

UK Legal News Analysis

The Dublin Regulation and unaccompanied children

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Jurisdiction

European Union

Related Legislation

Council Regulation (EC) 343/2003

Related Cases

[2013] All ER (D) 98 (Jun)

Abstract

Immigration analysis: The CJEU's recent ruling will affect unaccompanied children who have claimed asylum in Europe. Liz Barratt, an associate solicitor at Bindmans LLP, believes the judgment could have ramifications beyond children's cases and lawyers dealing with adult applicants facing a Dublin removal may find it a useful source of legal challenge to decisions in such cases.

Analysis

Original news

R (on the application of MA and others) v Secretary of State for the Home Department C-648/11, [2013] All ER (D) 98 (Jun)

The Court of Justice of the European Union (CJEU) made a preliminary ruling concerning the interpretation of the second paragraph of art 6 of Council Regulation (EC) 343/2003 (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). The request had been made in proceedings between MA, BT and DA, three children who were third-country nationals, and the Secretary of State for the Home Department (United Kingdom) (the Secretary of State) concerning the Secretary of State's decision not to examine their asylum applications which had been lodged in the United Kingdom and to propose that they be transferred to the member state in which they had first lodged an application for asylum.

What issues did this case raise?

The case concerned the application of the Regulation (EC) 343/2003 (the Dublin Regulation) to unaccompanied children and in particular whether the Dublin Regulation allowed member states to remove a child from one to another where the child had made an asylum application in both member states.

The case also concerned the interplay between the Dublin Regulation and the Charter of Fundamental Rights of the European Union, in particular art 24(1) of that Charter which states that in all actions relating to children the child's best interests must be a primary consideration. The CJEU has made clear that the Dublin Regulation observes the fundamental rights in the Charter which, in addition to art 24(1), includes, in arts 1 and 18, the full observance of the human dignity and right to asylum of asylum seekers. In this aspect

of the decision the judgment has important ramifications in adult cases where a removal under the Dublin Regulation may be in breach of the individual's rights under the Charter.

The Dublin Regulation sets out criteria for determining which member state is responsible for deciding an asylum claim. Article 6 of the Dublin Regulation was the relevant article in respect of unaccompanied children and we argued that, unlike all the other articles which apply to adults, this sets up special provision for unaccompanied children who claim asylum. We argued that the member state responsible for determining an unaccompanied child's asylum claim is the member state where the child is and has made his/her claim and not any other member state where the child may have been previously and claimed asylum previously. The one exception to this principle is where an unaccompanied child has family in another member state and it is in his/her best interests to be reunited with their family.

The reason why this case needed to be brought was that the UK and other member states understood art 6 of the Dublin Regulation to mean that an unaccompanied child who was in the UK but who had claimed asylum in another member state was not the responsibility of the UK and the UK could, and did, remove the child to that previous member state.

Until this case it had been the usual practice of the UK, and many other member states, to remove unaccompanied children who were in the UK and had claimed asylum here back to another member state where a child had previously claimed. This led to forced removals of very vulnerable children which often started at dawn or in the early hours and children found themselves back in another member state with no provision in place for their care.

To what extent is the judgment helpful in clarifying the law in this area?

The judgment of the CJEU makes clear that art 6 of the Dublin Regulation means a child in the UK, or any other member state, who claims asylum must have their case considered in the UK rather than the UK looking to pass responsibility for that child back to another member state. The judgment is clear about how the Dublin Regulation should be interpreted and confirms member states' responsibilities to unaccompanied children in their territory.

The judgment also makes clear that the Dublin Regulation must be applied in a manner which observes the rights set out in the Fundamental Rights Charter and this is a very welcome clarification for both children and adult asylum seekers.

What are the likely ramifications of the decision for UK courts?

If the UK Home Office comply with the judgment and put in to practice the correct interpretation of the Dublin Regulation then the UK courts will not have to deal with judicial review challenges of decisions to remove an unaccompanied child to another member state. There may be cases also where a child is being removed because family members are present in another member states and it has been decided it is in the child's best interests to be reunited. There may be cases where the assessment of the child's best interests is challenged.

The judgment also has potential application in other Dublin Regulation removal cases for adults and I expect the judgment may be relevant to the courts in such cases because of the effects of the Charter on the Dublin Regulation.

What are the implications for lawyers? What will they need to be mindful of when advising clients in this area?

This is an important judgment for asylum lawyers dealing with children's cases where the possibility of removal from the UK back to a different member state has raised its head. Many child clients are extremely anxious about the threat of being sent to another member state especially where they have experienced hardship/maltreatment which unfortunately is not uncommon. This judgment takes that fear away and means a child can concentrate on his/her asylum claim knowing that the UK will have to deal with her/his case. There will, I expect, be cases about the assessment of a child's best interests where removal if

proposed for a child to join family who are resident in another member state.

The judgment also potentially has ramifications beyond children's cases and lawyers dealing with adult applicants facing a Dublin Regulation removal may find it a useful source of legal challenge to decisions in such cases.

Are there any patterns or trends emerging in the law in this area?

What we have seen in the UK are a number of challenges to removal under the Dublin Regulation for both children and adults. This case, in my opinion, deals definitively with the application of the Dublin Regulation to unaccompanied children with no family members in another member state. There are still important issues to be decided for vulnerable adults facing removal from the UK under the Dublin Regulation.

What are your predictions for future developments?

There will be cases involving children being removed on the basis that they have family in another member state where issues of best interests of that child have to be considered. I think it is more likely that there will be leading cases about removal of adults under the Dublin Regulation and how that removal observes the individual's rights to asylum and human dignity as set out in the Fundamental Charter.

Liz Barratt specialises in immigration and administrative law, and is known for working with very vulnerable clients, including minors and victims of torture. She has a particular interest in children's cases and the impact of EU law on migration. A large part of her work is representing asylum seekers and refugees. In R (on the application of MA, BT, DA) v Secretary of State for the Home Department, she represented MA and BT.

Interviewed by Kate Beaumont.

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