

The Hague University of Applied
Sciences

Dissertation

**“Did the recast of the
Dublin System, the Dublin
III Regulation 604/2013,
lead to changes in the
practical implementation
of the Dublin System in
Germany in view of the
safeguarding of the
Fundamental Rights of
the refugees?”**

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Executive Summary

Despite the latest amendment of the Dublin System, which is supposed to be an improvement compared to the previous versions, especially in terms of protecting the Fundamental Rights of the refugees, the EU is still widely criticized for its asylum policies. Germany, as the Member State that receives the largest number of asylum seekers is also often criticized for the way it deals with asylum seekers. Therefore, this dissertation aims at answering the question *Did the recast of the Dublin System, the Dublin III Regulation 604/2013, lead to changes in the practical implementation of the Dublin System in Germany in view of the safeguarding of the Fundamental Rights of the refugees?*

In order to answer the research question an inductive research is conducted by using mixed methods, including documentary analysis and qualitative interviews. Documentary analysis of the Dublin II and III Regulations, landmark cases and existing literature provides a basis for the following primary research. Interviewing was chosen as the method for the primary research as it is the most suitable method for getting detailed information from different individuals. The chosen interview partners are all experts in the field of the asylum system and the implementation of the Dublin III Regulation in Germany and deal with the system professionally, or on a voluntary basis.

During the review of the existing literature it is identified, that there is a gap in the research that has already been done. While a lot of research is available on the Dublin Regulations in general and the cases that influenced the amendment of the Regulation, research about the practical implementation of the System is missing. The primary research is therefore aimed at finding out in what way the coming into force of the Dublin III Regulation might have changed the implementation of the Dublin System in Germany and if the situation for the refugees changed due to the amended Regulation.

Through the interviews it is established that while some aspects of the asylum system in Germany did noticeably change since the Dublin III Regulation came into force, these changes are not as extensive as expected. Apart from the suspension of transfers of asylum seekers to Greece, several aspects of the System that are problematic from the perspective of the Fundamental Rights of the refugees, remain. This includes the continuing transfers to some Member States where the reception conditions are equally precarious as in Greece, lacking care and accommodation as well as insufficient reviews of the asylum systems and reception conditions in the other countries.

Following the review of the existing literature and the primary research, further research with a larger number of interviewees is suggested. Additionally, changes of the implementation of the Dublin System in Germany, especially regarding the care, accommodation and evaluation of reception conditions in other Member States are recommended.

Did the recast of the Dublin System, the Dublin III Regulation 604/2013, lead to changes in the practical implementation of the Dublin System in Germany, in views of the safeguarding of the Fundamental Rights of the refugees?

Bachelor Thesis

By Nora Heising

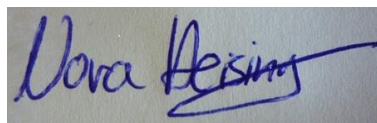
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Author's declaration:

I hereby confirm that this is my own work and that all the used sources are fully acknowledged and referenced according to the prescribed manners.

Respectfully submitted

28.05.2015



Date, Signature

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List of Abbreviations

| | |
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| AWO | Arbeiterwohlfahrt |
| BAMF | Federal Office for Migration and Refugees |
| CEAS | Common European Asylum System |
| CJEU | Court of Justice of the European Union |
| EAOS | European Asylum Support Agency |
| ECHR | European Convention on Human Rights |
| ECtHR | European Court of Human Rights |
| EU | European Union |
| NGO | Non-governmental Organization |
| UK | United Kingdom |
| UNHCR | The United Nations High Commissioner for Refugees |

1. Introduction

In 2014, the number of global refugees was the highest since the Second World War (Cremer, 2014). According to the United Nations High Commissioner for Refugees (UNHCR), over 51 million people were forced to flee their homes in that year. In the first 7 months of 2014, 626,000 asylum applications were counted in the 28 Member States of the EU, which was an increase of almost 191,000 applications compared to the year before (UNHCR, 2015). The European country that received by far the largest number of asylum seekers in the past year was Germany with over 203,000 applications. The number of people seeking asylum in Germany was more than two and a half times larger than the number of applicants in Sweden, which was the second most frequented country in the EU with 81,000 applications in 2014 (eurostat, 2015). The comparatively high number of applicants in Germany shows, that it is the most attractive country in the EU for many people seeking asylum. The numerous reports from the past year about precarious living situations in refugee centers all over the country are contradicting with the popularity of German for asylum seekers. In September 2014, the maltreatment of an asylum seeker in a refugee center in North Rhine-Westphalia became public (Schwarze, 2014). Many newspapers and news channels frequently report about catastrophic conditions in many of the mass accommodations for refugees in Germany, like the newspaper *Die Zeit* (Oberhuber, 2014). Additionally, refugee organizations like Pro Asyl widely criticize how Germany handles the high number of asylum seekers and how the Dublin Regulation is implemented in the country (Wendel, 2014).

With the establishment of a borderless Single Market within the European Union, the question on the control of the movement of third country nationals within this area arose. Part of the Schengen agreement, which was first established in the 1980's was the abolishment of passport and border controls between Member States. As the European Commission saw a potential issue of this system in regard to illegal migration, Articles 29 (full Article in Appendix 1) and 38 (full Article in Appendix 2) of the Schengen Convention laid down rules for processing asylum applications (Moreno-Lax, 2012, p. 2). With the creation of the Dublin Convention in the 1990's, the Schengen Convention was superseded. The main purpose of the Dublin Convention was to end the phenomena of 'refugees in orbit' (Pettersson, 2014, p. 1) and 'asylum shopping' (Pettersson, 2014, p. 1) by creating a clear system for allocating responsibilities to the Member States regarding the process of asylum applications. The establishment of the Dublin Convention was the first step towards a Common European Asylum System (CEAS). The first Dublin convention, which came into force in 1997, had significant deficits and was therefore replaced by the Dublin II Regulation in 2003 (Pettersson, 2014, p. 6). Despite the recast of the system and the implementation of the Dublin II Regulation, the criticism of the system continued, especially in regard to the protection of the Fundamental Rights of the refugees.

Based on the criticism of the system from politicians¹, Human Rights organizations² and scholars³ and especially influenced by judgments of the Court of Justice of the European Union (CJEU) and the European Court of Human Rights (ECtHR) in landmark cases, the Dublin System was again amended in 2013. The latest recast of the System, the Dublin III Regulation 604/2013 (hereafter Dublin III Regulation) came into force in January 2014 (The European Parliament and the Council, 2013, p. 53)⁴. The Dublin III Regulation is meant to be an improvement compared to the previous versions especially in terms of protecting the Fundamental Rights of the refugees. Nevertheless, the criticism of the System continues. Therefore, the question has to be raised: *Did the recast of the Dublin System, the Dublin III Regulation 604/2013, lead to changes in the practical implementation of the Dublin System in Germany in view of the safeguarding of the Fundamental Rights of the refugees?*

1.1 Structure

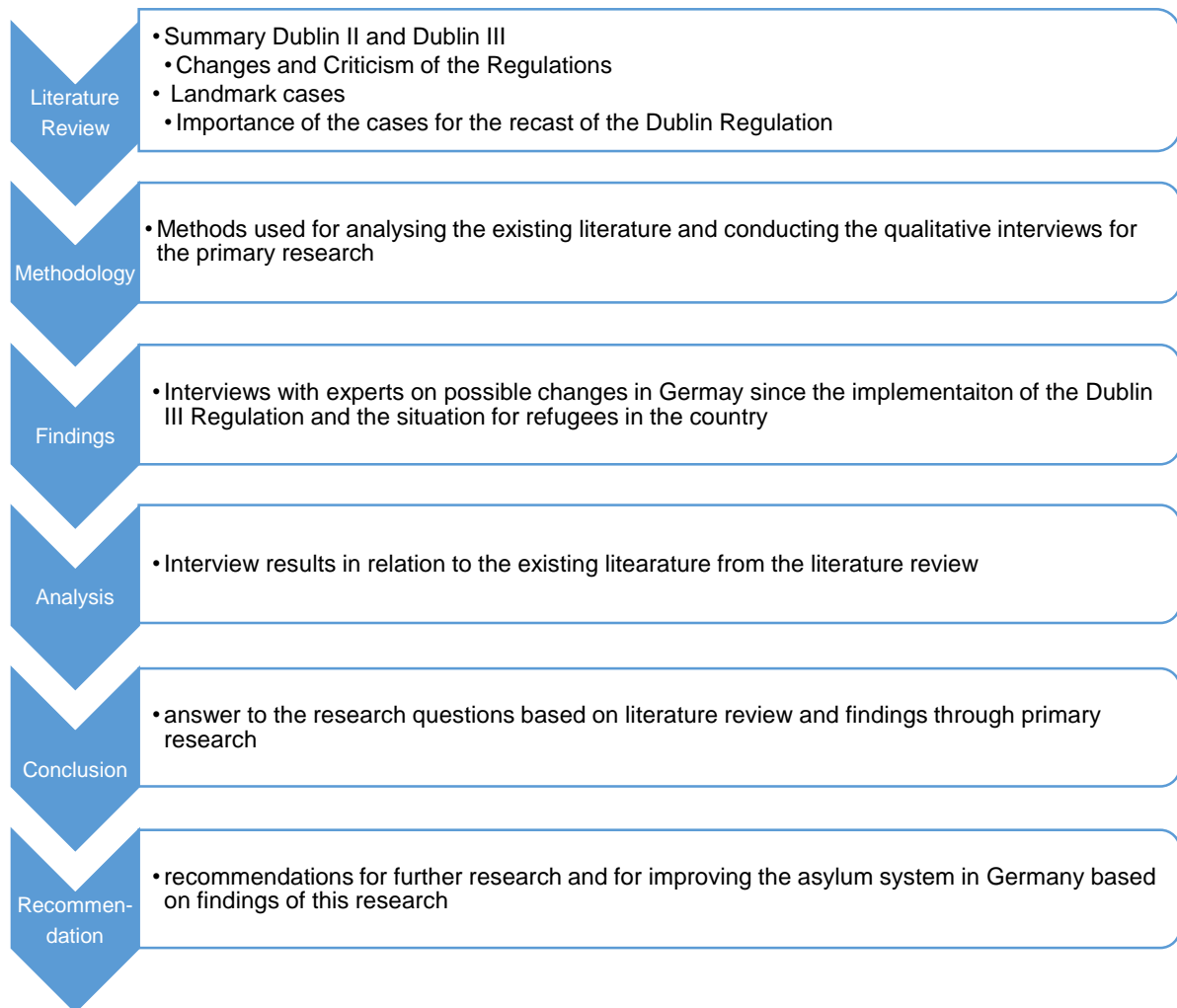
In order to find out whether the recast Regulation leads to the intended improvements, the Dublin II and Dublin III Regulations have to firstly be compared and the changes have to be pointed out (Chapters 2.1 and 2.2). Afterwards, the landmark cases *M.S.S v. Belgium and Greece* and *N.S / M.E v. UK and Ireland* have to be looked at and the main shortcomings of the Dublin System that were identified in the cases have to be pointed out and the impact of these cases on the recast of the System has to be analyzed (Chapters 2.3 and 2.4). Although neither one of these cases involved the state of Germany, it is important to look at them in relation to the above mentioned question as the judgments highly influenced the last recast of the Dublin System which consequently affects the situation for refugees in Germany as part of the European Union (Pettersson, 2014, pp. 45-46). Chapter 3 presents the methods that were used to answer the research question for this thesis. Furthermore, possible changes in the implementation of asylum policies in Germany that were caused by the recast of the System have to be analyzed (Chapter 4) and these findings are linked with the existing literature (Chapter 5). Additionally, the shortcomings of the implementation of the System in Germany have to be taken into account and lastly the question has to be raised how the implementation can be improved (Chapter 7). The diagram below illustrates the sub questions of the different chapters that will lead to answering the research question.

