

**POSITION ON THE IMPLEMENTATION OF  
THE DUBLIN CONVENTION**

*in the light of lessons learned from the implementation of  
the Schengen Convention*

**BY THE  
EUROPEAN COUNCIL ON REFUGEES AND EXILES**

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**KEY RECOMMENDATIONS ON  
THE IMPLEMENTATION OF THE DUBLIN CONVENTION**

**The European Council on Refugees and Exiles calls on all States party to the Dublin Convention to:**

1. Not return an asylum seeker to a 'third State', pursuant to Article 3(5) of the Dublin Convention, without providing the asylum seeker with a suspensory right of appeal and without ensuring that the applicant will be protected against *refoulement* and will be granted access to a fair and efficient determination procedure in the third state.
2. Implement the Convention in a flexible and humane manner by invoking the 'opt out' clause of Article 3(4) and the 'humanitarian' clause of Article 9 in the interests of the asylum seeker; and to establish operative guidelines to identify those cases where Articles 3(4) and 9 should normally be applied.
3. Utilise the 'family' grounds provision in Article 9 to reunite family members resident in different Member States, regardless of their status.
4. Address the failure of the Convention to provide for the socio-economic rights of asylum seekers awaiting a decision on the State responsible for determining their claim, and ensure that these rights are respected from the first moment of arrival.
5. Provide all asylum seekers with a suspensory right of appeal against a decision to transfer their application to another Member State.
6. Harmonise national asylum laws and procedures in conformity with international refugee and human rights law and at the level of the highest international standards so that the Dublin Convention will create a regional system that is not simply efficient, but also fair.
7. Ensure that the exchange of personal data takes place under the auspices of a supervisory body and that personal data is never disclosed to the asylum seeker's country of origin.
8. Ensure that all transfers of asylum seekers are conducted in a manner which respects the dignity and physical integrity of the individual.
9. Take appropriate steps in order to ensure that the Convention receives a uniform application and interpretation through the supervision of a supra-national judicial authority such as the European Court of Justice.
10. Establish practices of transparency with regard to the implementation of the Convention and to keep the asylum seeker informed on the assessment of his/her case.

## INTRODUCTION

1. It was the 1957 Treaty of Rome that first voiced the long-term objective of a European Community based on the “free movement of goods, persons, services and capital”. In 1985, however, France and Germany joined by Belgium, the Netherlands and Luxembourg, signed the Schengen Agreement outside the framework of the European Community. This Agreement set out the objective of a gradual abolition of checks at their common borders. However, it was recognised that this objective could not be achieved without measures to compensate for the lack of security resulting from the absence of border checks. Therefore, between 1985 and 1990, the so-called Schengen States elaborated a treaty - the Schengen Convention<sup>1</sup> - which provided compensatory measures in the areas of external borders, police co-operation, extradition, narcotic drugs, firearms and the movement of non-EU nationals, including asylum seekers.
2. The asylum chapter of the Schengen Convention aimed to ensure that asylum seekers would not be able to make multiple asylum applications, either simultaneously or consecutively, in different Schengen States. It stipulated that they could apply for asylum in one Schengen State only and that the choice of State would not be that of the asylum seeker but would be determined on objective criteria set out in the Convention.<sup>2</sup>
3. In the mid-1980s, the political commitment of the European Community as a whole to create an internal market regained momentum and was formalised with the adoption of the Single European Act in 1987. This Act created an internal market described as “an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured”.<sup>3</sup> The creation of an internal market posed the question, however, of how to achieve the goal of abolishing border checks between the Member States whilst monitoring and controlling the movement of third country nationals and in particular asylum seekers, whose numbers were rising. To this end, Member States agreed that a common policy on asylum was required. However, this common policy was to be formulated by inter-governmental committees and agreed by EC States working outside the framework of the European Community. This process was initially referred to as European Political Co-operation, and then following the entry into force of the Treaty on European Union, it was known as Co-operation in the Fields of Justice and Home Affairs.<sup>4</sup> As a consequence, asylum policy in the European Union was to be developed without European parliamentary scrutiny and beyond the jurisdiction of the European Court of Justice.
4. *The Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities* (hereinafter the Dublin Convention)<sup>5</sup> was the first result of the Member States’ inter-governmental efforts to harmonise, or at least, co-ordinate asylum policy. The Dublin Convention’s underlying principle is, like that of the asylum chapter of the Schengen Convention, to identify which Member State has responsibility for examining an asylum application and to ensure that only one State determines the application. The Dublin Convention sets out an order of precedence for establishing responsibility based on criteria such as the presence of family members with refugee status, whether the asylum seeker has a valid resident permit or visa, or where the asylum seeker first entered the European Union.
5. Both the Schengen Convention (agreed between 5 EC States)<sup>6</sup> and the Dublin Convention (agreed between all 12 EC States as they were then) were signed within four days of each other in 1990, but the Schengen Convention became operational on 26 March 1995 at a time when the ratification process of the Dublin Convention was still far from complete.

