



Press and Information

Court of Justice of the European Union
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Judgment in Case C-4/11
Bundesrepublik Deutschland v Kaveh Puid

Where a Member State may not transfer an asylum seeker to the State competent to examine his application because of a risk of infringement of his fundamental rights in the latter, the Member State is required to identify another Member State as responsible for the examination

Conversely, it is not, in principle, required itself to examine the application

The ‘Dublin II’ Regulation¹ sets out the criteria for determining the Member State competent to examine an application for asylum lodged in the EU – a single Member State being, in principle, competent. Where an asylum seeker has lodged his application in a Member State which is not the one the Regulation indicates is competent, the Regulation provides for a procedure for the transfer of the asylum seeker to the competent Member State. However, in such a situation, the Member State to which the application was made may decide not to transfer the applicant to the competent State and itself to examine the application.

Mr Puid, an Iranian national, arrived in Germany irregularly by transiting through Greece. His application for asylum lodged in Germany was declared inadmissible on the ground that, under the Regulation, Greece was the Member State competent to examine that application. Mr Puid was therefore transferred to Greece. However, he brought an action for annulment of the decision rejecting his application, which was upheld by the Verwaltungsgericht Frankfurt am Main (Administrative Court, Frankfurt am Main, Germany). That court considered that, in the light of the conditions in Greece in relation to the reception of asylum seekers and processing of asylum applications, Germany was required to examine the application. Mr Puid was subsequently recognised as a refugee by the German authorities.

In that context, the Hessischer Verwaltungsgerichtshof (Higher Administrative Court, Land of Hesse, Germany), before which an appeal against the decision of the Verwaltungsgericht Frankfurt am Main has been brought, has asked the Court of Justice for clarification as to the designation of the State which must examine an application for asylum. The German court is seeking to ascertain whether the Regulation confers on an asylum seeker the right to require a Member State to examine his application if that State cannot transfer him, because of a risk of infringement of his fundamental rights, to the Member State initially identified as competent.

In today’s judgment, the Court recalls, first of all, that a Member State is required not to transfer an asylum seeker to the Member State initially identified as responsible where systemic deficiencies in the asylum procedure and in the conditions for the reception of asylum seekers in the Member State initially identified as responsible provide substantial grounds for believing that the applicant would face a real risk of being subjected to inhuman or degrading treatment².

In this connection, the Court points out that, faced with such a situation, a Member State may decide, in accordance with the Regulation, itself to examine the application. However, the Court makes clear that if that State does not wish to avail itself of that right, it is not, in principle, required

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 Joined Cases [C-411/10](#) and [C-493/10](#) N. S. and M. E. and Others; see also Press Release [140/11](#).

to examine the application. In those circumstances, it is to identify the Member State responsible for the examination of the asylum application by continuing to examine the criteria set out in the Regulation. If it does not succeed in so doing, the first Member State with which the application was lodged is to be responsible for examining it.

Lastly, the Court states that the Member State in which the asylum seeker is located must ensure that it does not worsen a situation where the fundamental rights of that applicant have been infringed by using a procedure for determining the Member State responsible which takes an unreasonable length of time. Accordingly, if necessary, it must itself examine the application.

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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