¹ For example by the politician of the *Left Party* Ulla Jelpke (Jelpke, 2015)

² For example by the organization *Pro Asyl* (Wendel, 2014)

³ For example by Thomas Berthold, spokesman of the Federal Association for Unaccompanied Minor Refugees (Berthold, 2015)

⁴ Article 49 of the Dublin III Regulation



1.2 Definition of Key Terms

For this research, the following key terms are essential. The terms refugees and asylum seekers will appear numerous times throughout this research. Therefore, both concepts have to be clearly defined. Additionally, the Fundamental Rights of the refugees play a role in this research, which requires a restriction of the concept. The terms “refugee in orbit” and “asylum shopping” are the basis of the Dublin System. These two phenomena are the reason why the Dublin System was initially established and therefore need to be defined.

Refugee: according to Article I of the 1951 Geneva Convention Relating to the Status of Refugees, a refugee is a person that: “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of its nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or, who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it” (The Office of the United Nations High Commissioner for Refugees, 1951).

Asylum seeker: according to The United Nations High Commissioner for Refugees, an asylum seeker is a person that claims to be a refugee. The claim first has to be evaluated by a national asylum system that decides whether a person qualifies for international protection (UNHCR, 2015).

Fundamental Rights: for this research, Fundamental Rights as defined in the European Convention on Human Rights will be taken as a basis (European Court of Human Rights, 2010).

Refugees in orbit: situation in which asylum seekers move from one Member State to another without one state taking the responsibility for examining the application for asylum (Filzwieser & Sprung, 2014, p. 22).

Asylum shopping: situation in which asylum seekers lodge asylum applications in several Member States and especially choose countries for lodging asylum applications where the policies for granting asylum are most lenient (Filzwieser & Sprung, 2014, p. 22).

Mutual trust: in relation to the Dublin System and the CEAS, mutual trust is the concept, that Member States of the EU automatically regard each other as safe states that offer equal protection to the asylum seekers and equal access to asylum procedures (Pettersson, 2014, p. 7).

Principle of non-refoulement: “refers to the obligation of States not to refoule, or return to the frontiers of territories where his (of the refugee) life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion” (International Justice Resource Center, n.d.).

Sovereignty-clause: laid down in Article 3 (2) of the Dublin Regulation. This clause allows a Member State to take up the asylum procedure for an asylum seeker, although it is not the responsible Member State according to the criteria for responsibility that are laid down in the Regulation (Lieven, 2012, p. 3).

In the following literature review the first chosen qualitative method, documentary analysis of the Dublin II and Dublin III Regulations, will be employed. The detailed methodology of this research will be explained in chapter 3. Next to the analysis of the different Dublin Regulations, two landmark cases as well as academic texts by different scholars on the Dublin Regulation, the implementation of the Regulation and shortcomings of the Regulation as well as proposed improvements will be reviewed. The documentary analysis will serve as the foundation for the following primary research and the qualitative interviews.

2. Literature Review

This chapter provides an overview over the Dublin II and Dublin III Regulations. Different papers, books and articles will be compared on the differences and similarities of the Dublin II and the Dublin III Regulation, on the changes in the system that were caused by the coming into force of the Dublin III Regulation and on the criticism of the system. Additionally, two landmark cases on the Dublin System will be summarized and literature on these cases will be compared. The purpose of this chapter is to give an overview over literature that has already been written on this topic and to compare the existing literature in the later chapters with the results that are found through primary research, namely qualitative interviewing. Additionally, studying the existing literature will help to identify the gaps in the research that has already been done in order to better focus and define the primary research for this thesis.

2.1 Summary Dublin II and Dublin III

Looking at the Dublin II Regulation 343/2003 (Council Regulation No 343/2003, 2003) and the Dublin III Regulation 604/2013 (Regulation No 604/2013 of the European Parliament and of the Council, 2013), differences in three main areas of the Regulations can be pointed out. For the purpose of this research, only the differences that are significant for answering the research question will be considered. This includes the changes in the sovereignty clause, the criteria for determining responsibility and the additional Article 33.

One essential change in the recast of the Dublin System, is the change of the so called sovereignty clause under Article 3 (2). In the Dublin II Regulation the Article states:

By way of derogation from paragraph 1, each Member State may examine an application for asylum lodged with it by a third-country national, even if such examination is not its responsibility under the criteria laid down in this Regulation. In such an event, that Member State shall become the Member State responsible within the meaning of this Regulation and shall assume the obligations associated with that responsibility. Where appropriate, it shall inform the Member State previously responsible, the Member State conducting a procedure for determining the Member State responsible or the Member State which has been requested to take charge of or take back the applicant (Council Regulation No 343/2003, 2003, p. 3).

The sovereignty clause, Article 3 (2), under the Dublin III Regulation includes the following:

Where no Member State responsible can be designated on the basis of the criteria listed in this Regulation, the first Member State in which the application for international protection was lodged shall be responsible for examining it.

Where it is impossible to transfer an applicant to the Member State primarily designated as responsible because there are substantial grounds for believing that there are systematic flaws in the asylum procedure and in the reception conditions for applicants in that Member State, resulting in a risk of inhuman or degrading treatment within the meaning of Article 4 of the Charter of Fundamental Rights of the European Union, the determining Member State shall continue to examine the criteria set out in Chapter III in order to establish whether another Member State can be designated as responsible.

Where the transfer cannot be made pursuant to this paragraph to any Member State designated on the basis of the criteria set out in Chapter III or to the first Member State with which the application was lodged, the determining Member State shall become the Member State responsible (Regulation No 604/2013 of the European Parliament and of the Council, 2013, p. 37).

The sovereignty clause allows a Member State to take up the responsibility for an asylum application although it is not officially responsible to do so according to the criteria of responsibility. This gives discretionary power to the different Member States and allows for a margin of appreciation (Lieven, 2012, p. 225).

While the Article under the Dublin II Regulation does not impose any obligations on the Member States, the amended Article 3 (2) in the Dublin III Regulation imposes new obligations on the Member States in the case that an asylum seeker cannot be transferred to the responsible Member State. Additionally, the Article now includes that the Member State transferring an asylum seeker has to further examine the criteria for determining the Member State responsible if there are substantial grounds for believing that there is a risk of inhuman or degrading treatment in the responsible Member State. This is a very essential change in the Regulation and it can be argued that the judgments in different landmark cases have influenced the change of this Article (Pettersson, 2014, pp. 33-35).

Chapter III of both Regulations lays down the “criteria for determining the Member State responsible” (The Council of the European Union, 2003, pp. 4-5) (The European Parliament and the Council, 2013, pp. 39-41). In the Dublin III Regulation, some minor changes, especially on unaccompanied minors and family members in the criteria were implemented. The article on unaccompanied minors, Article 6 in the Dublin II Regulation and Article 8 in the Dublin III Regulation, was further defined in the amended Regulation. Now, a Member State can be

responsible, if another relative, not only a family member⁵, of the unaccompanied minor is legally present in that Member State. The same rule now also applies for family members that are beneficiaries of international protection. In the previous Dublin II Regulation only a refugee status of a direct family member and not of a relative was recognized as a reason for a responsibility of that Member State for the unaccompanied minor.

Looking at the list of criteria for determining the responsible Member State it can be summarized, that only a few minor changes were made in the Dublin III Regulation. The paragraph on unaccompanied minors and their family members was further defined and the hierarchy of the different criteria was slightly changed (Pettersson, 2014, pp. 33-39).

Lastly the addition of Article 33 in the amended Dublin III Regulation is important to mention. Article 33 adds “A mechanism for early warning, preparedness and crisis management” to the Regulation. The first paragraph of the Article reads:

Where, on the basis of, in particular, the information gathered by EASO pursuant to Regulation No 439/2010, the Commission established that the applicant of this Regulation may be jeopardized due either to a substantiated risk of particular pressure being placed on a Member State’s asylum system and/or to problems in the functioning of the asylum system of a Member State, it shall, in cooperation with EASO, make recommendations to that Member State, inviting it to draw up a preventive action plan (The European Parliament and the Council, 2013, p. 48).

This Article establishes a new system for preventing precarious situations in the asylum system of a Member State caused by overburdening or other reasons in that Member State. The last paragraph of Article 33 states: “The European Parliament and the Council may, throughout the entire process, discuss and provide guidance on any solidarity measures as they deem appropriate” (The European Parliament and the Council, 2013, p. 48). It is however, not further defined in the Regulation what these solidary measures entail (Pettersson, 2014, pp. 40-41).

After looking at the differences between the Dublin II and the Dublin III Regulation, the existing literature will be examined. Many scholars and researchers have written articles and papers about the Dublin Regulations and the different aspects of the Regulation that were summarized in this

⁵ The differences between family members and relatives are laid down in Article 2(h) of the Regulation. A relative is an “adult aunt or uncle or grandparent who is present in the territory of a Member State” (The European Parliament and the Council, 2013, p. 36)

section. The following section will give an overview over some of the academic writings on the changes as well as the criticism of the Dublin System.

2.2 Changes and Criticism of the System

After summarizing the differences between the content of the Dublin II and Dublin III Regulations, the next step is to examine the literature that has been written on the changes in the Dublin III Regulation and on the criticism of the amended Regulation. This section gives an overview over some of the existing literature. Many of the below references articles and papers were published in journals like the *International Journal of Refugee Law* or the *European Journal of Migration and Law*.

Catherine Petersson illustrates in her paper “Recasting the Dublin Regulation, An analysis of the impact of the M.S.S. and N.S/M.E judgments on the recast of the Dublin Regulation” what effects the recast of the Dublin Regulation had on the concept of mutual trust in the EU. According to Petersson the recast of the system was a step in the right direction, however it was also a step backwards in regards of a necessary fundamental redesign of the system (Petersson, 2014, p. 10). Similarly, Christian Filzwieser describes the recast Regulation in his book “Dublin III-Verordnung, Das Europäische Asylzuständigkeitssystem” as a conformist further development of the system but not as a revolutionary breaking point in the system (Filzwieser & Sprung, 2014, p. 27).