However, it was agreed that when the Dublin Convention entered into force, its provisions would substitute the asylum chapter of the Schengen Convention.<sup>7</sup>

6. This paper has been drafted because, following the final ratifications of the Netherlands and Ireland in June 1997, the Dublin Convention entered into force in September 1997 and replaced the asylum chapter of the Schengen Convention. Over the last two years, non-governmental organisations and lawyers have witnessed, from the sidelines, the implementation of the Schengen Convention and have identified<sup>8</sup> a number of legitimate concerns which Member States now have the opportunity to address so as to ensure a more humanitarian, more transparent, more efficient and fair implementation of the Dublin Convention.
7. The Treaty of Amsterdam, revising the Treaty on the European Union, was signed by EU Member States in October 1997.<sup>9</sup> The Treaty, *inter alia*, provides for measures “for determining which Member State is responsible for considering an application for asylum submitted by a third country national in one of the Member States”.<sup>10</sup> This would appear to imply that the provisions of the Dublin Convention may finally be brought within a revised European Community framework. This would result in greater parliamentary transparency and limited jurisdiction for the European Court of Justice. However, given the fact that these measures may not enter into force before the year 2004, ECRE’s recommendations relating in particular to transparency and judicial supervision remain highly relevant.

## **WILL THE DUBLIN CONVENTION FULFIL ITS AIMS?**

### **‘Safe’ Third Countries**

8. Under the fifth paragraph of the Preamble to the Dublin Convention, Member States undertake to “provide all applicants for asylum with a *guarantee* that their applications will be examined by one of the Member States...” (emphasis added).<sup>11</sup> Despite this general undertaking, however, Article 3(5) of the Dublin Convention, in contradiction, allows Member States to expel asylum seekers to “third” states outside the European Union. This provision, therefore, undermines the guarantee set out in the Preamble.
9. ECRE reiterates that there is no common acceptance in international law of the concept of ‘safe third countries’. It is evident that, unless safeguards are established to ensure respect for human rights standards and international principles of refugee protection, the implementation of the concept of ‘safe third countries’ poses a serious risk to the institution of asylum and to the fundamental principle of *non-refoulement*.<sup>12</sup>
10. Article 3(5) of the Dublin Convention stipulates that “Any Member State shall retain the right, pursuant to its national laws, to send an applicant for asylum to a third State ... in compliance with the *provisions of the Geneva Convention, as amended by the New York Protocol*” (emphasis added). ECRE notes that Article 29(2) of the Schengen Convention also provided Member States with the option to apply the third state concept, by stating that “Every Contracting Party shall retain the right to refuse entry or to expel an applicant for asylum to a third State on the basis of its national provisions and in accordance with its *international commitments*” (emphasis added). ECRE regrets, therefore, that unlike the Schengen Convention, the Dublin Convention makes neither explicit nor implicit reference to Member States’ obligations under other international, regional or thematic human rights

treaties, such as the International Covenant on Civil and Political Rights, the Convention against Torture or the European Convention on Human Rights.

