



Press and Information

Court of Justice of the European Union

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Advocate General's Opinion in Case C-648/11
MA, BT, DA v Secretary of State for the Home Department

Advocate General Cruz Villalón considers that, when an unaccompanied minor has lodged asylum applications with more than one Member State, the Member State responsible for examining the application will be that where the most recent application was lodged

For this to apply, no member of the minor's family must be legally present in another Member State and the minor's best interests must not require a different solution

The 'Dublin II' Regulation¹ lays down the criteria for determining the Member State responsible for examining an asylum application lodged in the EU, so that, in principle, responsibility lies with a single Member State. When a third-country national seeks asylum in a Member State which is not that designated as responsible by the Regulation, the latter provides for a procedure for the transfer of the asylum seeker to the Member State responsible.

Two minors of Eritrean nationality (MA and BT) and one an Iraqi national of Kurdish origin (DA) applied for asylum in the United Kingdom. The British authorities observed that they had already previously claimed asylum in other Member States, namely Italy (MA and BT) and the Netherlands (DA). Since the view was taken that those Member States were responsible for examining the asylum applications, it was agreed that the minors should be transferred to them.

Where the applicant for asylum is an unaccompanied minor, the Regulation² provides that the Member State responsible for examining his application will be that where a member of his family is legally present, provided that this is in his best interests. If there is no such family member, the Member State responsible for examining the application will be that where the minor has lodged his application for asylum. However, in that latter case, the Regulation does not expressly prescribe a solution where the minor has lodged asylum applications in several Member States. That issue is interpreted for the first time in the Opinion delivered today by Advocate General Pedro Cruz Villalón.

It must be pointed out that, either before (MA and DA) or after (BT) the transfer was carried out, the British authorities, availing themselves of the 'sovereignty clause' provided for in the Regulation, decided that they would themselves examine the asylum applications. This meant that BT, who had been transferred to Italy, could return to the United Kingdom. The sovereignty clause provides that each Member State may examine an application for asylum, even if such examination is not its responsibility under the criteria laid down in the Regulation. However, the issue to be resolved is whether the outcome achieved in the present case, the result of a decision which was discretionary and taken freely by the United Kingdom, is mandatory in accordance with the Regulation.

Mr Cruz Villalón considers that **when an unaccompanied minor has lodged claims for asylum in more than one Member State, and no member of his family is legally resident in another Member State, the Member State responsible for determining the application for asylum**

¹ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national (OJ 2003 L 50, p. 1).

² Article 6.

must, in principle, having regard to the minor's best interests, and unless those interests require otherwise, be that where the most recent application has been lodged.

The fundamental consideration of the minor's best interests, provided for in the Charter of Fundamental Rights of the European Union, must be decisive in order to decide which Member State, of all those that have received an asylum application, is the Member State responsible. This has to be reconciled, in addition, with the objectives of clarity and speed which the Regulation advocates for the procedure for determining the Member State responsible for examining an asylum application. Consequently, the responsibility in question must be allocated to that Member State which is best placed to ascertain the minor's best interests. This will normally be the Member State where the minor is present, which will usually be the Member State which has received the most recent asylum application. That Member State is the one which is in a position to question the minor and is able to have regard to what he himself understands to be his own best interests. In addition, neither for reasons of time nor in view of the best treatment owed to minors is it appropriate to make this type of asylum seeker engage in travel that can be avoided.

The Advocate General acknowledges that the solution proposed may have the undesired effect of giving rise to a type of 'forum shopping', with the result that asylum seekers may be tempted, for the purposes of lodging their application, to choose the Member State where the law which is most advantageous to them will be applied. However, that potential risk is sufficiently justified by the fact that it is only in this manner that due attention can be given to the minor's best interests.

In any event, the criterion that the Member State responsible is that where the most recent application for asylum has been lodged is warranted only in that it best lends itself, in principle, to serving the minor's best interests. Accordingly, if, in a given case, that consideration is inapplicable, the minor's interests require the criterion in question not to be applied.

NOTE: The Advocate General's Opinion is not binding on the Court of Justice. It is the role of the Advocates General to propose to the Court, in complete independence, a legal solution to the cases for which they are responsible. The Judges of the Court are now beginning their deliberations in this case. Judgment will be given at a later date.

NOTE: A reference for a preliminary ruling allows the courts and tribunals of the Member States, in disputes which have been brought before them, to refer questions to the Court of Justice about the interpretation of European Union law or the validity of a European Union act. The Court of Justice does not decide the dispute itself. It is for the national court or tribunal to dispose of the case in accordance with the Court's decision, which is similarly binding on other national courts or tribunals before which a similar issue is raised.

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The [full text](#) of the Opinion is published on the CURIA website on the day of delivery.

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