

[Home](#) > CJEU - C-648/11 The Queen on the application of MA, BT, DA v Secretary of State for the Home Department

CJEU - C-648/11 The Queen on the application of MA, BT, DA v Secretary of State for the Home Department

Country of Applicant:

Eritrea

Iraq

Date of Decision:

06-06-2013

Citation:

C-648/11

Court Name:

Fourth Chamber of the CJEU

Keywords:

[Dublin Transfer](#) [1]

[Best interest of the child](#) [2]

[Unaccompanied minor](#) [3]

Relevant Legislative Provisions:

International Law > [1951 Refugee Convention](#) [4] > [Art 1A](#) [5]

International Law

International Law > [1951 Refugee Convention](#) [4]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [6]

European Union Law > [EN - Charter of Fundamental Rights of the European Union](#) [7]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Recital \(3\)](#) [9]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Recital \(4\)](#) [10]

European Union Law > [EN - Asylum Procedures Directive, Council Directive 2005/85/EC of 1 December 2005](#) [6] > [Art 25](#) [11]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Recital \(15\)](#) [12]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Article 2](#) [13] > [\(c\)](#) [14]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#)

[8] > [Article 2](#) [13] > [\(d\)](#) [15]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Article 2](#) [13] > [\(h\)](#) [16]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Article 3](#) [17] > [1.](#) [18]

European Union Law > [EN - Dublin II Regulation, Council Regulation \(EC\) No 343/2003 of 18 February 2003](#) [8] > [Article 3](#) [17] > [2.](#) [19]

Headnote:

This case concerns the interpretation of Article 6 of Regulation (EC) No 343/2003 when an unaccompanied child submits more than one asylum application in two Member States and does not have any family members present in the territories of the Member States. In such circumstances the CJEU held that the responsible Member State is the one in which the child is present after having lodged an asylum application there.

Facts:

The three joined cases in the proceedings concerned three children, two of whom were Eritrean (MA and BT) and one of whom was a national of Iraq (DA). All of the children had applied for asylum in the United Kingdom after having previously claimed in other Member States. None of the Applicants had family members legally present in the territory of either of the relevant Member States. After Court proceedings, the Secretary of State decided pursuant to Article 3(2) of the Dublin Regulation to examine MA's and DA's asylum claim. BT was transferred to Italy in 2009 and brought an action before the High Court of Justice challenging the legality of her transfer to Italy. BT was able to return to the UK and was granted refugee status but declined to withdraw her action. The Applicants appealed to the Court of Appeal (England and Wales) (Civil Division) and the Court referred the following question of interpretation to the CJEU:

In Regulation 343/2003, where an applicant for asylum, who is an unaccompanied minor with no member of his or her family legally present in another Member State, has lodged claims for asylum in more than one Member State, which Member State does the second paragraph of Article 6 make responsible for determining the application for asylum?

Decision & Reasoning:

As regards admissibility, the Court held that the case was not hypothetical in light of BT's claim for damages which was an integral part of the main proceedings. The central question for the Court concerned the second paragraph of Article 6 and the meaning of 'where the minor has lodged his or her application for asylum.' The Court recalled that in interpreting a provision of EU law it is necessary to consider not only its wording, but also the context in which it occurs and the objectives pursued by the rules of which it is a part. If it had been intended for this provision to mean the first Member State then it would have been expressed as such (Para 52). Therefore, it cannot be construed as meaning the first Member State where the minor has lodged his or her application for asylum. The Court held that unaccompanied minors form a category of particularly vulnerable persons and that it is important not to prolong the procedure for determining the Member State responsible more than is strictly necessary, which means that, as a rule, unaccompanied minors should not be transferred to another Member State (Para. 55). Guaranteeing effective access to an assessment of the applicant's refugee status is also key. The Court referenced Article 24(2) of the Charter of Fundamental Rights and Recital 15 in the

preamble to the Regulation in that regard. Accordingly, the second paragraph of Article 6 cannot be interpreted in a way that disregards a fundamental right. The Court held that the best interests of the child must be a primary consideration in all decisions adopted by the Member States under Article 6. Therefore, the present Member State in principle should be the State responsible for the child's asylum application. As regards forum shopping, the Court held that such an interpretation of Article 6 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. In this regard a link was made to Article 25 of the Asylum Procedures Directive to show that Member States are not required to examine whether an applicant is a refugee where an application is considered inadmissible because, inter alia, the asylum applicant has lodged an identical application after a final decision has been taken against him.