11. The 1992 EC Resolution on a Harmonised Approach to Questions Concerning Host Third Countries also allows Member States to apply the third state concept but lists certain principles (paragraph 1) and criteria (paragraph 2) to be taken into account before the concept is applied to individual cases. In light of these criteria and the obligation on Member States in paragraph 4 of the Resolution to “ensure that their national laws...incorporate the principles of this resolution as soon as possible, *at the latest by the time of the entry into force of the Dublin Convention*” (emphasis added), ECRE urges Member States to provide the asylum applicant with a right of appeal, with suspensive effect, to an independent body against the decision to transfer him/her to a third state. Furthermore, ECRE urges Member States not to return an asylum seeker to a third state before determining that the following requirements are fulfilled:

(a) the third state is a party to and implements the 1951 Geneva Convention and the 1967 New York Protocol, and complies with UNHCR Executive Committee Conclusions;

(b) there is evidence that the applicant will be admitted to the third state under conditions of safety and respect for the individual;

(c) the applicant’s life and freedom will not be threatened in the third state, within the meaning of Article 33 of the 1951 Geneva Convention;

(d) the applicant will not be exposed to torture or inhuman or degrading treatment by the third state, within the meaning of Article 3 of the European Convention on Human Rights and Article 3 of the UN Convention against Torture;

(e) the applicant will be provided by the third state with full access to a fair and efficient refugee determination procedure, and offered effective protection for as long as that protection is required.

12. Even where these requirements may be met in principle, ECRE would remind Member States that, under paragraph 1(e) of the EC Resolution on Host Third Countries they have the discretionary right not to remove an applicant to a third state “for humanitarian reasons”.<sup>13</sup> ECRE urges Member States to make full and proper use of this right in deserving cases.

### **‘Refugees in orbit’**

13. The fifth paragraph of the Preamble of the Dublin Convention also seeks “to ensure that applicants for asylum are not referred successively from one Member State to another without any of these States acknowledging itself to be competent to examine the application for asylum”. Whilst the ‘orbit’ practice may be suppressed within the common territory of the Member States, by allowing asylum applicants to be sent to third states, the Dublin Convention will not prevent the ‘orbit’ problem between its common territory and some 170 third states.

14. Furthermore, chain deportations will still occur as, following the transfer of an asylum ap-

plicant between states party to the Dublin Convention, the responsible Member State may still send the applicant on to a third state pursuant to Article 3(5).<sup>14</sup>

### **Responsibility sharing**

15. Though not stated in the Preamble or text of the Dublin Convention, it is widely understood that one of the Convention's aims was to achieve a more equitable and logical distribution of responsibility for asylum applications within the European Union. If indeed this is one of the Convention's aims, ECRE expresses the belief that this is unlikely to be achieved, as the geographical location of States in relation to asylum seekers' travel routes is significant, and because implementation of the criteria will often result in a reciprocal exchange of approximately equivalent numbers of asylum seekers between States. Furthermore, ECRE does not believe that responsibility sharing should be sought at the expense of asylum seekers benefiting from the support of substantive links to certain countries, except in emergency situations<sup>15</sup>.

### **CRITERIA FOR DETERMINING STATE RESPONSIBILITY**

16. Like the Schengen Convention, the Dublin Convention includes a set of criteria for the determination of Member State responsibility for the examination of each asylum application. These relate primarily to the issuing of residence permits, visas or to the first State through which the asylum seeker entered the European Union.<sup>16</sup>
17. The Dublin Convention's strict criteria do not allow for the intentions of the asylum seeker to be taken into account in the determination of Member State responsibility. The fact that the asylum seeker may wish to join family members or religious, cultural or ethnic communities in one particular Member State is not a factor for strict consideration under Articles 4 - 8. ECRE believes that it is imperative that Member States take into consideration the intentions of the asylum seeker as a matter of course by invoking the 'opt out' clause in Article 3(4) and the 'humanitarian' clause in Article 9 of the Dublin Convention.<sup>17</sup>

### **Precedence of the criteria**

18. The Dublin Convention is much clearer than the Schengen Convention with regard to the order in which criteria for apportioning responsibility should be applied. Article 3(2) of the Dublin Convention states, quite unequivocally, that the criteria set out in Articles 4 - 8 shall apply in the order in which they appear, beginning importantly with the principle of family unity.

### **Family unity<sup>18</sup>**

19. Article 4 of the Dublin Convention provides for the reunification of members of the same family where at least one member has been recognised as a refugee under the 1951 Convention and is legally resident in a host Member State. ECRE notes that the concept of 'family' in Article 4 is narrowly defined to include only the reunification of spouses and of parents with their unmarried children under eighteen years of age. In this context and in light of the Member States' commitment to co-operate with UNHCR,<sup>19</sup> ECRE would draw Member States' attention to Paragraph 185 of the UNHCR Handbook on Procedures and Criteria for Determining Refugee Status which extends the principle of family unity to include "other

dependants, such as aged parents of refugees ... living in the same household.”