Petersson further points out that the sufficiency of the change of the sovereignty clause, under Article 3(2), is debatable. Article 3 in the Dublin III Regulation now prohibits the transfer of an asylum seeker to a Member State where there are “Substantial grounds for believing that there are systematic flaws in the asylum procedure” (Regulation No 604/2013 of the European Parliament and of the Council, 2013) in a Member State. However, Petersson criticizes that the Article does not oblige a Member State to investigate whether such systematic flaws exist in the responsible Member State. She further defines the allocation of the responsibility for an asylum seeker to the Member State where the applicant first enters the EU as one of the fundamental deficits of the Dublin System (Petersson, 2014, p. 35).

In addition, Lavrysen criticizes that the focus of European Asylum Law is on restricting asylum seekers to move between European countries and to efficiently dispose asylum applications rather than on protecting the Human Rights of asylum seekers. Moreover, the system does not primarily regard asylum seekers as people being in need of protection but as potential economic migrants. She further points out that the main purpose of the Dublin system is to efficiently determine the responsible Member State and not to protect and ensure Human Rights (Lavrysen, 2012, pp. 240-242).

Furthermore, according to Brouwer, one of the main flaws of the system is the fact that despite the existence of a Common European Asylum System, the reception conditions, the procedural guarantees and the decision of which person is in need of protection in the different Member States are only harmonized to a fairly limited degree (Brouwer, 2013, p. 138).

Another point of criticism in the Dublin System that is pointed out by Joanna Lenart in her Article “Fortress Europe: Compliance of the Dublin II Regulation with the European Convention for the Protection of Human Rights and Fundamental Freedoms” is the fact that the efficiency of the Dublin system is to a large extent at the expense of the asylum seekers. Consequently, there is a high risk for violations of the Fundamental Rights of the asylum seekers (Lenart, 2012, p. 5). This is connected to mutual trust and the principle of no-refoulement, which will be further explained in the following analysis of the landmark cases.

Next to the above cited scholars that have written papers and articles about the recast of the Dublin Regulation and criticism of the System, one association that works in the same field has to be considered. The German-based *Rat für Migration* is an interdisciplinary association of scientists and researchers that focus on migration and asylum questions. The *Rat für Migration* publishes an annual expert report about Germany as an immigration country in comparison to other countries, as well as many reports and papers about migration and the European Asylum System (Rat für Migration, n.d.). In a press release from April 29th 2015, the *Rat für Migration* harshly criticizes the Dublin III Regulation. One point of criticism is the burden sharing within the EU. According to the *Rat für Migration*, the Dublin System is very questionable under Human Rights standards. The System creates an inner-European system of apartheid and the “Verschiebebahnhof”⁶ has the effect of hindering asylum seekers for years from settling where they can find a supporting infrastructure. Concluding, the *Rat für Migration* calls for the abolishment of the Dublin System, as it sees the whole System as having failed (“Intergration statt Abschreckung” - Die europäische Asylpolitik steht am Scheideweg, 2015).

The analysis of some of the literature that has been written on changes as well as on criticism of the recast Dublin III Regulation shows that there are several aspects of the Regulation that are criticized by numerous scholars. The point that Member States are not obliged to investigate whether an asylum system in another Member State has systematic flaws, is one of the aspects. Another point of criticism is the fact that the system restricts asylum seekers from freely moving between European

⁶ This term is used by several scholars and institutions for describing the situation where asylum seekers are being sent from one Member State to another without settling or being officially recognized in any of these countries (Rat für Migration, 2015). The direct translation would be: shunting yard

countries. Additionally, the efficiency of the system is to a large extent at the expense of the asylum seekers and the reception conditions and asylum procedures are far away from being harmonized in the Member States. Many scholars describe the recast of the Dublin Regulation as a step in the right direction, but still far away from being the needed revolutionary change, while others see the system as having completely failed and call for its abolishment.

In the discussions about the Dublin System and Human Rights violations connected to the system, two cases are commonly mentioned. These cases are also said to have triggered and influenced the recast of the Dublin Regulation (Pettersson, 2014, pp. 45-46). Therefore, it is necessary to take them into consideration. The following section provides a brief summary of the cases, followed by a review of academic articles and papers that have been written about the cases.

2.3 Landmark Cases

The two cases *M.S.S v. Belgium and Greece* (M.S.S. v. Belgium and Greece, 2011) and the joined cases *C411/10, N.S.* and *C-493/10, M.E. and others* (Judgement of the Court in joined cases C-411/10 and C-493/10, 2011) from 2011 are landmark cases in pointing out the shortcomings of the Dublin System and ultimately influenced the recast of the Dublin Regulation. The case *M.S.S. v. Belgium and Greece* (hereafter M.S.S.) was a case at the European Court of Human Rights, while the joined cases *N.S. and M.E. v. UK and Ireland* (hereafter N.S. /M.E.) were preliminary rulings by the Court of Justice of the European Union. For the purpose of this research, the case summaries will focus on the aspects of the cases that are related to Fundamental Rights and the procedural aspects of the cases will not be considered. Taking the violations of the Fundamental Rights of the refugees of the cases into account, will contribute to defining the further research to answer the research question. National regulations will not be included in the summary as the focus of this research is on the European Asylum System.

2.3.1 Case of M.S.S. v. Belgium and Greece

The applicant Mr. M.S.S., an Afghan national, entered the European Union through Greece in December 2008, where his fingerprints were taken. After one week of detention in Greece, he was ordered to leave the country and did not apply for asylum there. He travelled to Belgium where he applied for asylum in February 2009. Based on the EURODAC⁷ system, it was confirmed that the applicant had previously been in Greece. In March 2009, the Belgian Aliens Office requested the Greek authorities to administer the asylum application of Mr. M.S.S. After the Greek authorities

⁷ The EURODAC system is an EU asylum fingerprint database. The fingerprints are taken from everyone entering the EU illegally and transmitted in the central EURODAC system. Based on the database it can be determined where a person first entered the EU if that person is applying for asylum in any EU Member State (European Commission, 2015).

failed to reply in the given time frame, they were automatically deemed to have accepted the responsibility. In April 2009, the Aliens Office received a recommendation by the UNHCR to suspend transfers to Greece based on deficiencies in the reception conditions of asylum seekers in Greece. In May 2009, the Aliens Office ordered Mr. M.S.S. to leave the country based on the fact that Belgium was not responsible for the asylum application under the Dublin Regulation but that the responsibility would lie with Greece.

After the arrival of Mr. M.S.S. in Greece, the lawyer of the applicant received a message stating that Mr. M.S.S. was in detention under precarious conditions. After the applicant was released from detention he went on living on the streets of Athens, as he had no means of subsistence. In August 2009, the applicant was arrested when trying to leave Greece with a false identity card and was put in detention in the same building as before. The lawyer was again informed about the precarious conditions of the detention and that Mr. M.S.S. had been beaten by police officers of the detention facility.

Mr. M.S.S. applied at the European Court of Human Rights against the Kingdom of Belgium and against the Hellenic Republic. The applicant claimed a violation of Article 2 (full article in Appendix 3) and 3 (full article in Appendix 4) of the Convention by the Belgian authorities in expelling him to Greece as well as a breach of Article 3 by the Greek authorities due to the detention conditions.

The Court found that there had been a violation of Article 3 of the Convention “No one shall be subject to torture or to inhuman or degrading treatment or punishment” (M.S.S. v. Belgium and Greece, 2011, p. 42) based on the detention conditions and living conditions in Greece. The Court also found a violation of Article 13 (full article in Appendix 5) “Everyone whose right and freedom as set forth in the Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity” (M.S.S. v. Belgium and Greece, 2011, p. 54) because of the shortcomings of the asylum procedure in Greece. Further, the Court found that there was a violation of Article 3 by Belgium because of the transfer of the applicant to Greece as well as because of exposing the applicant to the conditions of detention and living in Greece. Additionally, the Court found that Belgium had violated Article 13 of the convention “because of the lack of an effective remedy against the expulsion order” (M.S.S. v. Belgium and Greece, 2011, p. 77).

2.3.2 Joined cases N.S. (C411/10) v. Secretary of State for the Home Department and M.E. (C-493/19), A.S.M., M.T., K.P., E.H., v Refugee Applications Commissioner, Minister for Justice, Equality and Law Reform

Case N.S. (C-411/10)

The appellant Mr. N.S., an Afghan national, came to the United Kingdom after travelling through other European countries, one of them being Greece. In September 2008 he was arrested in Greece but he did not lodge an asylum application there. Mr. N.S. stated that he was detained by the Greek authorities for four days and was afterwards ordered to leave the country within 30 days. According to the appellant he was expelled to Turkey when trying to leave Greece, where he was detained for two months under appalling conditions. He reported that, after fleeing detention in Turkey, he travelled to the United Kingdom where he lodged an asylum application the same day as the arrival, on 12 January 2009.

In order to examine the asylum application of Mr. N.S., the Secretary of State for the Home Department requested the Greek Republic to take charge of the appellant on April 1st 2009. After Greece failed to reply to the request within the time frame, it was automatically deemed to have accepted the responsibility. The appellant was notified by the Secretary of State about his expulsion to Greece. Mr. N.S. claimed that his rights under the ECHR would be violated with a removal to Greece which the Secretary of State rejected as unfounded because Greece was on the ‘list of safe countries’.

The appellant requested the Secretary of State to examine his asylum application based on the claim that his Fundamental Rights would be violated if he would be expelled to Greece. The Secretary of State declared the claim of the appellant unfounded and maintained the decision to expel Mr. N.S. to Greece. In August 2009, Mr. N.S. proceeded to seek judicial review of the decision by the Secretary of State. Consequently, the decision to expel the appellant was annulled and the request for judicial review was granted in October 2009. The Court of Appeal referred seven questions on this case to the Court of Justice of the European Union (Judgement of the Court in joined cases C-411/10 and C-493/10, 2011).

Case M.E (C-493/10)

The five appellants in this case were all unconnected with each other and are nationals from Afghanistan, Iran and Algeria. All five appellants travelled to Ireland and lodged asylum applications after being arrested in Greece for illegal entry. Two of them admitted that they had been in Greece before while the other three concealed this information. Based on the EURODAC system, it was confirmed that all five appellants had previously been in Greece without lodging asylum applications there. All appellants refused to return to Greece based on the argument that the conditions for asylum

seekers in Greece are deficient and therefore required the state of Ireland to examine their asylum applications. The High Court referred two questions to the Court of Justice of the European Union for a preliminary ruling in this case.

The two cases were joined by the Court of Justice of the European Union.

Decision by the Court

Based on European Union law it can be presumed that the responsible Member State observes the Fundamental Rights of the Union. An asylum seeker may not be transferred to the responsible Member State if there are substantial grounds for believing that there are systematic deficiencies in the reception of asylum seekers and if there is a risk for inhuman and degrading treatment. If it is found impossible to transfer an asylum seeker to the responsible Member State, the Member State that is to carry out the transfer must examine the criteria of the Regulation to determine whether another Member State is responsible for examining the asylum application. The Member State where the asylum seeker is present must ensure, that the situation of the asylum seeker is not worsen (N.S. and others, 2011, pp. 31-33).

Many scholars have emphasized the importance of these two landmark cases for the recast of the Dublin System. The following section will review some of the research that has been done on these cases as well as summarize some of the main points of the judgments.

