Παιδιού. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/network_for_childrens_rights.pdf
- [436]Network for Children's Rights | Δίκτυο για τα Δικαιώματα του Παιδιού. (2022). Input to the Asylum Report 2022. https://euaa.europa.eu/sites/default/files/2022-03/network_for_childrens_rights.pdf
- [437]Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000, November 27, 2003. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32003R2201

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