20. ECRE is concerned that the restrictive language of Article 4, referring only to family members with refugee status, may result in Member States refusing to recognise the need for family re-unification where one member of the family possesses a status other than that of a refugee recognised in accordance with the 1951 Refugee Convention (for example, humanitarian, ‘temporary’ or *de facto* status) and is legally resident in another Member State.
21. ECRE is also concerned that Article 4 of the Dublin Convention does not deal specifically with the re-unification of family members who are obliged, according to the criteria, to submit their applications in different Member States and are awaiting the determination of their application. This will occur where family members have travelled with visas or residence permits issued by different Member States or have entered the common territory via different Member States.
22. The result of the strict implementation of similar provisions in the Schengen Convention was that family members were divided across different Schengen States for years.<sup>20</sup> Given the length of time often involved in the processing of asylum applications in many Member States and given the clearly documented trend<sup>21</sup> of granting a humanitarian or *de facto* status rather than refugee status, family members may be separated indefinitely.
23. ECRE firmly believes that this situation is unacceptable and that Member States should make every endeavour to utilise the ‘opt out’ and ‘humanitarian’ clauses of Articles 3(4) and 9 of the Dublin Convention to reunite family members applying for asylum in different Member States.

#### **‘Opt out’ clause**

24. Article 3(4) of the Dublin Convention, which is sometimes referred to as the ‘opt out’ clause,<sup>22</sup> states that “Each Member State shall have the right to examine an application for asylum submitted to it by an alien, even if such examination is not its responsibility under the criteria defined in this Convention, *provided the applicant for asylum agrees thereto*” (emphasis added). Unlike the Schengen Convention, therefore, the Dublin Convention requires the explicit agreement of the asylum seeker if a State which is not responsible under the Dublin Convention opts to examine the asylum application anyway. This provision should be interpreted to imply that the interests and intentions of the asylum seeker are paramount in the Member State’s decision to assume responsibility for the asylum application.
25. ECRE notes, however, that the language of Article 3(4) does not give the asylum seeker a right to request the State to apply Article 3(4) and assume responsibility for processing his/her application. Non-governmental organisations and lawyers’ experience under the Schengen Convention, which had a similar clause,<sup>23</sup> has been that some Schengen States did not implement this clause in the interests of the asylum seeker but as a means to expedite returns.
26. ECRE suggests that operative guidelines should be developed which would assist Member States to identify those cases where Article 3(4) should be applied. Cases requiring its application should include:

- (a) an asylum seeker in poor physical or psychological health;
- (b) an asylum seeker who is pregnant;
- (c) an unaccompanied child asylum seeker without family in another Member State;
- (d) an asylum seeker with family members in the State where the asylum application has been lodged<sup>24</sup>;
- (e) an asylum seeker with substantial cultural ties with the State where the asylum application has been lodged;
- (f) an asylum seeker who can demonstrate that on the facts of his/her case the responsible Member State would, on the evidence of past practice, apply more restrictive criteria in determining his/her status than the Member State where the application has been lodged and as a consequence produce a very different decision detrimental to his/her safety.

27. In this context and in light of the Member States' commitment to co-operate with UNHCR, ECRE would urge Member States to take into account the intentions of the asylum seeker as recommended in UNHCR Executive Committee Conclusion No. 15 (XXX) which states that "the intentions of the asylum seeker as regards the country in which he wishes to request asylum should as far as possible be taken into account."

#### **'Humanitarian clause' : family life and culture**

28. Article 9 of the Dublin Convention provides that "Any Member State, even when it is not responsible under the criteria laid out in this Convention, may, for humanitarian reasons, based in particular on *family or cultural* grounds, examine an application for asylum at the request of another Member State, provided that the applicant so desires" (emphasis added). Under the Schengen Convention, Contracting Parties did not sufficiently utilise the equivalent provision<sup>25</sup> to re-unite family members resulting in the separation of families across a number of Schengen States.
29. ECRE urges Member States to utilise the "*family*" grounds provision in Article 9 where the principle of family unity under Article 4 is not applicable for the following reasons:
- (a) where one member of the family possesses humanitarian, 'temporary' or *de facto* status and is legally resident in a Member State;
  - (b) where a family member's application has not yet been decided in a Member State;
  - (c) where the family member does not yet have access to the asylum procedure.
30. ECRE would also particularly point out to Member States that the *cultural* needs of all asylum applicants (needs relating to their race, ethnicity, nationality, religion, language etc.) should be taken into account when determining State responsibility under this Article.
31. ECRE welcomes the fact that Member States may not invoke Article 9 without the consent of the asylum seeker. However, ECRE is concerned that Member States are under no obligation to inform the asylum seeker that s/he may request the transfer of his/her application to another Member State on family and cultural grounds.
32. In this context, ECRE urges the Member States to inform the asylum seeker of the possibility of seeking family reunification or transfer on the basis of cultural needs under the Dublin Convention in order to enable the asylum seeker to present relevant information and to facilitate the implementation of Article 9.



