



A Member State that has given notice of its intention to withdraw from the EU in accordance with Article 50 TEU remains the responsible State for the purposes of the Dublin III Regulation

It is for each Member State to determine the circumstances in which it wishes to make use of its discretion and itself carry out the examination of an application for international protection for which it is not responsible

On 10 January 2017, the International Protection Appeals Tribunal (IPAT, Ireland) upheld a decision of the Irish Refugee Applications Commissioner recommending the transfer of S.A., M.A. and their child A.Z. to the UK. The Commissioner took the view that the UK was the country responsible for taking charge of the asylum applications brought by S.A. and M.A. on the basis of the Dublin III Regulation¹.

The IPAT considered that it did not have jurisdiction to exercise the option conferred by the discretionary clause² provided for by that regulation, according to which each Member State may decide to examine an application for international protection lodged with it, even if that examination is not its responsibility under the criteria defined by that regulation for determining the responsible Member State.

Hearing an action brought against the IPAT's decision, the High Court (Ireland) took the view that, in order to resolve the dispute before it, it was first necessary to determine the implications which the process of withdrawal of the UK from the EU may have for the Dublin System. It therefore referred a number of questions to the Court of Justice.

In today's judgment, the Court observes, first of all, that the notification by a Member State of its intention to withdraw from the EU in accordance with Article 50 TEU does not have the effect of suspending the application of EU law in that Member State and that, consequently, that law continues in full force and effect in that Member State until the time of its actual withdrawal from the EU.

The Court goes on to state that it is clear from the wording of the discretionary clause provided for by the Dublin III Regulation that that **clause is optional and that that option is also not subject to any particular condition**. It is intended to allow each Member State to decide, in its absolute discretion, on the basis of political, humanitarian or practical considerations, to agree to examine an asylum application even if it is not responsible under the criteria laid down in that regulation. That finding is consistent (i) with the objective of that clause, which is to maintain the prerogatives of the Member States in the exercise of the right to grant international protection and (ii) with settled case-law of the Court, according to which optional provisions afford wide discretionary power to the Member States.

The Court takes the view that the fact that a Member State, in this case the United Kingdom, which is designated as responsible within the meaning of the Dublin III Regulation, has notified its

¹ Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (OJ 2013 L 180, p. 31).

² Article 17(1) of the Dublin III Regulation.

intention to withdraw from the EU in accordance with Article 50 TEU does not oblige the determining Member State, in this case Ireland, itself to examine, under the discretionary clause, the application for international protection.

The Court then goes on to examine whether the Dublin III Regulation must be interpreted as requiring that the determination of the State responsible under the criteria defined by that regulation and the exercise of the discretionary clause set out in that regulation be undertaken by the same national authority. The Court finds in this regard that the Dublin III Regulation does not contain any provision specifying which authority has power to take a decision under the criteria, defined by that regulation, relating to the determination of the Member State responsible or in respect of the discretionary clause. Nor does that regulation specify whether a Member State must entrust the task of applying such criteria and of applying that discretionary clause to the same authority. By contrast, that regulation does provide that each Member State is to notify the Commission without delay of the authorities responsible, in particular for fulfilling the obligations arising under that regulation, and of any amendments regarding those authorities.

The Court concludes that it is a matter for the Member States to determine which national authorities have power to apply the Dublin III Regulation. It adds that a Member State is free to entrust to different authorities the task of applying the criteria defined by that regulation relating to the determination of the Member State responsible and the task of applying the discretionary clause set out in that regulation.

Furthermore, the provisions of the Dublin III Regulation³ do not require a Member State which is not responsible, under the criteria set out by that regulation, for examining an application for international protection to take into account the best interests of the child and to examine itself that application pursuant to the discretionary clause set out by that regulation.

The Court also takes the view that the regulation does not require a remedy to be made available against the decision not to make use of the discretionary clause, in the knowledge that that decision may be challenged at the time of an appeal against the transfer decision.

Finally, the Court finds that, **in the absence of evidence to the contrary, the Dublin III Regulation establishes a presumption that it is in the best interests of the child to treat that child's situation as indissociable from that of its parents.**

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 judgment is published on the CURIA website on the day of delivery.

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³ Article 6(1) of the Dublin III Regulation.