Repeat Cases, Dublin Cases, Fast-Track National Proceedings

This chapter pays separate attention to three special types of national asylum court proceedings and the positions of the international supervisors regarding such proceedings.

These three special types are briefly referred to as ‘repeat cases’, ‘Dublin cases’ and ‘fast-track proceedings’.

Repeat cases are cases in which a claimant lodges a second (or third, or fourth et cetera) asylum application after a negative decision on a first application, often with the aim of submitting new evidence corroborating the claim for protection.

In Dublin cases, an asylum application is decided upon on the basis of the EU Dublin Regulation 2003/343/EC.\(^1\) The EU Dublin Regulation provides criteria for establishing which EU Member State is responsible for the examination of an asylum application submitted in one of the EU Member States. The Regulation is based on the ‘single application’ principle, aimed at discouraging individuals from applying for asylum in more than one EU Member State. Based on the criteria laid down in the Regulation, EU Member States may decide not to examine an asylum application and to refer the asylum applicant to the authorities of another EU Member State.

In fast-track proceedings, shorter than normal time limits (and sometimes also other special rules) apply, created with the aim of faster and more efficient processing of asylum claims and appeals.

Based on my experience as a national asylum judge, I can say without any doubt that the most difficult and urgent questions concerning evidence and judicial scrutiny arise within the framework of these special types of cases. In repeat cases, asylum seekers often present new evidence. Sometimes, this evidence has been obtained as a result of long and intensive searches for witnesses, documents, and information about events and the situation in the country of origin. I vividly remember a repeat case in which an 18-year-old

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\(^1\) Council Regulation 2003/343/EC of 18 February 2003, establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third country national, OJ of the EU L 50, 25 February 2003, pp. 1–10, last amended by OJ of the EU L 304, 14 November 2008, p. 83.
Iranian woman presented a significant amount of evidentiary materials in corroboration of a second application for asylum. During the proceedings following her first asylum application she had not presented any evidence corroborating her claim for protection. She had fled her country of origin in great haste, as a minor, and had not realized at the time that it would be asked of her to present evidence in corroboration of her statements. It was only after the dismissal of her first request for asylum that she realized that she really needed evidentiary materials to support her claim. A difficult and long search followed, resulting in witness statements from both individuals who had known her father – a well-known opponent of the Iranian regime – witness statements from different organizations and country information. Following the constant jurisprudence of the highest Dutch asylum court, the administration took the stance that this evidence could and should have been presented during the proceedings following the first application for protection. It is not only in the Netherlands that judges wrestle with the problem of evidence presented in repeat cases. From *Hilal v. the UK* (ECtHR, 2001), it appears that the applicant presented crucial evidence in second national asylum proceedings and that neither the administrative nor the national courts attached weight to this evidence because of its late presentation.2

In Dublin cases, other evidentiary problems occur. The file of a Dublin case normally contains a so-called ‘claim approval’, which means that the intermediary EU Member State (the first EU State where the applicant applied for asylum, or the first EU State which was transited), approves referral of the asylum seeker back to it. The administrative and judicial authorities of the referring EU Member State tend to decide in a very speedy manner. By way of illustration: first instance asylum courts in the Netherlands are normally allowed a time slot of 20 court hearing minutes per Dublin case. It is normally assumed that the intermediary EU Member State will live up to its obligations under international and EU asylum law. In other words, it is assumed that the asylum procedure and living conditions of (failed) asylum seekers in the intermediary EU country are in conformity with international and EU asylum law. It is very difficult for asylum seekers to prove the opposite. The case of *M.S.S. v. Belgium and Greece* (2011),3 in which the ECtHR ruled that the asylum procedure and living conditions of (failed) asylum seekers in Greece were not compliant with international and EU asylum law and that Belgium, by referring asylum seekers to Greece, had violated its obligations under Articles 3 and 13 ECHR, has a long history. In many cases before M.S.S., asylum seekers in different EU Member

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