Outcome:

The second paragraph of Article 6 of the Dublin Regulation must be interpreted as meaning that, in circumstances such as those of the main proceedings, where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the Member State responsible.

Observations/Comments:

Intervener: the AIRE Centre UK

The Advocate General's opinion contained a number of important points with respect to the rights of the child as the primary consideration in applying the Dublin Regulation: an assessment must be made of the individual circumstances of each case, and to consider which decision best serves those interests, the minor's cooperation is necessary (Para 74). As regards the potential risk of forum shopping, the Advocate General stated that this was sufficiently justified by the fact that the approach of the child having their claim examined in the present Member State was the only way in which due attention could be given to the best interests of the child which is a primary consideration in accordance with Article 24(2) of the Charter. Allocating responsibility to the Member State where the most recent application was lodged was also held by the Advocate General to be subject to exception if the minor's best interests require.

Further commentary and press releases concerning this ruling are found here:

<http://media.leidenuniv.nl/legacy/case-summery-case-c-648-11.pdf> [20]

<http://www.alde.eu/press/press-and-release-news/press-release/article/unaccompanied-minors-member-states-must-follow-eu-court-jurisprudence-41590/> [21]

<http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130071en.pdf> [22]

http://defenceforchildren.nl/p/hjr_document/2466594 [23]

<http://www.airecentre.org/news.php/103/press-release-the-queen-on-application-of-ma-bt-da-v-secretary-of-state-for-the-home-department-inte> [24]

The Swedish Migration Board's instructions following the judgment are available here:

Case Law Cited:

CJEU - C-400/10 J. McB. v L. E.

CJEU - C-19/08 Migrationsverket v Edgar Petrosian and Others (UP)

CJEU - C-45/09 Gisela Rosenblatt v Oellerking Gebäudereinigungsges. mbH

CJEU - C-197/10 Unió de Pagesos de Catalunya v Administración del Estado

CJEU - C-225/02 Rosa García Blanco v Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)

CJEU - C-314/96 Ourdia Djabali v Caisse d'allocations familiales de l'Essonne

CJEU - C-403/09 PPU Deticek [2009] ECR I-12193

Attachment(s):



[Original judgment - C-648.11.odt](#)[26]

Authentic Language:

English

Country of preliminary reference:

United Kingdom

National / Other Legislative Provisions:

TFEU - Art 267

Links:

[1] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A1213

[2] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A17

[3] https://www.asylumlawdatabase.eu/en/case-law-search?f%5B0%5D=field_keywords%3A88

[4] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention>

[5] <http://www.asylumlawdatabase.eu/en/content/1951-refugee-convention#1>

[6] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive>

[7] <https://www.asylumlawdatabase.eu/node/453>

[8] <https://www.asylumlawdatabase.eu/node/19>

[9] https://www.asylumlawdatabase.eu/node/19#toc_15

[10] https://www.asylumlawdatabase.eu/node/19#toc_16

[11] <http://www.asylumlawdatabase.eu/en/content/asylum-procedures-directive#Art%2025>

[12] https://www.asylumlawdatabase.eu/node/19#toc_29

[13] https://www.asylumlawdatabase.eu/node/19#toc_42

[14] https://www.asylumlawdatabase.eu/node/19#toc_46

[15] https://www.asylumlawdatabase.eu/node/19#toc_47

[16] https://www.asylumlawdatabase.eu/node/19#toc_51

[17] https://www.asylumlawdatabase.eu/node/19#toc_65

[18] https://www.asylumlawdatabase.eu/node/19#toc_66

- [19] https://www.asylumlawdatabase.eu/node/19#toc_67
- [20] <http://media.leidenuniv.nl/legacy/case-summery-case-c-648-11.pdf>
- [21] <http://www.alde.eu/press/press-and-release-news/press-release/article/unaccompanied-minors-member-states-must-follow-eu-court-jurisprudence-41590/>
- [22] <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-06/cp130071en.pdf>
- [23] http://defenceforchildren.nl/p/hjr_document/2466594
- [24] <http://www.airecentre.org/news.php/103/press-release-the-queen-on-application-of-ma-bt-da-v-secretary-of-state-for-the-home-department-inte>
- [25] <http://olseke.files.wordpress.com/2013/07/mv-instruktion-vci813.pdf>
- [26] <https://www.asylumlawdatabase.eu/sites/default/files/aldfiles/Original%20judgment%20-%20C-648.11.odt>