2.4 Importance of the Cases for the Recast of the Dublin Regulation

Many scholars and experts point out three essential aspects when analyzing the importance and impact of the judgments in the *M.S.S. case* and in the case of *N.S. /M.E*: mutual trust as the basis of the Dublin Regulation, the principle of non-refoulement and the sovereignty clause.

Laurens Lavrysen's article "European Asylum Law and the ECHR: An Uneasy Coexistence" highlights areas of concern in the European Asylum System, including the Dublin Regulations from the point of view of the ECHR. Lavrysen describes the ruling by the ECtHR in the *M.S.S. case* as depicting the end of mutual trust in European Asylum Law. States that are transferring asylum seekers should no longer presume that the other Member States "comply with their international obligations" (Lavrysen, 2012, p. 244). She further points out that it is quite unusual that the ECtHR "enters the sphere of social and economic rights" (Lavrysen, 2012, p. 246), which it did in the *M.S.S. case* by judging over the living conditions of the applicant in Greece. This shows that the *M.S.S. case* is an important landmark case (Lavrysen, 2012, pp. 260-262).

Several other scholars go into a similar direction as Lavrysen. The article “German courts and their understanding of the Common European Asylum System” by Harald Dörig examines different asylum cases in Germany and how the German Courts implement the EU Asylum System into national law making. Dörig points out that the judgment by the CJEU in the case *N.S./M.E* clearly shows that the Common European Asylum System and the Dublin System are based on the assumption that Fundamental Rights and international obligations are observed by all Member States. Therefore, “Member States can have confidence in each other in that regard” (Dörig, 2014, p. 776).

Similar to Dörig, Evelin Brouwer describes mutual trust in her article “Mutual Trust and the Dublin Regulation: Protection of Fundamental Rights in the EU and the Burden of Proof” as the basis of the Dublin System. Brouwer’s article discusses the two landmark cases *M.S.S.* and *N.S./M.E* and the burden of proof throughout the asylum process. According to her, Member States assume that all the other Member States respect the Fundamental Rights of the refugees. Brouwer explains that one reason for mutual trust is the fact that all Member States are a party to the ECHR and are therefore bound to comply with the principle of non-refoulement, which is laid down in Article 3 of the Dublin Regulation (Brouwer, 2013, pp. 136-139).

Furthermore, Violeta Monreno-Lax’s article “Dismantling the Dublin System: *M.S.S. v. Belgium and Greece*” discusses the principles of refutability and non-refoulement. She emphasizes that the whole Dublin System is “based on the presumption that Member States may be considered ‘safe countries’” (Moreno-Lax, 2012, p. 1). Therefore, transferring an asylum seeker from one Member State to another is not a violation of the principle of non-refoulement. Monreno-Lax further points out that it is not established in the Dublin Regulations whether the presumption that all Member States are ‘safe countries’ “should be considered absolute or rebuttable” (Moreno-Lax, 2012, p. 5). The fact that presuming that all Member States are safe countries is refutable, was established in different cases at the ECtHR and was again emphasized in the case of *M.S.S.* (Moreno-Lax, 2012, pp. 5-6).

Regarding the sovereignty clause, Monreno-Lax points out that the Member States have developed very divergent practices of using and applying this clause. While some apply the sovereignty clause for humanitarian reasons, other simply implement it for practical reasons. While some Member States had already suspended transfers to Greece before the ECtHR reached verdict in the *M.S.S. case*, others continued transfers to Greece⁸ until after the final judgment (Moreno-Lax, 2012, pp. 17-18).

⁸ In Denmark, Luxembourg and Iceland transfers to Greece have completely been suspended. In other Member States like Austria, France and Hungary transfers to Greece have been decided on

Brouwer describes mutual trust as the “cornerstone of cooperation between EU Member States” (Brouwer, 2013, p. 136). She further describes the concept of mutual trust as “the reciprocal trust of Member States in the legality and quality of each other’s legal system” (Brouwer, 2013, p. 136). However, Brouwer also points out that there is a tension between mutual trust and harmonization (Brouwer, 2013, pp. 136-138).

Similar to Brouwer, Sophie Lieven also argues that the principle of mutual trust caused a quasi-automatic transfer of asylum applicants to the responsible Member States. Consequently, mutual trust, which is the basis of the Dublin System does not only lead to an easy cooperation between the Member States but it is also a violation of the principle of non-refoulement. The Dublin III Regulation puts an end to the automaticity with which Member States have transferred asylum seekers to the responsible states (Lieven, 2012, pp. 225-227).

In addition, Brouwer points out the importance of the fact that Belgium was also found to have breached the principle of non-refoulement, by sending the applicant back to Greece because there was a high risk that the applicant would be sent back to Afghanistan as well as because of the living and detention conditions in Greece. The Court found in this case, that the transferring state has to ensure that there are sufficient guarantees that the applicant will not be transferred back to his country of origin without a sufficient evaluation of the risks. Asylum seekers are no longer responsible for submitting evidence that they are being treated in violation to Article 3 ECHR (Brouwer, 2013, pp. 140-142).

According to Brouwer three reasons can be identified why the ECtHR found a violation of Article 3 in the *M.S.S. case*. First of all, the Court considered new information about the situation on Greece such as reports by different Human Rights organizations. Secondly, the Court found that Belgian authorities were systematically transferring asylum seekers to Greece, without considering an exception in certain cases. Lastly, the ECtHR decided that it was not a sufficient guarantee for Belgium that Greece diplomatically assured the safeguarding of the rights of the refugees (Brouwer, 2013, p. 142).

Regarding the *N.S./M.E case*, Brouwer states that the ruling by the CJEU implies that Member States are obliged to assess the application of mutual trust especially in regards to the principle of non-refoulement. She further points out that the ruling by the Court establishes that not the asylum seeker himself has to submit the claim of systematic deficiencies in the States responsible but that the

a case by case basis and in the Netherlands, Finland, Sweden, Belgium and Norway, removals to Greece have been endorsed (Moreno-Lax, 2012, p. 17).

transferring Member State has the responsibility to investigate this. Consequently, the burden of proof has shifted onto national authorities. Nevertheless, it still has to be guaranteed that asylum seekers can submit evidence in the procedure of allocating responsibility for an asylum application (Brouwer, 2013, pp. 143-144).

The “Case report on C-411/10, N.S. and C-493/10, M.E and Others” by Sophie Lieven discusses possible practical consequences of the judgment. Lieven points out that especially the judgment of the *N.S./M.E case* clarifies in what way the overloading of a Member State influences how it is determined which Member State is responsible for the an asylum application. The fact that the CJEU found that an asylum seeker could not be transferred to a Member State where there is a serious risk for a violation of the Charter means, that many Member States have to change their application of the Dublin Regulation to ensure that the Fundamental Rights of the applicant are respected (Lieven, 2012, p. 224).

All these academic writings point out the importance of mutual trust, the principle of non-refoulement and the sovereignty clause in the Dublin System. In the *M.S.S. case* as well as the joined *cases N.S/M.E*, these aspects of the Dublin System are illustrated. Since mutual trust is at the basis of the Dublin System, it is assumed that all Member States observe the Fundamental Rights and their international obligations and therefore all Member States are considered as safe countries. This shows the importance of the judgments for the recast of the Dublin II Regulation. Evelin Brouwer even goes as far as stating that the judgments in both cases have put an “end to blind trust” (Brouwer, 2013, p. 135) and that they are “dismantling the Dublin System” (Brouwer, 2013, p. 135).

The documentary analysis of the Dublin II and Dublin III Regulations and the summaries of the cases as well as the analysis of the existing literature will serve as a basis for the primary research. Based on the existing literature, gaps in the research that has already been done are identified. Although a lot of research has been done on the general changes in the Dublin III Regulation in comparison to the Dublin II Regulation as well as about general changes for asylum seekers caused by the recast Dublin Regulation, specific research on changes in the practical implementation of the latest Dublin Regulation appears to be missing. This gap in the existing research will be the main focus of the primary research in Chapter 4 and 5.

Before moving on to the findings of the primary research, the following chapter will describe in depth the methodology of this research. This includes what and why specific research methods were chosen and possible advantages and disadvantages of the selected methods. Additionally, the interview partners for the primary research are introduced and the limitations of the interviews are outlined.

3. Methodology

The research that is conducted in order to find out whether *the recast of the Dublin System, the Dublin III Regulation 64/213, lead to changes in the practical implementation of the Dublin System in Germany in view of the safeguarding of the Fundamental Rights of the refugees* can be classified as inductive. Nigel Gilbert defines induction in his book *Researching Social Life* as “moving from a set of observations to a theory” (Gilbert, 2008, p. 27) or as defined by Zina O’Leary inductive research is “the process that moves from specific observation to broader generalization and theories” (O’Leary, 2004, p. 7). Using a theory as the starting point for a research and applying this theory to observations would be a deductive approach. However, a deductive approach is not taken for this research because no theory is being tested throughout the research. Instead, an inductive approach is taken because first of all the Dublin System in general and related landmark cases will be observed. Afterwards different aspects related to Fundamental Rights of the refugees in Germany will be examined and based on this a thesis will be developed on the situation for refugees in Germany regarding the safeguarding of their Fundamental Rights in relation to the Dublin System. Through different observations a theory will be established at the end of this research, which is described as “inductive approach to the relationship between theory and research” in Gilbert’s book (Gilbert, 2008, p. 82).

In order to conduct this inductive research, mixed methods were applied. Nigel Gilbert argues in his book that mixed methods can not only be the combination of qualitative and quantitative methods as many authors define it, but also the combination of several different qualitative methods (Gilbert, 2008, pp. 126-127). By using mixed methods, knowledge can be generated from different approaches, which better reflect the complexity of the research topic. Using just one method would not be sufficient for answering the research question. The mixed methods used for this research are a combination of different qualitative methods that are used sequentially, meaning that “the results from one method are analyzed before proceeding to the next method” (Gilbert, 2008, p. 130).

More specifically, complementary mixed methods are used which is explained by Nigel Gilbert as a tool “to reveal the different dimensions of a phenomenon and enrich understandings of the multi-faceted, complex nature of the social world” (Gilbert, 2008, p. 128). For this research, the complementary methods allow to analyze the issues related to the Dublin System from different angles and thus get a better picture of the complex situation connected to the Dublin Regulations. The complementary sources employed are secondary qualitative sources such as academic articles and case analyses and primary qualitative sources, namely interviews. Documentary analysis of the landmark cases as well as of the Dublin II and the Dublin III Regulation serve as the foundation for the later primary research and therefore will influence the structure of the interviews.

3.1 Primary Research

Based on the fact that the Dublin III Regulation only came into force in January 2014, there are not a lot of academic sources available about the Regulation. In particular, finding sources and academic articles about the practical implementation of the Dublin III Regulation in Germany and about possible changes the new Regulation might have caused, is very difficult. Therefore, several qualitative interviews with different experts were conducted. Prior to the main interviews, a pilot interview was conducted. The purpose of the pilot interview was to test the feasibility of the interview questions and to test whether the chosen questions would lead to the desired results and answers. Some of the questions that were tested in the pilot interview proved to be feasible and were used for the following interviews. Therefore, the answers of the interview partner from the pilot interview to those questions were used for this research.

