



Dublin transfer of unaccompanied minors

Findings of the Court of Justice of the European Union

The CJEU was asked to answer the following question:

in Regulation No 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?

The Court first noted that the expression ‘first lodged his application’ used in Article 5(2) of regulation 343/2003 has not been repeated in the second paragraph of Article 6. Moreover, Article 6 refers to the Member State ‘where the minor has lodged his or her application for asylum’, whereas Article 13 expressly states that ‘the first Member State with which the application for asylum was lodged shall be responsible for examining it’. Assuming that the European Union legislature had intended to designate, in the second paragraph of Article 6 of Regulation No 343/2003, ‘the first Member State’ as responsible, that would have been expressed in the same precise terms as in Article 13 of that regulation. Accordingly, the expression, ‘the Member State ... where the minor has lodged his or her application for asylum’, cannot be construed as meaning ‘the first Member State where the minor has lodged his or her application for asylum’.

Furthermore, the second paragraph of Article 6 of Regulation No 343/2003 must be interpreted in the light of its objective, which is to focus particularly on unaccompanied minors, as well as in the light of the main objective of the regulation, which is to guarantee effective access to an assessment of the applicant’s refugee status. 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.

The above considerations are supported by the requirements arising from recital 15 in the preamble to Regulation No 343/2003, according to which the regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter. Those fundamental rights include, in particular, that set out in Article 24(2) of the Charter, 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. Thus, the second



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paragraph of Article 6 of Regulation No 343/2003 cannot be interpreted in such a way that it disregards that fundamental right.

The Court concluded that the answer to the question referred to it is that the second paragraph of Article 6 of Regulation No 343/2003 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'.

See: *The Queen, on the application of MA, BT, DA v Secretary of State for the Home Department*, Case C-648/11, Judgement of 6.6.2013.