33. Even if such a request to another Member State is submitted, that Member State is under no obligation to grant it. ECRE would urge all Member States to develop common guidelines for the acceptance of all such requests to assume responsibility on humanitarian grounds.<sup>26</sup>
34. Finally, ECRE would remind Member States of their obligations under Article 8 of the European Convention on Human Rights, Article 10 of the Convention on the Rights of the Child and Article 23 of the International Covenant on Civil and Political Rights, regarding respect for private and family life. Additionally, in light of Member States' commitment to co-operate with UNHCR, ECRE draws attention to UNHCR Executive Committee Conclusions 9 and 24, and paragraphs 181-188 of the UNHCR Handbook.

## **SOCIO-ECONOMIC RIGHTS**

35. ECRE is concerned that the Dublin Convention does not contain provisions regarding the social and economic rights of asylum seekers awaiting a decision on the Member State responsible for processing their asylum application or awaiting transfer to the responsible State. The result could be that, as occurred under the Schengen Convention, asylum seekers in some Member States will not have basic socio-economic rights and that the standard of reception in each Member State will vary considerably.
36. ECRE urges the Member States to address this matter urgently, reminding Member States that denial of socio-economic rights could constitute inhuman and degrading treatment under the European Convention on Human Rights. Reception facilities and/or assistance should be provided from the moment of arrival (as opposed to the point of admission to the asylum procedure) and should be extended throughout the period during which responsibility for the application is determined, including any appeal.<sup>27</sup>

## **PROCEDURAL ISSUES**

### **National asylum procedures and policy**

37. Under Article 3(3) of the Dublin Convention, an asylum application must be examined by the receiving Member State "in accordance with its national laws *and its international obligations*" (emphasis added). In contrast, Article 32 of the Schengen Convention merely stipulated that the Contracting Party should apply its "national law" in the processing of an application. ECRE is, therefore, encouraged by the deference required of each Dublin Member State to its international human rights obligations.
38. ECRE reminds Member States that the principal objective of the Dublin Convention, expressed in paragraph 2 of the Preamble, is the "harmonisation of their asylum policies" and that this is a prerequisite of its functioning in a fair and non-discriminatory manner. Although the EU has adopted a large number of "harmonisation" instruments in the field of asylum, these have in general not conformed to the highest international standards and have tended to undermine rather than strengthen refugee protection in western Europe. Furthermore, Member States' asylum procedures and policies continue to vary, producing different decisions with regard to asylum applications of similar factual content.

39. In such a context, ECRE is concerned that differing national law, practice and procedures may lead to injustice in the determination of certain cases that have been transferred under the Dublin Convention and result in *refoulement* in breach of Article 33 of the 1951 Convention and, where applicable, Article 3 of the European Convention on Human Rights and Article 3 of the Convention against Torture. Such divergences in national law and policy may result in an asylum seeker being returned to his/her country of origin by one Member State whilst s/he would have received, for instance, *de facto* status in another Member State. Member States are therefore urged to undertake further harmonisation which is in full conformity with international refugee and human rights law, and supervised by a judicial authority.
40. Furthermore, ECRE calls on the Dublin Committee, established under Article 18, to further develop implementing guidelines relating to procedures for determining state responsibility and who is competent to determine state responsibility.