The chosen interview partners are experts from different areas, such as an asylum counselor, the Head of the Office for Foreign Nationals and Matters of Citizenship at the Berlin Senat, a head of an emergency shelter for refugees and an activist that supports refugees. With this range of experts from different fields, contrasting views on the implementation of the Dublin III Regulation in Germany were explored as well as various views and perspectives on possible changes that were caused by the implementation of the new Regulation.

The pilot interview was conducted with Matias Haman who is the head of an emergency shelter for refugees in Berlin. He was chosen as the first interview partner as he works at the grassroots level of the asylum system in Germany. He directly works with asylum seekers on a daily basis and also has to cooperate and communicate with the German authorities in order to keep the emergency shelter running.

Andreas Michels, works for the asylum counseling in the preliminary reception center for adult refugees in Berlin. The sponsoring organization of the reception center is the Arbeiterwohlfahrt Kreisverband Berlin Mitte e.V. (AWO). He was chosen as he also works with refugees on a daily basis as well as for his more neutral position as a counselor. In his position as a counselor for asylum questions, Michels knows about the latest regulations and developments in the German as well as the European asylum system, which is very beneficial for this research. The interviewee Peter Marhofer is a representative of the political side of the asylum system. He is Head of the Office for Foreign Nationals and Matters of Citizenship at the Berlin Senat Administration for Interior Affairs and Sports. Therefore he does not directly work with refugees, but with the rules and regulations of the EU and Germany that consequently influence the direct work with the refugees. Additionally, he is also familiar with all the latest developments in the legislation in this area. Andrea Heuer is a

Human Rights activist and a member of Amnesty International and the No Borders Network. She is part of a political initiative that supports refugees in Germany. She was chosen as a representative of the topic from the perspective of the Fundamental Rights of the refugees.

With these interviewees it has to be kept in mind, that their opinions and explanations are not completely unbiased and politically neutral. Marhofer answered the questions as a representative of a political institution and Heuer as a Human Rights activist. Heuer does not work with refugees professionally, like the other interviewees but on a voluntary basis. Nevertheless, she has several years of experience in this field and has done extensive research on the safeguarding of the Human Rights of refugees. Furthermore, it has to be considered that not all of the questions were answered by the three interviewees. Consequently, some opinions on issues will only be represented by one or two of the interviewees.

Interviewing was chosen as the method for the primary research as it is the most flexible research method and thus is the most suitable for this research. Surveys or questionnaires are commonly used to predict outcomes, for example polls prior to elections. Additionally, surveys are often used to find out about behaviors, personal experiences, values and attitudes (Gilbert, 2008, p. 183). While these aspects might be beneficial and interesting for other research, surveys would not lead to the desired results in this research. Finding out about the implementation of the Dublin III Regulation in Germany and the situation of refugees, requires a more flexible and open research method than surveying. Similarly to questionnaires, focus groups would also not lead to the intended results in this research. One main aspect of focus groups is the interaction between the participants (Gilbert, 2008, p. 228). This however, is not desired for this research as it is important to find out information from different experts individually and separately. Additionally, focus groups tend to “lack the depth of information that could be obtained from individual interviews” (Gilbert, 2008, p. 232), which would be a great disadvantage for this research. Consequently, interviewing is the most beneficial research method for the purpose of this research and was thus employed.

In order to get the desired results, semi-structured interviews were conducted. Zina O’Leary defines semi-structures interviews in the book *The essential guide to doing research* as:

“interviews that are neither fully fixed nor fully free, and are perhaps best seen as flexible. Interviewers generally start with some defined question plan, but pursue a more conversational style of interview that may see questions answered in an order more natural to the flow of conversation” (O’Leary, 2004).

The reason why semi-structured interviews were conducted is that the results can be compared while the interview can also be adjusted depending on the different interview partners. A core of identical

questions allows the comparison of the answers of the different experts and additional questions allow to get in depth information about the different fields of expertise. Almost all the interview questions are open-ended question and depending on the availability of the interview partners, the pilot interview was conducted one-on-one, while the others were done in written form via emails. It has to be kept in mind that the fact that some interviews were conducted via email influences the outcome of the interviews. While interview partners in one-on-one conversations can be asked to elaborate or further explain, if a given answer is not clear or sufficient, this is much more limited in written interviews. Nevertheless, written interviews also constitute advantages as the interview partners have more time to consider and phrase their answers more clearly and precisely.

For the conduction of the interviews, the *Ethical Principles of Psychologists and Code of Conduct* by the American Psychological Association will be met (American Psychological Association, 2010). This includes informing the interview partners about the purpose and the process of the interview, the possibility to withdraw from the interview at any point, the confidentiality measures that are taken as well as obtaining informed consent of the interview partners for participating in the research. The informed consent for that was given to all the interview partners can be found in Appendix 6.

It will be taken into account that the results from the interviews will be rather narrow, as only a small number of interviews will be conducted as well as the possible bias of the interview partners will be considered. Consequently, the results of the interviews will not be representative for describing and explaining the implementation of the Dublin III Regulation in whole Germany and the situation of the Fundamental Rights of the refugees. Nevertheless, based on the different fields of expertise of the interview partners, the results found through the interviews will give a general picture of what the situation of refugees in Germany is like. Samples of the interview transcripts can be found in Appendix 7.

As previously stated, qualitative interviews were conducted for the primary research for this thesis. The focus of the primary research is be on the gaps in this field of research that were identified in the literature review. The following chapter summarizes the findings of the primary research through the interviews.

4. Findings

Based on the analysis of the existing literature, it becomes evident, that while many scholars have written about the Dublin Regulations in general, the changes the Dublin III Regulation brought as well as about the shortcomings of the system, detailed research about the concrete and practical implementation of the system in Germany appears to be lacking. Therefore, the focus of the primary research is on finding out what consequences the implementation of the Dublin III Regulation has in Germany and in what way the situation of asylum seekers might have changed since the coming into force of the amended Regulation.

In order to find out about the situation in Germany in relation to the Dublin III Regulation and about the situation for refugees in the country, three interviews as well as a pilot interview were conducted. The interviewees all work in positions that are related in some way to the Dublin Regulation or with asylum seekers on a voluntary basis. Andreas Michels works for the Asylum Counseling at the preliminary reception center for adult refugees in Berlin. The sponsoring organization of the center is the Arbeiterwohlfahrt (AWO). Peter Marhofer is Head of the Office for Foreign Nationals and Matters of Citizenship at the Berlin Senat Administration for Interior Affairs and Sports. Mathias Haman is head of an emergency shelter for refugees in Berlin. Andrea Heuer volunteers for a political initiative that supports refugees in Germany.

Michels works with the Dublin Regulation and the related consequences on a daily basis. About 70% of the clients that come to the asylum counseling are affected by the Dublin Regulation, therefore it is very present in his daily work (Michels, 2015). Many of the asylum seekers that Heuer deals with are affected by an impending deportation to another Member State based on the Dublin System. The Dublin Regulation is therefore also very present in her work (Heuer, 2015). At the Senat Administration for Interior Affairs and Sports on the other hand, the Dublin System is not as present. The Senat mainly functions as administrative assistance for the Federal Office for Migration and Refugees (BAMF) (Marhofer, 2015). Similar to Marhofer, the work of Haman is only indirectly influenced by the consequences of the Dublin Regulation. There are refugees in the shelter that might be expelled based on the Dublin System, but that does not influence the daily work in the shelter (Haman, 2015).

While the work for Marhofer did not change since the Dublin III Regulation came into force (Marhofer, 2015), the work of Michels did noticeably change. One difference is the new standard interview during the consultation in order to determine the responsibility in a Dublin case, which was established in the Dublin III Regulation. This is a significant change to the Dublin II Regulation when the asylum seekers often did not get in touch with the system until a decision was taken by the

BAMF. Now, the asylum seekers immediately get in contact with the Dublin Regulation on the day of the application for asylum. Another change according to Michels is a general increase in the number of Dublin cases. Another important change is a guaranteed possibility to appeal against the decision whether asylum is granted or not (Michels, 2015).

Regarding the dealing with refugees in Germany, Marhofer, Michels and Heuer notice changes since January 2014 when the Dublin III Regulation came into force. Marhofer points out that based on the fact that the consistent implementation of the Dublin System is being hindered because of its significant legal shortcomings, problems in the accommodation and care of the refugees in Germany have come up (Marhofer, 2015). Michels emphasizes the change in the asylum process for the refugees. According to him, the reason for the flight has become less important and many of the asylum applicants have to live with the fear of being deported to the responsible Member State for a long time. He describes Europe as “Verschiebebahnhof”, which is very burdening for the refugees because the EU is signaling that it is not offering the awaited protection (Michels, 2015). Heuer points out another aspect that changed since the coming into force of the Dublin III Regulation. According to her, more administrative courts decide to suspend deportations of asylum seekers to Italy or Hungary (Heuer, 2015).

As mentioned before, there are several reports about catastrophic conditions in refugee camps and stories about the maltreatment of refugees that were published in the media. Michels clearly states that he does not believe that the public authorities treat the refugees in Germany appropriately. He especially points out that the accommodation in mass camps as well as the insufficient care does not correspond with the Human Rights standards in the EU (Michels, 2015). Similar to Michels, Haman believes that there are significant deficiencies in the work of the authorities. According to Haman, the work that the authorities do is often neither the right work, nor good, effective or efficient. He believes that the authorities definitely do not meet the requirements of the work they are supposed to do (Haman, 2015). Heuer also emphasizes that the German authorities do not ensure at all that the Fundamental Rights of the refugees are being safeguarded when they are being deported. The precarious detention conditions in Hungary for example are not taken into account at all (Heuer, 2015). Marhofer on the other hand, is of the opinion that the treatment of refugees in Germany cannot be generalized.

Michels sees a possibility in changing the situation for refugees by harmonizing the standards for accommodation, care and procedural standards in Europe. Additionally, he suggests the abolition of the Dublin System and the implementation of a fair distribution procedure in Europe. Furthermore, he proposes to establish a possibility to seek international protection outside of Europe and to come to Europe without risking one's life (Michels, 2015). Heuer also suggest several changes in order to

improve the situation of the refugees. Like Michels she proposes a legal way for refugees to come to Europe to apply for asylum. This includes not stopping refugees to enter the EU at the European external borders. For Germany and the treatment of refugees in the country, she proposes to improve the care and accommodation of refugees by increasing the number of counseling centers (especially in rural areas), by better training the employees of the BAMF and by ensuring access to German courses during the asylum proceedings (Heuer, 2015).

Based on the landmark cases *M.S.S* and *N.S/M.E* it was established in the Dublin III Regulation that asylum seekers can no longer be deported to Greece, even if Greece would be the responsible state for the asylum application. Neither Marhofer, nor Michels, nor Heuer know of cases, since the implementation of the Dublin III Regulation, where asylum seekers were deported to Greece from Germany. Michels however points out, that there are cases of refugees being deported to Italy, Bulgaria or Hungary where the situations for the refugees are equally precarious as in Greece (Michels, 2015). The still practiced deportations, especially to Italy, Bulgaria and Hungary are also pointed out by Heuer. She also emphasizes that the declaration of Southeast European countries (like Bulgaria) as “safe countries of origin” worsens the situation for many refugees (Heuer, 2015).

