Court of Justice of the European Union
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Press and Information

Judgment in Case C-648/11
MA, BT, DA v Secretary of State for the Home Department

The Member State responsible for examining an asylum application made in more than one Member State by an unaccompanied minor is the State in which the minor is present after having lodged an application there

For that to be the case, there must be no member of the minor's family legally present in another Member State

The 'Dublin II' Regulation[1] lists the criteria for determining the Member State responsible for examining an asylum application lodged in the EU, so that the competence is reserved to a single Member State. Where a third-country national claims asylum in a Member State other than that designated as responsible under the regulation, the regulation lays down a procedure for transferring the asylum applicant to the Member State responsible.

Two minors of Eritrean nationality (MA and BT) and a minor of Iraqi nationality (DA) applied for asylum in the United Kingdom. No member of their families was legally present in another Member State of the EU. The United Kingdom authorities established that they had already lodged applications for asylum in other Member States: in Italy (MA and BT) and in the Netherlands (DA). Therefore, it was decided that the minors would be transferred to those States, which were considered responsible for examining their asylum applications.

Where the applicant for asylum is an unaccompanied minor, the regulation[2] provides that the Member State responsible for examining the application is to be that where a member of his family is legally present, provided that this is in the best interest of the minor. In the absence of a family member, the Member State responsible for examining the application is to be that where the minor has lodged his application for asylum, although the regulation does not specify whether that is the first application which the minor lodged in a Member State or the most recent application lodged in another Member State.

It should be stated that before proceeding with the transfer of MA and DA, but after BT had been transferred, the United Kingdom authorities decided to examine the applications for asylum themselves, under the 'sovereignty clause' provided for by the regulation. Consequently BT, who had already been transferred to Italy, was able to return to the United Kingdom. Under the sovereignty clause, 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 question which the Court has answered is whether the outcome in those three cases – the result of a discretionary decision by the United Kingdom – is mandatory under the regulation.

In its judgment, delivered today, the Court declares that, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged an asylum application in more than one Member State, the Member State responsible for examining it will be that in which the minor is present after having lodged an application there.

[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.

That conclusion follows from the context and objective of the regulation**,** which seeks to guarantee effective access to an assessment of the asylum applicant's refugee status, while focusing particularly on unaccompanied minors. Thus, since unaccompanied minors form a category of particularly vulnerable persons, it is important not to prolong more than is strictly necessary the procedure for determining the Member State responsible, which means that, as a rule, unaccompanied minors should not be transferred to another Member State.

These considerations are supported by the requirement that the fundamental rights of the EU should be observed, including the right whereby in all actions relating to children, whether taken by public authorities or private institutions, the child's best interests are to be a primary consideration. Accordingly, in the interest of unaccompanied minors, it is important not to prolong unnecessarily the procedure for determining the Member State responsible, and to ensure that unaccompanied minors have prompt access to the procedures for determining refugee status.

The Court states that such an interpretation does not mean that an unaccompanied minor whose application for asylum is substantively rejected in one Member State can subsequently compel another Member State to examine an application for asylum. Member States are not required to examine whether the applicant is a refugee where an application is considered inadmissible because the asylum applicant has lodged an identical application after a final decision has been taken against him.

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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