### **Evidence**

41. Aware that different standards relating to the evidence required to determine the State responsible for processing an asylum request can result in procedural delays and disputes, ECRE is encouraged that the Dublin Committee, established under Article 18, has adopted texts clarifying the evidence which may be relied upon to indicate State responsibility.<sup>28</sup>
42. In this context, ECRE urges the Dublin Committee to draw up operative guidelines relating to evidence required in the application of the ‘opt out’ and ‘humanitarian’ clauses.<sup>29</sup>

### **Time limits for transfer between States**

43. ECRE welcomes the fact that the Dublin Committee has adopted guidelines setting out time limits for the transfer of asylum applications amongst the Member States.<sup>30</sup> Under these guidelines, Member States are obliged to reply to a “request to take charge” of an application within one month. Whilst this time limit may be extended in particular cases, ECRE would remind Member States that “in no circumstances” should it exceed the three month time limit prescribed in Article 11(4) of the Dublin Convention. ECRE urges Member States to adhere strictly to these time limits and to keep good their objective in paragraph 5 of the Preamble “to take measures to avoid any situations arising, with the result that the applicants for asylum are left in doubt for too long as regards the likely outcome of their applications...”.

### **Conduct of transfer between States**

44. ECRE is aware that under the Schengen Convention, asylum applicants were transferred to other Schengen states without prior notification and under duress involving the use of force. ECRE urges Member States to conduct the transfer of asylum applicants under the Dublin Convention in a manner which respects the dignity and physical integrity of the individual.

### **Right to appeal**

45. ECRE regrets that the Dublin Convention does not explicitly provide the asylum applicant with a suspensory right of appeal against a decision to transfer his/her application. The only reference to suspensory effect is in Article 11(5) of the Dublin Convention which allows the

asylum applicant to challenge a transfer decision made under that Article “if the proceedings are suspensory.”

46. ECRE urges Member States, who do not already provide asylum applicants with a suspensory right of appeal, to make such a provision as a matter of urgency.

### **Protection of personal data**

47. Article 15 of the Dublin Convention provides for the protection of personal data. ECRE notes that the computerisation of personal data will only be authorised if Member States have adopted legislation that implements the principles of the Strasbourg Convention of 28 February 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data.
48. ECRE believes it is unacceptable that the storage and processing of personal data in the Schengen Information System (SIS) has in some instances resulted in a refusal to grant access to the asylum procedure. This has occurred where data regarding an individual as an undesirable alien for reasons unrelated to the asylum application has been stored in SIS but where that individual was at risk of persecution if returned to his/her country of origin. ECRE urges the Member States to the Dublin Convention to take the necessary measures to ensure that there are not similar occurrences in future.
49. Whilst Article 15(4) of the Dublin Convention provides for some protection regarding the exchange of personal data, which “...may only take place between authorities the designation of which by each Member State has been communicated to the Committee provided for under Article 18,” there is no explicit provision for a body to monitor data protection under the Convention. ECRE recommends the establishment of such a body in order to ensure that exchanged personal data is not used for any purpose other than determining the State responsible for examining the claim and that such data is never disclosed to the asylum seeker’s country of origin.

### **Transparency**

50. Under the Schengen Convention, non-governmental organisations and lawyers have been denied access to the Schengen Manual and other implementing decisions of the Schengen Executive Committee. This has resulted in confusion for asylum seekers and rendered difficult their legal representation. ECRE notes that the Treaty of Amsterdam provides for greater transparency.<sup>31</sup> Until these new transparency rules come into effect, however, ECRE calls on the Member States of the Dublin Convention to establish greater transparency for non-governmental organisations, lawyers and asylum seekers with regard to the procedures to be adopted and decisions taken.
51. ECRE also urges the Dublin Committee<sup>32</sup> to make it a requirement that Member States inform the asylum applicant of the assessment of his/her case at the earliest opportunity, in order to enable the asylum seeker to lodge an appeal if necessary or to solicit his/her co-operation in voluntary transfer.

