

# HOW TO MANAGE SECONDARY MOVEMENTS OF ASYLUM SEEKERS?

***Philippe DE BRUYCKER***

*Professor at the Université libre de Bruxelles (ULB)*

*Coordinator of the Odysseus Academic Network*

# OUTLINE

- 1. Motives for secondary movements**
- 2. EU Preference for a repressive approach**
- 3. A too timid positive approach**

# 1. MOTIVES FOR SECONDARY MOVEMENTS

- Plural and extremely diverse
- Not all linked to asylum policy (like different levels of reception conditions or of recognition rates among Member States)
- But also family links not taken into consideration, knowledge of languages, presence of diasporas, level of living conditions, (perceived) integration opportunities, ...
- Therefore very difficult to address by States and public policies
- Issue on the agenda as a problem since the eighties
- No right to chose asylum country but...
- ... This does not mean no legitimacy for secondary movements because of:
  - Implementation of principle of mutual recognition of negative asylum decisions before European even minimal harmonisation
  - inequalities between asylum seekers in relation with differences between asylum policies of EU MS

## 2. THE PREFERENCE FOR A REPRESSIVE APPROACH AT EU LEVEL

- Not new approach but much more emphasised in the current envisaged legislations for a 3<sup>rd</sup> generation of rules under the CEAS
- In particular in the Dublin IV proposal but also in other proposed instruments (RC and AP)
- Either by the non-responsible Member State where the asylum seeker moved
- But also by the responsible Member State where the asylum seeker can be transferred back
- Rather technical and complex issue with two types of sanctions regarding individual rights or procedural guarantees (leaving aside the issue of detention) in case of secondary move

## 2.A. SANCTIONS ABOUT RIGHTS

- No entitlement to RC except emergency health care in non responsible MS:
  - Problematic with International and European Human Rights law
  - In particular with CJEU case law ( cases Cimade & Gisti (2012) based on right to dignity + Saciri (2014) regarding precisely the Dublin period
  - Contradictory with RC proposal where the “obligation to cover immediate material needs” is reminded
- No right for UAM to a representative in non responsible MS!
  - Contrary to Child Convention
- Rejection of application considered as implicitly withdrawn by responsible MS
  - Denial of access to asylum procedure contrary to article 18 EUCFR

## 2.B. SANCTIONS ABOUT ASYLUM PROCEDURAL GUARANTEES

- Accelerated procedures in responsible MS
  - in principle not problematic if basic guarantees are respected
- Limitations of appeal rights against Dublin transfers:
  - against evolution of jurisprudence of CJEU with case Ghezelbash in 2016
  - against article 13 ECHR and 47 EUCFR
- No appeal in responsible MS if application was rejected
  - against article 13 ECHR and 47 EUCFR
  - moreover idea rejected by Commission during Dublin III discussions

# 3. A TOO TIMID POSITIVE APPROACH

- Proposals effectively made:
  - EU operational standards and indicators on reception conditions directed towards MS (towards some kind of more harmonised RC?)
  - Contingency plans to ensure adequate RC in case of disproportionate pressure (towards crisis management?)
  - Regulation proposed to replace the Qualification Directive (more effective?)
- Issues neglected:
  - More or less consideration for some preferences of asylum seekers (see however MEP Wikström report on Dublin IV)
  - Free movement rights for protected persons counterbalancing responsibility determination (despite obligation to implement “uniform asylum (refugee) status *valid throughout the EU*” following article 78, §2 a) TFEU)

# BY WAY OF CONCLUSION

- Unbalanced approach with too many sanctions and not enough incentives:
  - Will sanctions make Dublin finally effective (after 20 years of implementation)?
  - Huge risks of Illegality on considerable points
- What about the credibility of the asylum policy for the public opinion?