The interviewees have quite differing opinions on how German authorities and courts decide whether there are systematic deficiencies in the asylum system in other Member States. According to Michels, such deficiencies are usually only identified after years of documentation work of NGOs or the UNHCR. He further criticizes that many thoroughly investigated reports are being ignored for a long time. Consequently, the asylum seekers that are not represented by a lawyer that is well informed, have great disadvantages (Michels, 2015). Heuer also stresses that it very much depends on the lawyers and judges how the asylum situation in a Member State is being evaluated. She further points out that the German authorities hardly ensure that the Human Rights of an asylum seeker are not being violated when he is deported to the responsible Member State (Heuer, 2015). In contrast to Michels, Marhofer states that status reports by the German Foreign Office, the BAMF and NGOs on the situations in the different Member States are being extensively evaluated and taken into account (Marhofer, 2015). According to Heuer, courts do take the reports of NGOs and local authorities into account, however, the various courts decide very differently, based on these reports, about suspending a deportation or not. She further points out that based on her experience it seems like the German authorities first classify the reception conditions as safe. If another Member State than Greece would be declared to not be a safe country, the Dublin system would further fall apart (Heuer, 2015).

Concerning the problems of the practical implementation of the Dublin Regulation in Germany, all four interviewees point out different aspects that they see as most problematic in the implementation.

According to Michels, the problem does not lie in Germany, but in the Dublin System itself. However, the BAMF could also be more generous towards the asylum seekers. In particular there should be a personal interview with every asylum seeker to find out about the individual situation instead of using the standardized 9 minute interview. Additionally, free legal advice and protection should be available (Michels, 2015). Marhofer points to the identity verification as one of the main issues. He emphasizes that if not every asylum seeker is consistently being registered in the EURODAC system, the applicants can disappear and consequently cannot be transferred within the deadline to the responsible Member State (Marhofer, 2015). Haman sees the biggest problem of the implementation in Germany in the fact that the whole German asylum system is organized around the idea that the refugees will leave again at some point. Therefore, the system is not designed to provide an adequate health care from day 1 onwards, but on the knowledge that over 50% of the refugees will leave again and therefore no permanent solution is being established (Haman, 2015). For Heuer the biggest problem of the practical implementation of the Dublin Regulation in Germany is the fact that the countries where many asylum seekers are being deported to (i.e. Italy, Bulgaria, and Hungary) are unjustifiable from a Human Rights perspective. Another problems she sees in Germany is the bureaucratic burden of the asylum applications and the fact that many asylum seekers have to wait for a long time until they are allowed to make an asylum application (Heuer, 2015).

The violation of Human Rights was one of the key aspects in the landmark cases *M.S.S* and *N.S/M.E.* According to Michels, one of the main flaws in the System in regards to the safeguarding of the Fundamental Rights of the refugees, is the fact that there is no thorough evaluation of the conditions in the responsible Member State. This includes whether there is sufficient accommodation, health care, supply and care for refugees in need of particular protection like children, pregnant women and disabled people (Michels, 2015). Marhofer sees the main issues in the safeguarding of the Fundamental Rights in the social and economic situations on the different Member States and in a legal harmonization of the asylum systems in all the countries (Marhofer, 2015). Heuer points out other aspects. According to her, one of the main flaws in the System concerning the Fundamental Rights of the refugees is that medical reports are being ignored and that refugees are being deported that are not fit to travel. Additionally, the age of refugees is often wrongly being determined. Consequently refugees that are actually minors, are considered to be over 18 (Heuer, 2015).

The interviews show that the Dublin III Regulation does have fairly differing consequences for the people that work with refugees and asylum seekers in Germany. Despite the differences and varying observations of the interview partners, some similarities could be identified. The following chapter analyses these differences and similarities and puts the findings of the interviews in context with the findings of the literature review.

5. Discussion of Research Findings

After summarizing the results of the interviews the next step towards answering the research question is to connect the findings and main points of the literature review with the findings of the primary research. This chapter provides a bridge between the aspects of the Dublin System that other scholars have pointed out in articles and papers, including the changes the Dublin III Regulation has caused, criticism and the importance of the landmark cases as well as the opinions and experiences and opinions of the interviewed experts.

The discussion of the research findings is structured around two main blocks, similar to the literature review, into changes and criticism around the Dublin III Regulation and changes of the Regulation that are directly linked to the landmark cases. The two sub sections are further divided into sections about the different aspects of the Regulation and the landmark cases. A third block analyzes the findings of the interviews that go further than the analysis of the existing literature and are relevant for answering the research question.

5.1 Changes and Criticism of the Dublin III Regulation

The fact that the Dublin II Regulation was amended in order to improve the situation of the refugees and to ensure the compliance with the Fundamental Rights of the refugees, suggests that the practical implementation of the System in Germany would noticeably change. This presumably includes a change in the work of the people that deal with refugees and the asylum system in Germany as well as a change in the dealing with refugees. In practice, this only seems to be the case to a certain degree. Out of the interviewees, only Michels' work noticeably changed since the Dublin III Regulation came into force (Michels, 2015). While both Marhofer and Haman barely see changes in their everyday work (Marhofer, 2015) (Haman, 2015).

As identified in the literature review, there are three main aspects in the Dublin III Regulation that are different compared to the previous Dublin II Regulation. One of these aspects, the sovereignty clause, states in the Dublin III Regulation, that a Member State transferring an asylum seeker to the responsible Member State has to further examine the situation if there are substantial grounds for believing that there is a risk of inhuman or degrading treatment (Regulation No 604/2013 of the European Parliament and of the Council, 2013, p. 37). It was also pointed out by scholars, that despite the changed sovereignty clause, Member States are not obliged to investigate whether such systematic flaws do exist in the first place (Pettersson, 2014, p. 35).

The lack of investigations and controls of possible risks of inhuman and degrading treatment was also highlighted by especially one interview partner. Michels pointed out a large gap between the reports by Human Rights organizations and the UNHCR that show systematic deficiencies in the

asylum systems of many countries and the recognition and acknowledgement of these reports. Based on Michel's statement, it appears that German courts and authorities do not properly investigate whether there are systematic flaws in the asylum system in a Member State (Michels, 2015). Based on Marhofer's explanation on the other hand, the new sovereignty clause is being respected and the asylum systems are being investigated by authorities. He describes that the reports on the reception conditions in different Member States are carefully being evaluated and are also taken into account (Marhofer, 2015).

The new Article 33 in the Dublin III Regulation aims at creating a new system for preventing precarious situations in the asylum system of a Member State, similar to the amended sovereignty clause States (Regulation No 604/2013 of the European Parliament and of the Council, 2013, p. 48). The establishment of this new Article 33 thus indicates a change in the investigation of the asylum systems in the different Member. As mentioned above, the opinions of the interviewees vary significantly on the questions whether German authorities do investigate this properly.

Both scholars as well as the interviewed experts, criticize several aspects of the Dublin III Regulation. The *Rat für Migration* views the Dublin III Regulation as very questionable under Human Rights Standards. It especially points out the reception conditions in Germany (Rat für Migration, n.d.). This was also mentioned by Michels. He believes that the accommodation in mass refugee centers and the lack of care that are reality in Germany, do not match the Human Rights perception of the EU (Michels, 2015).

Another point that is stressed by the *Rat für Migration* is the fact, that the Dublin III Regulation has made the EU into a "Verschiebebahnhof" for refugees. This hinders asylum seekers from settling in one country and leaves them restless for many years ("Intergration statt Abschreckung" - Die europäische Asylpolitik steht am Scheideweg, 2015). Michels, equally describes Europe as a "Verschiebebahnhof" which according to him signals the refugees that the EU is not offering protection. Similar to the *Rat für Migration*, Michels is of the opinion, that this is very burdening for the refugees because they have to live with the fear of being deported to the responsible Member State for a long time and consequently cannot settle (Michels, 2015).

5.2 Landmark Cases

Both landmark cases show significant deficiencies in the asylum system in Greece. Consequently, the CJEU and the ECtHR suspended the transfer of asylum seekers to Greece. Neither one of the interview partners knew of expulsions from Germany to Greece since the coming into force of the Dublin III Regulation. However, Michels points out that although transfers to Greece were suspended, transfers to Italy, Bulgaria and Hungary continue, where the reception conditions are equally precarious as in Greece (Michels, 2015). Heuer supports this observation by also stressing that transfers to these three countries continue and that the detention conditions in Hungary for example are as precarious as in Greece (Heuer, 2015). Consequently, the landmark cases successfully suspended transfers to Greece, but many other Member States are still considered as safe countries where the reception conditions are also critical and transfers continue. This shows that the implementation of the Dublin III Regulation only led to an improvement concerning the suspension of transfers to Member States to a limited degree.

Another important aspect that was pointed out in the *M.S.S. case* is the fact that the ECHR found that both Greece and Belgium had violated several Articles of the ECtHR by either transferring the asylum seeker to Greece or because of the detention and living conditions (*M.S.S. v. Belgium and Greece*, 2011, pp. 42-77). This ruling leads to the question whether the German authorities do treat asylum seekers appropriately. Out of the three interviews, two interviewees clearly stated that they do not believe that this is the case for German authorities. Michels especially criticized the accommodation in mass refugee centers and the insufficient care in that regard (Michels, 2015). Haman even goes as far as saying that the German authorities neither do the right work, nor is their work for refugees good, efficient or effective (Haman, 2015). According to Michels and Haman, German authorities clearly do not deal with asylum seekers appropriately.

One important aspect that was pointed out by many scholars in relation to the landmark cases, is the importance of mutual trust in the Dublin System and the changes of mutual trust that were caused by the rulings of the landmark cases. According to Döring, Brouwer, Lavrysen and Monreno-Lax, the basis of the Dublin System used to be mutual trust and the assumption that all Member States can be considered as safe countries (Döring, 2014, p. 776) (Brouwer, 2013, pp. 136-139) (Lavrysen, 2012, pp. 242-244) (Moreno-Lax, 2012, pp. 2-6). Consequently, asylum seekers were transferred to the responsible Member State without evaluating the reception conditions and the asylum system in that country.

These scholars also agree, that the judgments in the cases *M.S.S.* and *N.S./M.E* have put an end to mutual trust and the assumption that all Member States comply with certain standards and treat the

asylum seekers respectfully. Lieven even goes as far as describing the Dublin III Regulation as putting an end to the automaticity with which asylum seekers are being transferred to Member States (Lieven, 2012, pp. 225-227). This observation would indicate that, since the Dublin III Regulation came into force, transfers do not happen automatically anymore and that the asylum situation in the different Member States are carefully being evaluated before asylum seekers are being deported.