### **Judicial supervision**

52. The Dublin Convention does not give supervisory jurisdiction to an independent international court. A Committee of Member States' representatives will only examine questions of a general nature concerning interpretation and application. Otherwise, its interpretation and implementation is left to the Member States themselves. Clearly, the risk, as manifested during the implementation of the Schengen Convention, is that the Dublin Convention will be implemented differently in each Member State.
53. If indeed the provisions of the Dublin Convention are brought within a revised community framework as a result of the Treaty of Amsterdam<sup>33</sup>, this should have important implications for the jurisdiction of the European Court of Justice.<sup>34</sup> Although ECRE has elsewhere noted<sup>35</sup> the unnecessary limitations imposed on the jurisdiction of the Court of Justice with regard to asylum matters under the Treaty of Amsterdam, the fact that the Court would be given some jurisdiction is an important step forwards. However, ECRE anticipates that approximately seven years may elapse before these new arrangements come into effect. In the meantime, the Dublin Convention, which lacks judicial supervision, provides the legal basis for Member State responsibility for the processing of asylum applications.
54. ECRE, therefore, urges the Member States to take appropriate steps in order to grant jurisdiction to the European Court of Justice. This would ensure that the Dublin Convention receives the uniform application and interpretation which the Schengen Convention has lacked.

## CONCLUSION

55. Article 18 of the Dublin Convention provides for the creation of a Committee, referred to above as the 'Dublin Committee', to "examine...any question of a general nature concerning the application or interpretation of this Convention." ECRE urges the Dublin Committee to address this paper's ten key recommendations as a matter of urgency and in the interests of transparency to consult with UNHCR and non-governmental organisations.

*1 December 1997*

<sup>1</sup> *Convention applying the Schengen Agreement of 14 June 1985 between the Governments of the States of the Benelux Economic Union, the Federal Republic of Germany and the French Republic on the Gradual Abolition of Checks at their Common Borders, 19 June 1990*

<sup>2</sup> Title II, Chapter 7 on responsibility for the processing of applications for asylum

<sup>3</sup> Article 7A EC (8A EEC)

<sup>4</sup> Treaty on European Union, Title VI, Maastricht, 7 February 1992

<sup>5</sup> European Communities No. 40 (1991)

<sup>6</sup> At the time of writing, all EU States with the exception of Ireland and the United Kingdom have joined Schengen.

<sup>7</sup> Bonn Protocol, 1994

<sup>8</sup> Convention d'application de L'Accord de Schengen, Premier bilan sa mise en oeuvre en Europe, France Terre d'Asile, February 1996

<sup>9</sup> Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, 2 October 1997

<sup>10</sup> Article 73k (Article 63 of the Consolidated Version of the Treaty Establishing the European Community).

<sup>11</sup> According to Article 1, an "examination of an application for asylum means: all the measures for examination, decisions or rulings given by the competent authorities on an application for asylum, except for procedures to determine the State responsible for examining the application for asylum".

<sup>12</sup> See *'Safe Third Countries: Myths and Realities'*, ECRE, February 1995.

<sup>13</sup> See paragraphs 24-34 below for examples.

<sup>14</sup> See Paragraph 3, 1992 EC Resolution on a Harmonized Approach to Questions Concerning Host Third Countries

<sup>15</sup> See ECRE 'Position on Sharing the Responsibility...', March 1996

<sup>16</sup> Articles 4-8 of the Dublin Convention.

<sup>17</sup> See also paragraphs 24-34 below.

<sup>18</sup> Id.

<sup>19</sup> Paragraph 6 of the Preamble and Article 2 of the Dublin Convention

<sup>20</sup> See *supra* note 8

<sup>21</sup> See the Biannual General Reports of ECRE 1990-1997

<sup>22</sup> It has also been referred to as the 'sovereignty' clause (Selbsteintrittsrecht)

<sup>23</sup> Article 29(4).

<sup>24</sup> Family members not covered by Article 4; see paragraph 29.

<sup>25</sup> Article 36.

<sup>26</sup> See paragraph 26.

<sup>27</sup> See ECRE's 'Position on the Reception of Asylum Seekers', June 1997.

<sup>28</sup> Decision No. 1/97 of the Dublin Committee concerning provisions for the implementation of the Dublin Convention, 9 September 1997, OJ L 281/1, 14 October 1997

<sup>29</sup> See paragraph 55

<sup>30</sup> Id.

<sup>31</sup> Article 191 of the Treaty of Amsterdam (Article 254 of the Consolidated Version of the Treaty Establishing the European Community).

<sup>32</sup> See paragraph 55.

<sup>33</sup> See paragraph 7.

<sup>34</sup> Article 73p of the Treaty of Amsterdam (Article 68 of the Consolidated Version of the Treaty Establishing the European Community).

<sup>35</sup> See ECRE's 'Final Analysis of the Treaty of Amsterdam in so far as it relates to asylum policy', update of November 1997.