



FI EMN Open Summary AHQ on the application of Sovereignty Clause in Dublin procedure

Requested by Suvi TIAINEN on 15th February 2016

Protection

Responses from Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Netherlands, Poland, Slovak Republic, Slovenia, Sweden, United Kingdom, Norway (23 in total)

Disclaimer:

The following responses have been provided primarily for the purpose of information exchange among EMN NCPs in the framework of the EMN. The contributing EMN NCPs have provided, to the best of their knowledge, information that is up-to-date, objective and reliable. Note, however, that the information provided does not necessarily represent the official policy of an EMN NCPs' Member State.

Background information:

Referring to the Ad-Hoc query requested by FI EMN NCP on 11th February 2014, Finland would like to request an update on the application of the Sovereignty Clause in Dublin procedure in the current situation of increased influx of asylum seekers to Europe. According to Council Regulation (EC) No 343/2003 article 3.2 (called the Sovereignty Clause) and Council Regulation (EU) No 604/2013 article 17.1 each Member State may, by way of derogation from Article 3.1, 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.

Questions

- 1. 1. In which cases does your country apply the sovereignty clause? Do you apply the sovereignty clause to whole categories of persons or on a case-by-case basis?**
- 2. 2. Does your country have any general rules for implementing the sovereignty clause?**
- 3. 3. Are there any statistics available on this matter? If available, please attach to this template.**
- 4. 4. Have there been any changes to the application of the sovereignty clause in your member state during the latest period of increased influx of asylum seekers?**

Results:

1. In which cases does your country apply the sovereignty clause?

All countries applied the sovereignty clause on a case-by-case basis: some rarely (Czech Republic and Lithuania). Sovereignty clause was applied for instance in connection with:

- vulnerable cases in general (e.g. Belgium, Cyprus, Finland, Hungary, United Kingdom). Some countries refer to humanitarian grounds (e.g. the Netherlands, the United Kingdom)
- family ties in general (e.g. Belgium, Cyprus, Finland, Hungary). Some countries refer to applicants having connections to the country (France, Norway)
- medical reasons or serious illness (Belgium, Cyprus, United Kingdom). In Norway and Italy health factors do not as a general rule qualify as grounds for this consideration.
- individual circumstances (Germany, Netherlands)

Application of the sovereignty clause to certain categories of persons:

- Belgium applies the sovereignty clause to applicants coming from Greece when no other member state is considered to be responsible. It is also applied to families coming from Italy and Hungary.
- Croatia receives asylum seekers coming mostly from Greece. The most important impact on the application of the sovereignty clause has been the ruling of the ECtHR and the CJEU jurisprudence.
- Finland applies the sovereignty clause to certain nationalities for procedural reasons. There are national guidelines that are applied categorically in relation to asylum seekers coming from Greece. Finland has also taken responsibility of some human trafficking cases.
- In Germany only a limited number of persons have been transferred to Malta since 2009. Persons requiring particular protection (e.g. pregnant women, persons over the age of 65 years, families with small children, unaccompanied minors, sick persons and those requiring

care) are not being transferred to Malta. In such cases the sovereignty clause is applied in order to alleviate the burden on the asylum system in Malta. Vulnerable cases are not transferred to Bulgaria. Families with children under the age of 16 are not transferred to Italy because Italy does not deliver individual assurances regarding accommodation fit for children (case by ECtHR 4.11.2014 Tarakhel vs. Switzerland).

- In Luxembourg the sovereignty clause is applied systematically to Greece and to Hungary. In relation to Hungary it is based on national case law.

- In Norway the sovereignty clause is applied to categories of persons who come from safe countries, to applicants who can easily be returned to their country of origin, to those coming from Greece and to human trafficking cases.

2. Does your country have any general rules for implementing the sovereignty clause?

The majority of the member states do not have general rules for the application of the sovereignty clause. Many refer to the jurisprudence of EU and the national courts that have influenced decision-making on a case-by-case basis. The most important impact on the application of article 3.2 (17.1) of the Dublin Regulation has been the ruling of the ECtHR in the case M.S.S. v Belgium and Greece and the judgement of the ECJ in the case C-411/10 NS, where the court ruled that a member state is obliged to examine an asylum application if transfer would expose the applicant to a serious risk of violation of fundamental rights.

In France the decision to apply the sovereignty clause depends on the "préfet" competent for the application. Instructions for Greece on the other hand apply to all prefectures.

In Germany the application of the sovereignty clause is restrictive otherwise the system of jurisdiction jointly agreed in the Dublin Regulation would be undermined.

The Swedish Migration Agency has internal guidelines regarding the application of the sovereignty clause. It is mostly applied to keep family members together and in difficult humanitarian circumstances.

In contrast to the other member states Norway has a general rule for the application of the sovereignty clause in the Immigration Act paragraph 7-4 Immigration Regulations.

3. Are there any statistics available on this matter?

In the majority of member states exact statistics are not available.

Belgium started to collect statistics on the sovereignty clause in January 2016. Since then it has been applied to 327 persons.

In Croatia there has been suspension of transfers to Greece on the basis of the sovereignty clause in 41 cases in 2015.

According to records kept in Cyprus since 2015, the sovereignty clause has not been applied.

According to the statistics of France the sovereignty clause has been applied in 138 cases in 2012, in 161 cases in 2013, in 122 cases in 2014 and in 334 cases in 2015.

In Germany due to the suspension of transfers to Greece on the basis of the Dublin III Regulation there have been 5.436 cases where the sovereignty clause was applied. In 2015 the sovereignty clause was applied in the case of 55 persons with regard to Malta, for 572 persons with regard to Bulgaria and for 999 persons with regard to Italy. The total number of cases where the sovereignty clause was applied in 2015 was 10.495 persons.

In Norway the statistics showed that there were 61 cases in 2012 where the sovereignty clause was applied. In 2015 there were 519 cases which were marked with a specific code showing that Greece was the responsible member state. Norway commented that because this code is registered manually, the actual number of cases in which Greece is responsible may be higher.

Sweden started to collect statistics on the application of article 17.1 in mid-2014. During the period May – December 2014 there were 37 cases. In 2015 the discretionary clause was applied in 260 cases.

4. Have there been any changes to the application of the sovereignty clause in your member state during the latest period of increased influx of asylum seekers?

The majority of the member states claimed that there have been no changes in the application of the sovereignty clause during the period of increased influx of asylum seekers. Some countries noticed an increase in the number of cases where the sovereignty clause was applied or expected there to be an increase. Belgium applied the sovereignty clause mainly based on family ties. Finland noted numerical changes and that the number of applicants meeting the criteria of being considered vulnerable had diminished also in appeal cases at the administrative court. Sweden noted an increase in the total number of asylum seekers but there were no changes in the application of the clause itself.