The observations and experiences of the interviewees however, describe a very different practice in Germany from what the scholars suggest in relation to the changed concept of mutual trust. Both Michels and Heuer report that from their experience, German authorities and courts do not properly evaluate whether systematic deficiencies exist in the asylum system of a Member State (Michels, 2015) (Heuer, 2015). Heuer even states that German authorities hardly ensure at all that the Fundamental Rights of the asylum seekers are being respected when they are deported to a Member State. Furthermore, she is of the opinion that the priority of the courts and authorities is to declare all the Member States as safe countries. This is because, if another country than Greece would be officially recognized as having systematic deficiencies in the asylum system and transfers to that country would be suspended, the whole Dublin System would further fall apart and Germany would be further restricted in transferring asylum seekers back to the responsible Member State (Heuer, 2015).

In contrast to the observations of Michels and Heuer, Marhofer describes that reports on problematic reception conditions and asylum systems are carefully being evaluated and taken into account by the German authorities (Marhofer, 2015). This shows a strong discrepancy between the opinions of the different experts. Despite Marhofer's positive description of the way Germany authorities evaluate the conditions in other Member States, the observations of Michels and Heuer suggest, that the presumption of the changed concept on mutual trust by the different scholars is not the case in the practical implementation of the Dublin III Regulation in Germany.

5.3 Practical Implementation in Germany

As mentioned previously, it was identified by reviewing the existing literature that there are gaps in the research that has already been done on the practical implementation of the Dublin III Regulation in Germany and what changes this might have caused. Therefore, the primary research was aimed at finding out information about exactly these gaps, which consequently means that some aspects of the primary research go further than the existing literature. This section points out some of these aspects.

One central goal of the primary research was to find out about possible problems of the practical implementation of the Dublin III Regulation in Germany. All four interviewees agree that there are flaws in the implementation, however the aspects they see as most problematic vary. While Marhofer attributes the problems to the inconsistent application of the EURODAC system (Marhofer, 2015), the other interviewees clearly see flaws in the way Germany sets up the asylum system. For Haman, the main issue is the fact that the German authorities are not trying to find long term solutions for the asylum seekers but that they focus on the idea that the majority of the refugees will leave the country again at some point (Haman, 2015). Heuer points out that the bureaucratic burden of an asylum application and the length of the process is the main flaw in the implementation in the system (Heuer, 2015). Michels agrees with Marhofer to a certain extent, that the problem does not exclusively lie in the implementation in Germany but in the whole Dublin System itself, but he also agrees that German authorities like the BAMF could be more lenient when implementing the Regulation (Michels, 2015).

These points show, that apart from the criticism and flaws of the Dublin III Regulation itself, the implementation of the Regulation in Germany is also deficient. Based on the opinions of the interviewees, there is still a lot of room for improvement in the way the German authorities implement the Regulation.

Next to finding out about the practical implementation of the Regulation in Germany, the safeguarding of the Fundamental Rights of the refugees is a main aspect of this dissertation and was examined in the primary research. Michels, Marhofer and Heuer see deficiencies in the way German authorities try to safeguard the Fundamental Rights of the refugees. Michels and Heuer agree that the accommodation in mass refugee centers that is being practiced all over Germany and the shortage of care for the asylum seekers is a central shortcoming. According to them, such accommodation does not comply with the Fundamental Rights standards of the EU (Michels, 2015) (Heuer, 2015). Heuer further criticizes the way that medical reports are being ignored and that the age of underage asylum seekers is often wrongly being determined (Heuer, 2015). Another criticism that is mentioned by Michel is the fact that the reception conditions in other Member States, including the accommodation, health care and general care is not sufficiently being evaluated by German authorities. This leads to deportations to countries where the reception conditions are have systematic deficiencies (Michels, 2015).

Based on these points of criticism it becomes evident that the situation for asylum seekers in Germany is far from being perfect. The way asylum seekers are being treated in Germany shows that their Fundamental Rights are not being safeguarded in every aspect of the system.

After examining the findings of the primary research in context with the previously summarized existing literature, the final step in this research is to come to a conclusion and answer the research questions. The following chapter provides an answer to the research question, based on the analysis of the primary research and the literature.

6. Conclusion

This research analyzed the Dublin II and Dublin III Regulations, the landmark cases *M.S.S.* and *N.S./M.E.* as well as qualitative interviews with different experts in order to answer the question: *Did the recast of the Dublin System, the Dublin III Regulation 604/2013, lead to changes in the practical implementation of the Dublin System in Germany in view of the safeguarding of the Fundamental Rights of the refugees?* Qualitative interviews were conducted with different experts next to documentary analysis of existing literature and the Regulations as well as the cases to answer this question.

After conducting the pilot interview with the head of an emergency shelter for refugees in Berlin, the focus switched from centering the research around the landmark cases to focusing on the practical aspects of the Regulation. While talking to Mathias Haman during the pilot interview it became evident, that the landmark cases might have affected the legislative procedure of drafting the Dublin III Regulation, on the grassroots level however, these cases hardly play a role. When it comes to the practical work with the asylum seekers, either at the accommodation or during counseling, the cases only play a role to a very limited degree. Therefore, the focus of the other interviews was on how the coming into force of the Dublin III Regulation might have influenced the asylum system and what might have changed for the refugees.

Based on the interviews it became apparent that some aspects of the asylum system did change in Germany since the Dublin III Regulation came into force. However, these changes are not as extensive as it might have been expected. One central change, that is especially important with regard to the Fundamental Rights of the refugees, is the suspension of transfers of asylum seekers to Greece. Nevertheless, it was also established in the interviews that transfers to other countries, like Italy and Bulgaria, where the reception conditions are as precarious as in Greece, continue. It is questionable, whether the implementation of the Dublin III Regulation really lead to an improvement of the situations for the asylum seekers.

The widely practiced accommodation in mass shelters, as well as lacking care, are other aspects of the asylum system in Germany that are highly criticized by different experts in relation to the safeguarding of the Fundamental Rights of the refugees. According to the interviewees, this did not change since January 2014, when the Dublin III Regulation came into force. Furthermore, the insufficient reviews of the asylum systems and reception conditions in the other Member States as well as the differing practices and decisions of the German courts remain problematic.

In conclusion, it can be summarized that the Dublin III Regulation did lead to changes in the practical implementation of the Dublin System in Germany in view of the safeguarding of the Fundamental Rights of the refugees. However, these changes are far away from being as extensive as it was hoped for.

The practical implementation of the System in Germany still has a long way to go until it fully complies with the Fundamental Rights that are set out in the European Convention on Human Rights. The following chapter includes recommendations in that direction as well as suggestions for future research.

7. Recommendations

After reviewing the existing literature and the analysis of the primary research, recommendations can be made in two general aspects of this research. Firstly on the way in which the research was conducted and secondly on improvements of the System based on the identified criticism and the suggestions of the scholars and interview partners to change certain aspects of the System.

For future research in this field it would be recommendable to get a larger number of interviews from experts. The three interviews that were conducted for this research, give a first overview of the practical implementation of the Dublin Regulation in Germany, however they are only samples. In order to get a more precise picture of the situation and implementation in Germany it would be desirable to conduct more interviews.

Apart from a larger number of interviews, it would also be recommendable to interview experts from the different federal states in Germany. Throughout the interviews with Haman and Marhofer it became evident, that their work is largely influenced by the regulations of the federal state of Berlin. The federal states in Germany all organize the accommodation and care of asylum seekers differently. While some states (like Bavaria) mainly provide mass accommodations, other states focus on providing separate apartments (Heuer, 2015). Consequently, conducting interviews with similar experts that work in other federal states than Berlin could give a more precise picture over the implementation and situation in whole Germany.

Through the evaluation of the existing literature it was identified that there is a gap in the research that has already been done. Research about the practical implementation of the Dublin III Regulation and the consequences of the amended Regulation in Germany is missing. This suggests that further research might be an important step towards improving the System and pointing out deficiencies in the System.

Apart from the recommendations for future research, content-related recommendations can also be made on the improvement of the Dublin System in general as well as on the practical implementation in Germany. Based on the evaluation of the existing literature and the primary research it becomes evident that the Dublin Regulation itself should be changed in order to allow asylum seekers to enter the EU legally. Additionally, the Dublin System should establish a better system for evaluating the reception conditions and the asylum systems in the different Member States as well as harmonize the asylum procedures and reception conditions in the Member States.

For the practical implementation of the Dublin Regulation in Germany, it is recommended to improve the accommodation and care for asylum seekers, including offering more asylum counseling, more German courses and more legal advice. Additionally, the bureaucratic burden of the asylum application procedure should be reduced and German authorities should more thoroughly evaluate the reception conditions in a Member State before transferring an asylum seeker.

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9. Appendices

Appendix 1: Article 29 of the Schengen Agreement

Article 29 of the Schengen Agreement of 14 June 1985 (Schengen Agreement, 1990, pp. 17-18)

1. *The Contracting Parties undertake to process any application for asylum lodged by an alien within the territory of any one of them.*
2. *This obligation shall not bind a Contracting Party to authorize every application for asylum to enter or to remain within its territory*
Every Contracting Party shall retain the right to refuse entry or to expel any application for asylum to a Third State on the basis of its national provisions and in accordance with its international commitments.
3. *Regardless of the Contracting Party to which an alien addresses an application for asylum, only one Contracting Party shall be responsible for processing that application. It shall be determined by the criteria laid down in Article 30.*
4. *Notwithstanding paragraph 3 every Contracting Party shall retain the right, for special reasons concerning national law in particular, to process an application for asylum even if under this Convention the responsibility for doing so is that of another Contracting Party.*

Appendix 2: Article 38 of the Schengen Agreement

Article 38 of the Schengen Agreement of 14 June 1985 (Schengen Agreement, 1990, pp. 22-24)

1. Every Contracting Party shall send every other Contracting Party that requests it the information it holds on an applicant for asylum that is necessary for purposes of
- determining the Contracting Party responsible for processing the application for asylum;
- processing the application for asylum;
- implementing the obligations arising under this chapter.

2. Such information may concern only

(a) the identity (name and forename, any previous names, appellations or aliases, date and place of birth, present nationality and any previous nationalities of the applicant for asylum and, where appropriate, the members of his family);

(b) the identity and travel documents (references, periods of validity, dates of issue, issuing authorities, place of issue, etc.);

(c) any other particulars necessary for establishing the applicant's identity

(d) places of residence and the itineraries of journeys;

(e) residence permits or visas issued by a Contracting Party;

(f) the place where the application for asylum was submitted;

(g) where appropriate, the date of submission of any previous application for asylum, the date of submission of the present application, the point reached in the procedure and the import of the decision taken.

3. In addition, a Contracting Party may ask another Contracting Party to inform it of the grounds invoked by an applicant for asylum in support of his application and, where appropriate, the grounds for the decision taken on it. The Contracting Party requested shall consider whether it can comply with the request made to it. In any case the communication of such information shall be subject to the consent of the applicant for asylum.

4. Exchanges of information shall be effected at the request of a Contracting Party and may be effected only between the authorities the designation of which has been communicated by each Contracting Party to the Executive Committee.

5. The information exchanged may be used only for the purposes set out in paragraph 1. Such information may be communicated only to the authorities and jurisdictions responsible for
- determining the Contracting Party responsible for the processing of an application for asylum;
- processing an application for asylum;
- implementing obligations arising under this Chapter.

6. *A Contracting Party that communicates information shall ensure it is correct and up to date. If it emerges that this Contracting Party supplied information that was not correct or should not have been communicated the recipient Contracting Parties shall be informed without delay. They shall be bound to correct that information or to delete it.*

7. *An applicant for asylum shall be entitled to be informed, at his request, of the information exchanged regarding him as long as it is available. If he ascertains that this information is incorrect or should not have been communicated he shall be entitled to require its correction or deletion. Corrections shall be effected as laid down in paragraph 6.*

8. *In each Contracting Party concerned the communication and receipt of information exchanged shall be recorded.*

9. *Information communicated shall be preserved no longer than the time necessary for the purposes for which it was exchanged. The need for its preservation must be assessed in due course by the Contracting Party concerned.*

10. *Information communicated shall in any case have at least the same protection as that laid down in the law of the recipient Contracting Party for information of a similar nature.*

11. *If information is not processed automatically but in another manner each Contracting Party must take appropriate measures to ensure that this Article is complied with by means of effective checks. If a Contracting Party has a service of the type referred to in paragraph 12 it may instruct that service to carry out those checks.*

12. *If one or more Contracting parties want to computerize the processing of all or part of the information referred to in paragraphs 2 and 3, computerization shall be authorized only if the Contracting Parties concerned have adopted legislation relating to such processing that implements the principles of the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data and if they have entrusted an appropriate national body with the independent control of the processing and use of data communicated under this Convention.*

Appendix 3: Article 2 of the ECHR

Article 2 of the European Convention on Human Rights (European Convention on Human Rights, 2010, p. 6)

Right to life

1. *Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.*
2. *Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary.*
 - a. *In defence of any person from unlawful violence;*
 - b. *In order to effect a lawful arrest or to prevent the escape of a person lawfully detained;*
 - c. *In action lawfully taken for the purpose of quelling a riot or insurrection.*

Appendix 4: Article 3 of the ECHR

Article 3 of the European Convention on Human Rights (European Convention on Human Rights, 2010, p. 6)

Prohibition of torture

No one shall be subject to torture or to inhuman or degrading treatment or punishment.

Appendix 5: Article 13 of the ECHR

Article 13 of the European Convention on Human Rights (European Convention on Human Rights, 2010, p. 12)

Right to an effective remedy

Everyone whose rights and freedoms are set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

Appendix 6: Informed Consent Form

Nora Heising, Bachelor Thesis

The Hague University of Applied Sciences

Informed Consent Form

1) Research Project Title

Did the recast of the Dublin system, the Dublin III regulation 604/2013 lead to changes in the practical implementation of the Dublin system in Germany in view of the safeguarding of the Fundamental Rights of the Refugees?

2) Project Description

The common European Asylum Policy and in particular the Dublin system has been criticized for many years. Landmark cases at the European Court of Human Rights and at the Court of Justice of the European Union show the shortcomings of the system. Since January 2014 the recast version of the Dublin system is in force. This latest version of the Dublin system is supposed to be an improvement compared to the former systems. The question is, whether Dublin III is an improvement of the system especially in terms of the safeguarding of the Human Rights of the refugees. In order to answer this question the differences between the Dublin II and Dublin III regulation will first be analyzed and the landmark cases *M.S.S. v. Belgium and Greece* and *N.S./M.E. v. UK and Ireland* will be looked at. Additionally, qualitative interviews will be conducted with different experts on this topic.

If you agree to take part in this study please read the following statement and sign this form.

I am 16 years of age or older.

I can confirm that I have read and understood the description and aims of this research. The researcher has answered all the questions that I had to my satisfaction.

I agree to the audio recording of my interview with the researcher.

I understand that the researcher offers me the following guarantees:

All information will be treated in the strictest confidence. My name will not be used in the study unless I give permission for it.

Recordings will be accessible only by the researcher. Unless otherwise agreed, anonymity will be ensured at all times. Pseudonyms will be used in the transcriptions.

I can ask for the recording to be stopped at any time and anything to be deleted from it.

I consent to take part in the research on the basis of the guarantees outlined above.

Signed: _____ Date: _____

Appendix 7: Sample Interview Transcripts

Interview with Andreas Michels, AWO Asylberatung

Im Rahmen meines Studiums, European Studies in Den Haag, schreibe ich in meinem letzten Studiensemester an meiner Bachelorarbeit. Das Thema meiner Arbeit lautet: *Did the recast of the Dublin system, the Dublin III regulation 604/2013, lead to changes in the practical implementation of the Dublin system in Germany in view of the safeguarding of the Fundamental Rights of the refugees?*

Damit geht es um die Fragestellung, welche Veränderungen es in der praktischen Umsetzung in Deutschland mit der Dublin III Verordnung 604/2013 gegeben hat und dies vor allem in Bezug auf die Grundrechte der Flüchtlinge. Um diese Frage zu beantworten, untersuche ich zunächst die Unterschiede zwischen dem Dublin II und Dublin III Verfahren und die Präzedenzfälle M.S.S. v. Belgium and Greece und N.S./M.E. v. UK and Ireland

As part of my studies, European Studies in The Hague, I am writing my Bachelor Thesis in the last semester. The topic of my thesis is: *Did the recast of the Dublin system, the Dublin III regulation 604/2013, lead to changes in the practical implementation of the Dublin system in Germany in view of the safeguarding of the Fundamental Rights of the refugees?*

The focus is on the questions whether there have been changes in the practical implementation of the Dublin regulation 604/2013 in Germany, especially in relation to the Fundamental Rights of the refugees. In order to answer this question, I first of all analyze the differences between the Dublin II and Dublin III Regulation and the landmark cases M.S.S. v. Belgium and Greece and N.S./M.E v. UK and Ireland.

**1. Für welche Institution/Organisation arbeiten Sie? Welchen Beruf üben Sie aus?
What institution do you work for? What is your profession?**

Ich arbeite für die Asylberatung in den Erstaufnahmeeinrichtungen für erwachsene Asylsuchende in Berlin, Träger ist der AWO Kreisverband Berlin Mitte e.V.
Vom Studium her bin ich Politikwissenschaftler, die meisten meiner Kolleg_innen sind Jurist_innen oder Sozialpädagog_innen/Sozialarbeiter_innen

I work for the asylum counseling in the preliminary reception center for adult refugees in Berlin. The sponsoring organization is the AWO Arbeiterwohlfahrt Kreisverband Berlin Mitte e.V.

**2. Können Sie bitte kurz beschreiben in wie weit Sie in Ihrer Arbeit mit dem Dublin Verfahren zu tun haben?
Could you please briefly describe, how your work is related to the Dublin system?**

In der täglichen Beratungsarbeit spielt Dublin eine große Rolle. Schätzungsweise 70% der Klient_innen sind von Dublin betroffen und somit steht dieses Thema in der Asylverfahrensberatung oft im Zentrum. Menschen wenden sich entweder mit allgemeinen Fragen zum Asylverfahren an uns und im Erstgespräch stellen wir die Problematik fest oder die Klient_innen kommen mit dem Bescheid, dass ein Dublin-Verfahren eingeleitet wurde.

In the daily counseling work, Dublin plays a large role. Approximately 70% of the clients are effected by Dublin, consequently this topic is often central in the asylum counseling. People either come with general questions about the asylum system to us and in the first

conversation we detect the problem, or the clients come with a notification that the proceedings were initiated.

3. Hat sich Ihre Arbeit seit dem Inkrafttreten der Dublin III Verordnung verändert?

Wenn ja, in wie fern?

Did you work change since the Dublin III Regulation came into force? If yes, in what way?

Ja.

Yes.

Zum einen ist die veränderte Praxis des BAMF in der Beratung sichtbar. Hier vor allem das neue Standard-Interview zur Bestimmung der Dublin-Zuständigkeit meist am Tag der Antragstellung. Schon dort spielt Dublin nun eine Rolle (im Unterschied zu Dublin-II, als die Betroffenen meist erst mit dem Bescheid von Dublin erfahren haben, bzw. das BAMF nur durch die Eurodac-Abfrage auf einen potentiellen Dublin-Fall aufmerksam wurde.

Zum anderen nahmen die Dublin-Fälle insgesamt zu. Das liegt meiner Einschätzung nach, v.a. daran, dass nun alle Anträge auf „internationalen Schutz“ Dublin auslösen und nicht nur Asylanträge.

Firstly, the changed practice of the BAMF is visible in the counseling. Especially the new standard interview to determine the Dublin responsibility usually on the day of the application. Already there, Dublin plays a role (unlike the Dublin II, when the affected person only got in touch with the system when they were notified about the Dublin proceedings or when the BAMF got notified through a EURODAC inquiry)

Secondly, there is a general increase in Dublin cases. In my opinion this is because all applications for “international protection” now trigger a Dublin case and not only the applications for asylum.

Interview with Andrea Heuer

1. **Für welche Institution/Organisation arbeiten Sie? Welchen Beruf üben Sie aus?
What institution do you work for? What is your profession?**

Ich arbeite ehrenamtlich in einer politischen Initiative, die Geflüchtete unterstützt. Mein Beruf ist momentan Studentin. Ich verdiene kein Geld mit der Arbeit mit Geflüchteten.

I work for a political initiative that supports refugees on a voluntary basis. My occupation is currently student. I do not earn money with the work with refugees.

2. **Können Sie bitte kurz beschreiben in wie weit Sie in Ihrer Arbeit mit dem Dublin Verfahren zu tun haben?
Could you please briefly describe, how your work is related to the Dublin system?**

Ich habe viel mit Geflüchteten zu tun, die von einer Abschiebung in ein anderes Land, v.a. Ungarn, Bulgarien und Italien, betroffen sind. Gemeinsam wird dann überlegt, was gegen die Abschiebung getan werden könnte.

I deal with refugees that are affected by deportation to another country, like Hungary, Bulgaria or Italy. Together we consider what could be done to stop the deportation.

3. **Hat sich Ihre Arbeit seit dem Inkrafttreten der Dublin III Verordnung verändert?
Did you work change since the Dublin III Regulation came into force? If yes, in what way?**

Im Vergleich zur Dublin II-Verordnung hat sich nichts positiv in meinem Erfahrungsbereich verändert, höchstens verschlechtert, durch die Gerichtspraxis, dass die 6-Monatsfrist, nach deren Ablauf Deutschland für das Asylverfahren zuständig wird, wenn keine Abschiebung erfolgen konnte, mit dem Einlegen eines Eilrechtsschutzes sich nach hinten verschiebt. Außerdem hat es sich negativ für die Geflüchteten ausgewirkt, dass die unbeantworteten Übernahmegesuche an Italien jetzt schon ab 2 Wochen nachdem das Gesuch gestellt wurde, als positiv beantwortet gilt, obwohl Italien keinerlei Auskunft dazu gegeben hat.

In comparison to the Dublin II Regulation, there are no positive changes in my field of experience, only negative ones. Through the judicial praxis, that after the 6 month time limit, Germany is responsible for the asylum procedure, If no deportation takes place it can be postponed with starting the proceedings for a legal protection. Additionally, it has negative consequences for the refugees, that if the request for responsibility is not answered by Italy within two weeks, it is deemed to have been accepted although Italy did not provide any information on that.